Motion Picture Tax Incentives: There’s No Business Like Show Business

by John Grand

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I. Introduction

The Dukes of Hazzard, Runaway Jury, All the King’s Men, Ray — what do each of these movies have in common? Each helped Louisiana taxpayers save thousands on their tax returns. For nearly a decade, the Legislature has tried to entice the movie industry to come into Louisiana. They succeeded in 2002. But are the costs associated with developing a film industry too high?

Louisiana now has one of the most pro-movie taxing structures in the nation and its scheme has proven to be an effective tool in the state’s quest to create a Cajun Hollywood. But is Louisiana getting a fair deal? The benefits of becoming the next Hollywood must be weighed against the costs of enticing the industry. Specifically, do the tax incentives for the film industry cost the state more than the projected economic development is worth?

This report examines those questions. Part II provides a background on Louisiana’s film and television tax credits. Part III then compares the actual benefits the state receives with the cost of offering such lavish tax incentives. Part IV examines motion picture incentives offered by other states. Finally, the report concludes with recommendations that Louisiana should adopt to ensure the effectiveness of its incentive program.

II. Motion Picture Tax Incentives

Louisiana’s motion picture incentive program consists of three different tax incentives: the motion picture investor credit, a sales and use tax exception, and the employment tax credit. Beginning in 2006, the sales and use tax exception and the employment tax credit will be eliminated, leaving only the newly amended motion picture investor tax credit. This section examines each of these incentives.

A. Motion Picture Investor Tax Credit

The motion picture investor tax credit is the largest incentive Louisiana offers to movie and television producers. Since its inception in 1993, the statute authorizing this incentive has undergone several major revisions.¹

1. Motion Picture Investor Tax Credit — 1993

In 1992 Louisiana enacted section 47:6007 of the Louisiana Revised Statutes, which authorizes the motion picture investor tax credit.² The legislation allowed investors, domiciled in Louisiana, to claim a state income tax credit for losses sustained in the production of motion pictures in Louisiana.³ In other words, the tax credit established a safety net for investors by guaranteeing a certain return on bad investments. That incentive can be very attractive to some investors because the majority of productions lose money.⁴

The exact amount of the credit an investor would receive depended on the size of the production and manner in which the credit was used. The credits ranged from 50 percent to 70 percent of an investor’s loss.⁵ If an investor spent over $2 million, the investor was entitled to a credit for 50 percent of his losses.⁶ If the investment was over $10 million, the amount of the credit increased to 60 percent,⁷ and the credit increased again to 67 percent for productions of over $25 million.⁸ An investor would also receive an increased credit if he used the credit to offset income from another successful production.⁹

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¹La. R.S. 47:6007.
²The act became effective on January 1, 1993.
⁴K.J. Greene, “Motion Picture Copyright Infringement and the Notion of Irreparable Harm: Toward a Reevaluation of the Standard for Preliminary Injunctive Relief,” 31 Rutgers L.J. 173, 180 (Fall 1999).
⁵La. R.S. section 47:6007(C) (West 1993).
In that situation, the investor would receive a 70 percent credit for his losses. See Chart 2.1 — Motion Picture Investor Tax Credit (1993).

The credit was also limited by the definition that section 47:6007 gave to base investment. To determine the amount a taxpayer lost on a production, the taxpayer had to subtract his base investment from any revenue generated from the production. Base investment was defined as 85 percent of the funds actually invested and expended within the state in a state-certified production. Thus, a taxpayer had to initially reduce his actual investment by 85 percent before he could determine his loss.

Section 47:6007 also had a generous carryforward provision, which remains in the current version. A taxpayer earning the motion picture investor credit is allowed to carry any unused credits forward for a period of 10 years from the year in which the credit is earned.

The following hypothetical illustrates the application of the 1993 rules. Assume that in 1993, a taxpayer, domiciled in Louisiana, invested $2,352,941.18 in a motion picture to be made exclusively in Louisiana. Over the next three years, the taxpayer recovered $1 million on the film. The motion picture investor tax credit would have entitled the investor to a credit of $500,000 ($2,352,941.18 loss times 85 percent) minus $1 million earnings times 50 percent.

However, if the taxpayer invested in a second, successful motion picture, then the taxpayer was entitled to a greater credit. Suppose the taxpayer's gains on the second production generated $700,000 of tax liability to the state. Because the taxpayer applied the motion picture investor tax credit against gains from a second motion picture, the taxpayer was allowed to claim a larger credit. The credit in this example would be $700,000 (($2,352,941.18 loss times 85 percent) minus $1 million gain times 70 percent).

