



Historical Note: Subsequent to the issuance of this private letter ruling, the LDR determined that the first ruling in PLR 03-006 was incorrect and that the motion picture employment credit, La. Rev. Stat. § 47:1125.1, is earned in the year in which the Louisiana employees of the motion picture production company receive the salary, wages, or compensation paid in connection with the production. The rulings in PLR 03-006 will still be followed with respect to the particular taxpayer that requested the PLR as long as the facts presented were truthful and complete and the transaction was carried out as proposed.

Private Letter Ruling
Redacted Version
No. 03-006
April 17, 2003

Corporation Income Tax, Corporation Franchise 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 and the Louisiana motion picture employment tax to the transactions proposed to be entered by ABC, LLC.

Facts

You provided the following facts:

“Due to the incentives of Senate Bill 108 and House Bill 17, entities located in states other than Louisiana that are in the business of distributing motion pictures, music videos and television commercials (individually, “Distribution Company” and collectively, “Distribution Companies”), desire to come to Louisiana to have motion pictures produced.

“ABC, LLC is a Louisiana limited liability company. Its Members will be subject to Louisiana income tax.

“Investment Co., LLC is a Louisiana limited liability company to be formed that will transfer funds to Production Co., LLC (see below) to be used in the production of motion pictures. Investment Co., LLC will be owned 99% by a Distribution Company and 1% by ABC, LLC

“Production Co., LLC will be a single member Louisiana limited liability company owned by Investment Co., LLC. Production Co., LLC will cause a motion picture to be produced in the state of Louisiana. The funds to produce the motion picture will come from Investment Co., LLC. Production Co., LLC will either hire Louisiana residents to produce the motion picture and/or contract with other Louisiana motion picture producers to produce the motion picture.

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“The Operating Agreement of Investment Co., LLC shall provide that all items of income, gain, loss and deduction shall be allocated 1% to ABC, LLC and 99% shall be allocated to Distribution Company, except that any credits under Senate Bill 108 and House Bill 17 shall be allocated 100% to ABC, LLC which then will be allocated to the Members of ABC, LLC in accordance with its Operating Agreement.

“ABC LLC may not become a Member of Investment Co., LLC until just prior to or shortly after the motion picture has been state certified and completed, and will not contribute funds to Investment Co., LLC until that time.

“A Louisiana taxpayer may not become a member of ABC, LLC until just prior to or shortly after the motion picture has been state certified and completed, and will not contribute funds to ABC, LLC (which funds will then be contributed to Investment Co., LLC) until that time.

“Production Co., LLC will expend funds (contributed to it by Investment Co., LLC) in producing a motion picture. The production of the motion picture could span a two year period, i.e., certain funds being expended in December of one year and January of the next year.

“It is very likely that a separate Production Co., LLC will be created for each motion picture to be produced. It is also likely that a different Investment Co., LLC will be created with respect to each motion picture to be produced.”

Ruling Request

You asked the following questions:

1. “In what tax year are the employment state tax credits earned? For instance, is the employment tax credit earned in the year in which the motion picture has been state certified and is completed, or is it earned in the year in which Production Co., LLC pays its employees? For example, if Production Co., LLC pays its employees in the month of December, 2002, and in the month of January, 2003, does the employment state tax credit flow to Investment Co., LLC in January, 2003, the year in which the motion picture is completed, based on the total amount paid to employees (that is, the amount paid in the months of December and January), or does the employment state tax credit flow through to Investment Co., LLC in December, 2002, based on the amount Production Co., LLC paid to its employees in December, 2002, and then again in January, 2003, based on the amount Production Co., LLC paid to its employees in January, 2003?
2. “In what tax year are the investment state tax credits earned? For instance, is the investment tax credit earned (i) in the year in which the motion picture has been state certified and is completed, or (ii) is in the year in which Investment Co., LLC transfers funds to Production, LLC or (iii) in the year that Production, LLC expends the funds? For example, if Investment Co., LLC contributes \$15M to Production, LLC in December of 2002 and Production, LLC spends \$10M in the month of December and another \$5M in the month of January, does Investment Co., LLC earn the investment tax credit in January, 2003, based on a \$15M movie production or does Investment Co., LLC earn a credit in December, 2002, based on a \$10M movie production and another credit in January, 2003, based on a \$5M movie production?

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“It is suggested that all credits should be earned when the motion picture has been completed and certified.

