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Governor

STATE OF LOUISIANA
DEPARTMENT OF REVENUE

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Secretary

Private Letter Ruling
Redacted Version
No. 02-015
December 13, 2002
Corporation Income Tax and Individual Income Tax
Availability of the Motion Picture Investor 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 to the transactions proposed by the ABC Group, X, LLC and the Y, LLC.

You provided the following facts:

Three corporations, A Corporation, a duly organized New York corporation, B Corporation, a duly organized New York Corporation and C Corporation, a duly organized California Corporation, (the ABC Group) are in the business of distributing motion pictures, music videos and television commercials. Due to the incentives of Senate Bill 108, the ABC Group is willing to order a portion of its productions from Louisiana companies.

Louisiana residents will form a Louisiana limited liability company (LLC), X. The members of X will all be Louisiana citizens who are subject to Louisiana income tax.

Y, LLC (Y) is a Louisiana limited liability company and is in the business of producing motion pictures, music videos and television commercials.

The ABC Group, X, and Y will enter into an agreement wherein upon the certification of a production as a "state-certified production" the ABC Group will transfer funds to X in order to pre-pay for purchase of this production. X then will then invest all of said funds in Y, as consideration for the production of a motion picture, music video and/or television commercial. Once the motion picture, music video and/or television commercial is produced the production shall be delivered to the ABC Group for distribution.

X will owe to the ABC Group a rebate equal to a percentage of any Louisiana state tax credits it earns pursuant to Senate Bill 108.

Attached to your request for a private letter ruling is a document entitled "Purchase and Distribution Agreement", dated 2002, and signed by representatives of the ABC Group, X and Y. This document outlines the proposed transaction in detail and is incorporated by reference.

You asked the following questions:

1. Is X an investor in accordance with the meaning of Senate Bill 108?
2. Is the payment by X to Y (the pre-payment received from ABC) considered an investment by X in accordance with Senate Bill 108?

3. Will the Louisiana tax credits of Senate Bill 108 be available to the members of X based on these proposed transactions?

4. Will the Louisiana tax credits be available to all members of X, notwithstanding when a person becomes a member of X? That, is, if a Louisiana citizen is a member of X by December of year-end, will that person be entitled to his/her share of all credits available to X pursuant to Senate Bill 108?

Discussion:

Senate Bill 108 of the 2002 First Extraordinary Session of the Louisiana Legislature amended La. Rev. Stat. § 47:6007, the Motion Picture Investor Tax Credit. Prior to these amendments, the credit was only applicable to productions produced by motion picture production companies that were corporations. The amendment expanded the availability of the credit by allowing the production company to be any legal entity structure, including a limited liability company.

To be able to earn the credit, a taxpayer must be domiciled in the state of Louisiana and must invest a minimum three hundred thousand dollars in a state-certified production. See La. Rev. Stat. § 47:6007(C). To qualify as a state-certified production, the production must meet several tests that are set forth in the definition section of La. Rev. Stat. § 47:6007(B).

A “**state-certified production**” is defined in La. Rev. Stat. § 47:6007(B)(5) as “a production approved by the Louisiana Film and Video Commission and the Department of Economic Development produced by a **motion picture production company** domiciled and **headquartered in Louisiana** which has signed a distribution agreement with either a major theatrical exhibitor, television network, or cable television programmer.” La. Rev. Stat. § 47:6007 defines a “**motion picture production company**” as “a company engaged in the business of producing nationally distributed **motion pictures**.” A “**motion picture**” is defined as “a nationally distributed feature length film, video, television series, or commercial made in Louisiana, in whole or in part for theatrical or television viewing or as a television pilot. The term ‘motion picture’ shall not include the production of television coverage of news and athletic events.” A motion picture production company is “**headquartered in Louisiana**” if it is “a corporation incorporated in Louisiana or a membership, limited liability company, or other business entity domiciled and headquartered in Louisiana for the purpose of producing nationally distributed motion pictures. (Emphasis added.)

The statute gives the Louisiana Film and Video Commission (the Film Commission) and the Department of Economic Development (DED) joint authority to determine if a production qualifies as a state-certified production. Therefore, if the Film Commission and DED approve a production as a state-certified production, the Department of Revenue will abide by their determination.

For purposes of this private letter ruling, it will be assumed that any production made under the Purchase and Distribution Agreement will meet all of the above requirements and has been determined by the Film Commission and DED to be a “state-certified production.” It will also be assumed that X will make at least the minimum required investment of three hundred thousand dollars in each production. Because X and its members are Louisiana residents, X will be considered an investor and entitled to earn the credit on an investment made in a “state-certified production” that meets or exceeds the threshold amount, regardless of the source of the capital used to make the investment.

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If X elects to be taxed as a corporation for federal income tax purposes, X will be an entity subject to Louisiana corporation income tax under La. Rev. Stat. § 47:287.11. In this situation, the credit must be claimed on X's Louisiana corporation income tax return and will not flow through to its members, La. Rev. Stat. § 47:6007(C)(3)(a). If X elects to be taxed as a partnership for federal income tax purposes it will not be an entity subject to Louisiana corporation income tax, and the members of X will be entitled to claim the credit on their Louisiana income tax returns as set forth in La. Rev. Stat. § 47:6007(C)(3)(c). The amount of the credit that will flow through to each member will depend on the terms of the membership agreement, or if there is no membership agreement, then it will flow through according to each member's distributive share.

The motion picture investor tax statute provides that "the tax credit shall be earned by investors at the time of such investment in such state-certified productions..." See La. Rev. Stat. § 47:6007(C)(1). Credits that are earned by X will flow through to all members of X who were members at any time during the taxable year in which the investment was made unless otherwise provided in the membership agreement.

Ruling:

Based upon the facts provided and the necessary assumptions set forth, for purposes of the credit authorized by La. Rev. Stat. § 47:6007, X will be considered an investor, the payment by X to Y will be considered an investment, and the credit will be available to the members of X that are Louisiana residents. If X elects to be taxed as a partnership for federal income tax purposes persons who are members of X at any time during the taxable year in which the credit is earned will be entitled to a share of the credit as provided in the membership agreement.

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Secretary

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This correspondence constitutes a private letter ruling (PLR) by the Louisiana Department of Revenue, as provided for by section 61:III.101 of the Louisiana Administrative Code. A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement that applies principles of law to a specific set of facts or a particular tax situation. A PLR does not have the force and effect of law, and is not binding on the person who requested it or on any other taxpayer. This PLR is binding on the department only as to the taxpayer to whom it is addressed, and only if the facts presented were truthful and complete and the transaction was carried out as proposed. It continues as authority for the department's position unless a subsequent declaratory ruling, rule, court case, or statute supersedes it.