

September 8, 2006
OPINION NUMBER 06-0216

Mr. Michael J. Olivier, Secretary
Louisiana Department of
Economic Development
P.O. Box 94185
Baton Rouge, Louisiana 70804-9185

119 TAXATION – Exemptions, general
La. R.S. 47:6007; R.S. 47:6007(C)(1)(b)(iii) provides
for an additional fifteen percent tax credit, over and
above the twenty-five percent tax credit provided for
under 47:6007(C)(1)(b)(i), for base investment
expended in this state on a state-certified
infrastructure project.

Mr. Alex J. Schott, Director
Governor's Office of Film &
Television Development
P.O. Box 94185
Baton Rouge, Louisiana 70804-9185

Dear Messrs. Olivier and Schott:

You requested an Attorney General's opinion regarding incentives authorized by La. R.S. 47:6007. You advise that The Film Factory, LLC ("Film Factory") plans to develop a 14 (+/-) acre plot of land in Orleans Parish into a state-of-the-art production complex to establish an infrastructure within the State to support the developing film and television production industry here in Louisiana.

Film Factory has outlined three business components that must be completed simultaneously in order to create this infrastructure:

1. The commercial production of films, television, and new media must be developed, produced, and distributed by Louisiana companies, not companies based in other states or countries;
2. There must be a comprehensive vocational training in the film and media business available to Louisiana residents which can only be achieved by the creation of a educational school solely dedicated to film and media training; and
3. There must be a film production studio whose facilities are competitive with facilities offered in other states.

These three components are collectively referred to as the "Project".

You indicate that in Acts 2005, No. 456, the Louisiana Legislature authorized additional incentives under La. R.S. 47:6007 to encourage the construction of motion picture

production infrastructure projects within the State. As Film Factory's Project is the first of its kind in the State to construct motion picture production and infrastructure facilities and the first in the State to be eligible to use the authorized additional incentives under R.S. 47:6007, you request an interpretation of the statute and how it is to be applied to this particular infrastructure Project.¹

R.S. 47:6007(C)(1)(b) provides in pertinent part:

(b) For state-certified productions approved by the Governor's Office of Film and Television Development, on or after January 1, 2006, and for state-certified infrastructure projects approved by the Governor's Office of Film and Television Development, on or after July 1, 2005:

(i) If the total base investment is greater than three hundred thousand dollars, each investor shall be allowed a tax credit of twenty-five percent of the base investment made by that investor.

* * * * *

(iii) Until January 1, 2008, if the total base investment is greater than three hundred thousand dollars, each taxpayer shall be allowed a tax credit of fifteen percent of the base investment made by that taxpayer that is expended in this state on a state-certified infrastructure project as certified by the Governor's Office of Film and Television Development, the Department of Economic Development, and approved by the division of administration.

Film Factory would like to avail itself of the tax credits described in R.S. 47:6007(C)(1)(b)(i) (the "25% Tax Credit") and (iii) (the "15% Tax Credit"), specifically with respect to the acquisition of land to build the Project, construction of the buildings which will house the studios, labs, and vocational school, the equipment needed within the studios, labs, and vocational school, the creation and implementation of a curriculum for the vocational school, investment in the development and distribution of film and television products, and associated financial reserves and budgeting requirements. The Governor's Office of Film and Television Development ("GOFTD"), the Louisiana Department of Economic Development ("DED") and the Division of Administration ("DOA") all believe that Film Factory is entitled to utilize both credits. Specifically, GOFTD, DED and DOA believe the Project qualifies for a total of forty (40%) percent in credits with respect to all such expenditures. You question whether our office agrees with this conclusion.

¹ We note that R.S. 47:6007 provides several tax incentives for investment in the motion picture industry. You have only asked for our opinion on the credits provided for under 47:6007(C)(1)(b)(i) and (iii). Therefore, we have limited our discussion to those particular sections.

In resolving this issue, we are guided by established rules of statutory interpretation and construction. The fundamental question in cases of statutory construction is legislative intent. *Succession of Boyter*, 99-0761 (La. 1/7/00), 756 So.2d 1122, 1128. Statutes should be interpreted to give effect to all parts of the statute and should not be given an interpretation that makes any part superfluous or meaningless. *Id.* at 1129.