Section 47:6007, as originally enacted, did not succeed in developing Louisiana's motion picture industry. There could be multiple reasons for the lack of success. In the opinion of the author, however, the 1992 legislation failed because it only compensated the filmmaker for losses. Motion picture producers don't invest believing the movie will be unprofitable. Also, the credits had to be used against a taxpayer's Louisiana income tax liability. Very few motion picture production companies are based in Louisiana. Therefore, if a production is unsuccessful, the production company has little if no Louisiana tax liability. Without liability, a tax credit is worthless. Because the 1992 legislation failed to attract business, the Legislature amended the statute in 2002, 2003, and 2005.

2. Motion Picture Investor Tax Credit — 2002 and 2003

Section 47:6007 underwent two substantial revisions between its initial passage in 1992 and its most recent overhaul in 2005. The first came in 2002 and allowed a credit for investment rather than for losses incurred in connection with an investment in a motion picture. Essentially, the 2002 amendments gave a taxpayer a credit for every dollar spent in Louisiana on a certified motion picture project. However, to be eligible to claim the credit, the taxpayer had to be an investor, not a motion picture production company.

In 2003 the Louisiana Legislature amended section 47:6007 to allow a taxpayer to transfer the
motion picture investor tax credit. The new amendment allowed a taxpayer to sell or transfer the credit to any Louisiana taxpayer and the new taxpayer could use the credit to reduce its tax liability. Before the amendment, the credit was useful only to investors that owed taxes to Louisiana. Investors that had no or limited Louisiana tax liability had no way of using the credit. The 2003 amendments permitted an investor to sell the credit to a third party. As a result, the credit became substantially more valuable to the investor.

The 2003 amendments also broadened the scope of the credit. Prior versions of section 47:6007 allowed a tax credit only for funds expended in Louisiana. The 2003 changes made the credit applicable to an investment made in Louisiana that was spent on a state-certified film. That subtle alteration meant that investors could receive a credit on money invested in a Louisiana state-certified film even if the money was spent in Mississippi. The allowance of a tax credit for amounts spent outside Louisiana raised a question as to the value of the credit to Louisiana. In a report on the effectiveness of the credit, the Baton Rouge Advocate cited one example in which investors were given $10.5 million in transferable motion picture investor tax credits even though the production spent only $1.3 million on local payroll. After two years, it became apparent that section 47:6007 needed further revision.

3. Motion Picture Investor Tax Credit — 2005

The Legislature made significant changes to section 47:6007 in 2005 that both enhance and scale back the motion picture investor tax credit. The amount of the credit remains dependent on the size of the investment made in Louisiana and on the amount of money spent on labor. Under the new law, retroactive to 2004, an investor receives a 10 percent income tax credit for every dollar spent on the production of a film or television show in Louisiana, provided the total amount spent in Louisiana is at least $300,000. If the total investment in Louisiana exceeds $8 million, the amount of the credit increases to 15 percent. In 2006 the amount of the credit drastically increases. An investor is awarded a credit in an amount equal to 25 percent of its investment that is spent in Louisiana on a motion picture production as long as the production spends at least $300,000 in Louisiana. Moreover, an investor will be entitled to an extra 10 percent credit if the money is spent to employ a Louisiana resident. The additional employment credit is limited to the first $1 million paid each employee each year on the project.

In 2010 and 2012, the amount of the credit will be reduced. In 2010 the credit is reduced to 20 percent of the investment and in 2012 it will be further reduced to 15 percent of the amount invested. In all other respects, the credit will remain the same as it is in 2006. See Chart 2.2 — Motion Picture Investor Tax Credit (2005).

The motion picture investor tax credit is still transferable. The Legislature is concerned that a middle market is developing in which brokers purchase credits from investors and sell them to third parties. To remedy that problem, the Legislature authorized the Governor’s Office on Film and Television Development (GOFTD) to begin purchasing motion picture investor tax credits in 2007 for 72 percent of their face value. The amount the GOFTD will pay increases by 2 percent every two years until the purchase amount reaches 80 percent. In other words, by 2015 the GOFTD will ensure an investor will receive in cash at least 80 percent of the value of a credit.

The 2005 amendments also removed the requirement that the investor had to be a Louisiana resident. Previously, an investor had to be domiciled in the state to qualify for the credit. Under the new provision, the investor must only be a Louisiana taxpayer. Thus, nonresident taxpayers may take advantage of section 47:6007 to reduce their liability for Louisiana income taxes.