3. “Is Investment Co., LLC considered an investor within Senate Bill 108 even if Investment Co., LLC and/or its Members do not contribute funds to the motion [picture] production until after the motion [picture] production has been state certified and completed?”
4. “If Production, LLC is a single member LLC, will the employment state tax credits and investment tax credits flow through to Investment Co., LLC?”
5. “May Investment Co., LLC specially allocate all of the state tax credits to ABC, LLC (a 1% owner of Investment Co., LLC), which state tax credits will then flow through to the Members of ABC, LLC in a manner provided for in ABC, LLC’s Operating Agreement?”
6. “Will the state investment tax credits available to ABC, LLC be based on the total amount of funds expended by Production Co., LLC and not limited to the actual dollars invested by ABC, LLC?”
7. “May the Louisiana taxpayer (a Member of ABC, LLC) utilize the state tax credits against Louisiana income tax, even if the income tax is the result of income from sources other than the motion picture production?”

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 and La. Rev. Stat. § 47:1125.1(C), the employment tax credit for motion picture production companies.

To be able to earn the investor 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). The employment tax credit, La. Rev. Stat. § 47:1125.1(C), is earned by a motion picture production company for the employment of residents of Louisiana in connection with production of a motion picture. The amount of the credit is a percentage of the total aggregate payroll for residents employed in connection with the production. The credit is only available with regard to payroll of Louisiana residents that are directly employed by the motion picture production company.

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 business structure outlined in your facts 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 the investments made in Production, Co., LLC that will equal or exceed the minimum required investment of three hundred thousand dollars in each

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production. Because Investment Co., LLC is a Louisiana resident Investment Co., LLC will be entitled to earn the credit on any 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.

Your first ruling request asks in what year the employment tax credit is earned. The employment tax credit, La. Rev. Stat. § 47:1125.1(C), is earned by a motion picture production company for the employment of residents of Louisiana in connection with production of a motion picture. The amount of the credit is a percentage of the total aggregate payroll of Louisiana residents that are directly employed by the motion picture production company in connection with the production. If the total production costs in Louisiana are less than three hundred thousand dollars, no credit is earned. If the total production costs in Louisiana are between three hundred thousand and one million dollars, the credit is ten percent of the total aggregate payroll for residents. If the total production costs in Louisiana are greater than one million dollars the credit is twenty percent of the total aggregate payroll for residents.

The statute does not expressly state when the credit is earned, and, therefore, may be considered to be earned by Production Co, LLC either in the year in which the wages are paid to the Louisiana residents or in the year in which the production is completed. The amount of the credit is based on the total aggregate payroll for residents employed in connection with the production and that amount is not known until the production is completed, the credit may be considered to be earned by Production Co., LLC in the year in which the production is completed. If Production Co., LLC chooses to consider the credit to be earned as qualified payroll is paid to Louisiana residents, since the credit percentage is based on the amount spent if the anticipated cost is greater than \$1 million, and the actual expenditure is less than \$1 million, recapture will be required.

In your second ruling request you ask when the investor tax credit is earned. 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). Therefore the investor tax credit is earned in the year in which the investment is made, without regard to when the production is completed or certified. In your example, Investment Co., LLC contributes \$15M to Production, LLC in December of 2002 and Production Co., LLC spends \$10M in the month of December and another \$5M in January 2003. In this situation Investment Co., LLC earned the entire investor tax credit in 2002, regardless of when Production Co., LLC spent the money.

In your third ruling request you ask if Investment Co. LLC will be considered to be an investor if it or its members do not contribute funds to the Production Co., LLC until after the production is completed. The primary objective of this credit is “to encourage development in Louisiana of a strong capital base for motion picture film, videotape, and television program productions, in order to achieve a more independent, self-supporting industry.” La. Rev. Stat § 47:6007(A). An immediate objective of the credit is “to [a]ttract private investment for the production of motion pictures, videotape productions, and television programs which contain substantial Louisiana content”. La. Rev. Stat § 47:6007(A)(1)(a). After the motion picture is completed, the only amounts that will be considered an “investment” will be amounts that are not in excess of bona fide debt of the motion picture production company. Investments made in a motion picture production company for the production of a state-certified production

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prior to production; during production; or post-production, if the production company has bona fide debt, will be presumed to be in keeping with the objectives of the statute. If the production is already completed, and the production does not have bona fide debt, the funds contributed are not needed to meet any of the objectives of the statute authorizing the credit and cannot be considered an “investment” for purposes of the credit.

Your fourth ruling request asks if the investor tax credit and the employment tax credit will flow through Production Co., LLC to Investment Co, LLC. As a motion picture production company, Production Co., LLC cannot earn the investor tax credit, see La. Rev. Stat. § 47:6007(C), therefore this credit is earned directly at the Investment Co. level without a flow through. The employment tax credit is earned at the Production Co. level and will flow through to Investment Co. under the provisions of La. Rev. Stat. § 47:1125.1(C).