In order for investors to receive the 25% Tax Credit provided for under R.S. 47:6007(C)(1)(b)(i), (1) the Project must be a state-certified production approved by the GOFTD, on or after January 1, 2006, or a state-certified infrastructure project approved by GOFTD, on or after July 1, 2005; and (2) the total base investment² for the Project must be greater than three hundred thousand dollars.

In order for taxpayers to receive the 15% Tax Credit provided for under R.S. 47:6007(C)(1)(b)(iii), (1) the Project must be a state-certified infrastructure project approved by GOFTD, on or after July 1, 2005; (2) the total base investment for the Project must be greater than three hundred thousand dollars; and (3) the base investment made by a taxpayer must be expended in this state³, on a state-certified infrastructure project as certified by the GOFTD, the DED, and approved by the DOA. This tax credit is only available until January 1, 2008.

As can be seen, the requirements for the 25% Tax Credit are identical to the first two requirements for the 15% Tax Credit. The 15% Tax Credit merely adds an additional requirement. Thus, any project or investment which qualifies for the 15% Tax Credit must necessarily qualify for the 25% Tax Credit. In order to give effect to both subsection (b)(i) and (b)(iii), we must interpret subsection (b)(iii) as providing an additional fifteen percent tax credit, over and above the 25% Tax Credit, for base investment expended in this state on a state-certified infrastructure project. To interpret the statute otherwise would render the language of subsection (b)(iii) meaningless. Our

² La. R.S. 47:6007(B)(1) defines "base investment" as follows:

(1) "Base investment" shall mean the actual investment made and expended by:

(a) A state-certified production in the state as production expenditures incurred in this state that are directly used in a state-certified production or productions.

(b) A person in the development of a state-certified infrastructure project.

³ La. R.S. 47:6007(B)(2) defines "expended in the state" as follows:

(2) "Expended in the state" in the case of tangible property shall mean property which is acquired from a source within the state, and in the case of services, shall mean services procured and performed in the state.

interpretation is also consistent with the legislative intent of the statute. R.S. 47:6007(A) sets forth the purpose of the statute, and provides in part:

A. Purpose. The primary objective of this Section is to encourage development in Louisiana of a strong capital and infrastructure base for motion picture film, videotape, digital, and television program productions, in order to achieve an independent, self-supporting industry...

The purpose of the statute is to encourage development of the film industry in Louisiana. The 15% Tax Credit provided for under 47:6007(C)(1)(b)(iii) is only available to base investment spent in Louisiana, and acts as an additional incentive to invest here.⁴

Based upon our interpretation of the statute, the fact that Film Factory's Project is a state-certified infrastructure project as certified by the GOFTD, the DED, and approved by the DOA, and assuming the total base investment is greater than three hundred thousand dollars, it is the opinion of our office that Film Factory would be entitled to the twenty-five percent tax credit on the base investment made Film Factory as provided for under R.S. 47:6007(C)(1)(b)(i). Further, for base investment expended in this state, Film Factory would be entitled to an additional fifteen percent tax credit of such base investment expended in this state by as provided for under R.S. 47:6007(C)(1)(b)(iii).

Trusting this adequately responds to your request, we remain

Yours very truly,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY: _____
KENNETH L. ROCHE, III
Assistant Attorney General

CCF, JR/KLR, III/crt

⁴ The Louisiana Legislature's intent is also demonstrated in House Concurrent Resolution No. 35 of the 2005 First Extraordinary Session, which provides in pertinent part:

WHEREAS, the Act (Acts 2005, No. 456) provides for an additional ten percent credit for base investment expended on payroll for Louisiana residents, *and an additional credit of fifteen percent for base investment expended in this state on a state-certified infrastructure project, over and above the twenty-five percent credit...* (Emphasis added).

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119 TAXATION – Exemptions, general

La. R.S. 47:6007

R.S. 47:6007(C)(1)(b)(iii) provides for an additional fifteen percent tax credit, over and above the twenty-five percent tax credit provided for under 47:6007(C)(1)(b)(i), for base investment expended in this state on a state-certified infrastructure project.

Mr. Michael J. Olivier
Secretary
Louisiana Department of
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P.O. Box 94185
Baton Rouge, Louisiana 70804-9185

Mr. Alex J. Schott
Director
Governor's Office of Film &
Television Development
P.O. Box 94185
Baton Rouge, Louisiana 70804-9185

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Kenneth L. Roche, III
Assistant Attorney General