To promote the development of a film infrastructure in Louisiana, the motion picture investor tax credit contains a semi-hidden provision that gives an investor a 15 percent credit on investments made in infrastructure projects. To qualify for the credit,
the base investment in the project must be greater than $300,000.39 The credit also contains two other caveats. First, like the credits given to investments in motion pictures, the infrastructure credit is given only to state-certified projects.40 Second, the infrastructure credit expires January 1, 2008.41

Finally, the Legislature recognized that giving a credit on investments spent in other states was a bad policy. The 2005 amendments include a new definition of base investment that limits the term to money invested and spent within the state.42 It’s unclear what ultimate impact the 2005 amendment will have on Louisiana’s motion picture industry and the number of credits given by the state.43

B. Sales and Use Tax Exception — Louisiana Revised Statutes 47:1124

Section 47:1124 waives all state sales and use taxes that would otherwise be imposed on purchases by a motion picture production company.44 However, that exception is limited. First, the exception applies only to the 4 percent sales taxes imposed by the state of Louisiana.45 Production companies remain liable for local sales and use taxes.46 Second, the exception expires January 1, 2006.47 Third, the exception applies only if the motion picture production company spends at least $250,000 in Louisiana within a 12-month period.48 Finally, the exception doesn’t apply to television coverage of news and sporting events.49

C. Employment Tax Credit — Louisiana Revised Statutes 47:1125.1

Section 47:1125.1 allowed a taxpayer to claim an employment tax credit in an amount equal to 10 percent of the total aggregate payroll to Louisiana residents employed in the production of a motion picture.49 The credit could be used against either income or franchise tax liability.50 To qualify, the production company had to spend at least $300,000.51 The amount of the credit increased to 20 percent if the production spent at least $1 million.52 No credit was allowed for salaries paid to employees in excess of $1 million within a 12-month period.53 The credit expired at the end of 2005.54

Beginning in 2006, that credit was essentially incorporated into the motion picture investor tax credit.55 However, under the motion picture investor

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39 Id.
40 Id.
41 Id.
43 Id.
44 Id.
45 Id.
46 Id.
47 Id.
48 Id.
50 La. R.S. 47:1125.1(B) (West 2006).
51 La. R.S. 47:1125.1(A) (West 2006). “Only salary, wages, or other compensation, including related benefits, paid to an individual for services performed by that individual in connection with the motion picture are eligible for the credit.” Revenue Information Bulletin No. 05-005 (Feb. 16, 2005).
52 Supra note 49.
53 Id.
54 Id.
55 For an more detailed analysis of the employment credit contained in the motion picture investor credit, see Part II.A.3. (p. 793).
tax credit, the employment credit benefits the investor, which may or may not be the motion picture production company.\textsuperscript{56}

It is also noteworthy that until recently the employment tax credit was not transferable.\textsuperscript{57} When the Legislature adopted the 2005 amendments to the motion picture investor tax credit, it amended the employment tax credit to make it transferable.\textsuperscript{58} The rules concerning the transferability of the credit are the same for both credits.\textsuperscript{59} Before the 2005 amendment, if the production company had no or limited Louisiana income or franchise tax liability, the credit would be worth very little.\textsuperscript{60} In 2006, when the credit becomes part of the motion picture investor tax credit, it will remain transferable.\textsuperscript{61}

III. Economics of Motion Picture Incentives

The motion picture incentives Louisiana offers are some of the most generous in the United States. The incentives have increased film activity within the state, but their costs are considerable. Since the 2002 amendments became effective, the program has paid out nearly \$100 million in tax credits.\textsuperscript{62} This section examines the benefits and the costs of developing Louisiana’s nascent movie industry.

A. Advantages

Motion picture productions in Louisiana create jobs and generate tax revenue. Motion picture production companies and their employees spend money that would otherwise not benefit Louisiana residents and businesses. Moreover, motion picture productions are environmentally safe and have the collateral benefit of providing free advertising for the state’s tourist industry. This section examines each of those benefits.

1. Employment

In 2004 the per capita personal income in Louisiana was \$27,219.\textsuperscript{63} Comparable states in the southeastern United States had a per capita personal income of \$29,754 during the same time.\textsuperscript{64} In other words, Louisiana residents earn on average \$2,535 less than citizens from other comparable states.