In your fifth ruling request you ask if Investment Co., LLC may allocate all of its state tax credits to ABC, LLC and if ABC, LLC may, in turn, allocate all such tax credits so allocated to its members. The operative 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 is entitled will be 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. 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 ABC or its members under the allocation provisions of the operating agreements satisfies the statute.

If Investment Co., LLC or ABC, LLC elect to be taxed as corporations for federal income tax purposes, they will be entities subject to Louisiana corporation income tax under La. Rev. Stat. Ann. § 47:287.11. In this situation, the credit must be claimed on their Louisiana corporation income tax returns and will not flow through to their members, La. Rev. Stat. Ann. § 47:6007(C)(3)(a). If Investment Co., LLC or ABC, LLC *do not* elect to be taxed as a corporation for federal income tax purposes, they will not be an entity subject to Louisiana corporation income tax, and their members will be entitled to claim the credit on their Louisiana income tax returns as set forth in La. Rev. Stat. Ann. § 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.

In your sixth request, you ask if state investor tax credits available to ABC, LLC are based on the total amount of funds expended by Production Co., LLC and not limited to the actual dollars invested by ABC, LLC. The total amount of the motion picture investor credit will be based on the amount invested in Production Co., LLC that is expended in the production of the state-certified production. If no provision is included in Investment Co., LLC’s operating agreement, the credit that ABC, LLC will earn will be based on the actual dollars invested by ABC. However, through allocations of the credit in the Investment Co. operating agreement as addressed in your fifth ruling request, the total amount of the investor tax credit available to ABC may be based upon the total amount invested in Production Co., LLC that is expended in the production of the state-certified production.

Your seventh and final request asks if the Louisiana Taxpayer may utilize the state tax credits against Louisiana income tax, even if the income tax is the result of income from sources

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other than the motion picture production. The investor tax credit is a credit against state income tax for taxpayers domiciled in the state of Louisiana. The statute does not limit the applicability of the investor credit to income generated by the production. As long as the Louisiana Taxpayer is domiciled in Louisiana, the Taxpayer may utilize the investor tax credit against its Louisiana income tax liability regardless of the source of the income. The employment tax credit states that the credit “may be applied to any income tax or corporation franchise tax liability applicable to the motion picture production company”. La. Rev. Stat. § 47:1125.1(B). Subsection C of the statute goes on to provide for a flow through of the credit for situations in which the motion picture production company is not subject to income or franchise tax. If the motion picture production company were subject to Louisiana income or franchise tax liability, it could use the credit against either tax even if the source of the tax liability were unrelated to the production that gave rise to the credit. Because the statute provides for a flow through of the credit and because the motion picture production company could use the credit against either tax liability regardless of its source, a taxpayer who is allocated the credit through the flow through provisions will also be able to use the credit against either tax liability regardless of its source.

Ruling:

Based upon the facts provided and the necessary assumptions set forth, for purposes of the incentive tax credits authorized by La. Rev. Stat. §§ 47:6007 and 47:1125.1,

1. The employment tax credit may be considered to be earned either in the year in which qualifying wages are paid to Louisiana residents or in the year in which the production is completed.
2. The motion picture investor credit will be earned in the tax year in which the investment is made in Production Co., LLC.
3. Investment Co., LLC will be considered an investor for purposes of the investor tax credit if it does not contribute funds to the production until after the production has been state certified and completed only to the extent that Production Co., LLC has bona fide debt remaining after the completion of the production.
4. Any employment tax credits earned by Production Co, LLC will flow through to Investment Co., LLC.
5. Investment Co., LLC may allocate all of the state tax credits to which it is entitled to ABC, LLC through its written operating agreement. ABC LLC may in turn allocate all of the state tax credits to which it is entitled to any or all of its members through its written operating agreement.
6. The amount of the investor tax credit is based on the total amount invested in and expended on the production. Once earned, the amount of the credit attributable to each member of the Investment Co., LLC is based on Investment Co.’s operating agreement. Therefore the credit that ABC receives is not necessarily based solely on the amount that ABC invests.

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7. The Louisiana Taxpayer may utilize any of the investor or employment tax credits to which it is entitled against its Louisiana income tax liability regardless of the source of the income.

If you have any questions or need additional information, please call Michael Pearson, Senior Policy Consultant, or Leonore Heavey, Attorney, Policy Services Division, at 225-219-2780.

Sincerely

Cynthia Bridges
Secretary

By: Leonore F. Heavey
Attorney
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Revision History: April 17, 2003 (new document); March 22, 2004 (historical note added)

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.