Motion pictures offer lucrative jobs; employees are offered starting wages of \$20 to \$25 per hour, plus benefits.\textsuperscript{65} The benefits are further enhanced when a production moves into full swing because workers will often have to work overtime hours for which they are paid one and a half times their regular hourly salary.\textsuperscript{66} Unfortunately, positions in the motion picture industry are not permanent. When a production is complete, the workers are left unemployed. However, if a steady number of films are produced in Louisiana, many of the workers in the industry can move from production to production during the course of the year. It is impossible to determine the precise number of jobs created by the film industry, but the Legislative Fiscal Office (LFO) has estimated that it expects the new amendments to the motion picture investor tax credit will create the equivalent of 1,900 to 2,500 full-time jobs in Louisiana.\textsuperscript{67} Moreover, the LFO expects other industries to also benefit from the increased film activity. To accommodate the needs of future productions, the LFO expects other industry to employ between 700 and 1,500 new employees per year.\textsuperscript{68}

2. Tax Revenue

Although the tax credits compensate for the entire Louisiana income tax liability of a production company, Louisiana still recovers ancillary tax revenue from the production. Louisiana employees pay state income taxes on money they receive from the studio. If production and postproduction facilities are purchased, the motion picture company has to pay local property taxes. Also, beginning in 2006, companies have to pay both local and state sales and use taxes on goods and services purchased for a production.\textsuperscript{69}

In 2003 it was estimated that Louisiana recovered 30 to 33 cents in taxes on every dollar given in incentives it provided to the film industry.\textsuperscript{70} In other words, Louisiana’s incentive program costs only between 67 percent and 70 percent of the amount of the tax credits awarded. It remains to be seen how the 2005 amendments will affect the ratio between credits issued and revenue raised by Louisiana. The net amount of taxes collected should increase when the sales and use tax exception expires. This net amount should also benefit from the reclassification of expenses that qualify for a credit. Before the 2005 amendment, Louisiana allowed credits for investments made in Louisiana that were spent in other

\begin{itemize}
\item \textsuperscript{56}La. R.S. 47:6007(C)(1) (West 2006).
\item \textsuperscript{57}Acts 2005, No. 456, section 1.
\item \textsuperscript{58}Id.
\item \textsuperscript{59}La. R.S. 47:1125.1(F) (West 2006).
\item \textsuperscript{60}Revenue Information Bulletin No. 04-022 (Sept. 22, 2004).
\item \textsuperscript{61}La. R.S. 47:6007(C)(a)(2)(b)(ii), (c)(ii), and (d)(ii) (West 2006).
\item \textsuperscript{62}Id.
\item \textsuperscript{64}The southeastern states are Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.
\item \textsuperscript{65}Supra note 23.
\item \textsuperscript{66}Id.
\item \textsuperscript{68}Id.
\item \textsuperscript{69}La. R.S. 47:1124 (West 2006).
\item \textsuperscript{70}Supra note 23.
\end{itemize}
states. The new amendment limits the amount of authorized credits because production companies may only receive a credit on money spent in Louisiana. However, the amendment also dramatically increases the size of the credit awarded to production companies.

The LFO projects that Louisiana will issue nearly $60 million a year in tax credits as a result of the 2005 legislation. In return, the LFO expects the state will recover between $9 million and $10 million per year in tax revenue from those productions. Therefore, based on the projection of the LFO, Louisiana should recover between 15 percent and 18 percent of the motion picture investor tax credits that it issues.

3. Personal Income

Even though Louisiana will not recover the entire amount of the tax credits that it will issue, residents and businesses in Louisiana will receive far more money than the program will cost. For example, assume that a production company spends $1 million in Louisiana on a motion picture in 2006. Furthermore, assume that $500,000 of the production expenditures are spent on wages for employees making less than $1 million. The production company will receive $300,000 in tax credits. According to the estimates of the LFO, Louisiana will recover about $54,600 of the $300,000 through other taxes. Therefore, the production will cost Louisiana about $250,000. However, the production company had to spend $1 million in Louisiana to receive those credits. Even though the production cost the state a great deal of money, Louisiana businesses and residents received $1 million that would have otherwise not been spent in the state.

The LFO’s projections estimate that personal earnings in Louisiana will increase by $200 million per year as a result of the state’s aggressive motion picture incentives. Considering the LFO expects the program to cost the state about $50 million in tax revenues, it’s clear why the Louisiana Legislature felt the program would benefit Louisiana.

4. Collateral Benefits

Motion pictures also produce two collateral benefits. First, motion pictures are clean and environmentally friendly. Being employed by a motion picture company is comparable to a traditional manufacturing job. Salaries in both industries are roughly equivalent. However, a film doesn’t produce toxic waste or pollutants. Thus, jobs created by a motion picture industry are preferable to traditional manufacturing jobs.

Free advertising for Louisiana’s tourist industry is another tremendous advantage. If a film is made in Louisiana, viewers witness the beauty and culture of the state. That helps shape perceptions about the state and directly affects tourism and growth. Motion pictures filmed in Hawaii receive credits for money spent in the state. The advertising benefit is so substantial that Hawaii bases part of its incentives program on the manner in which the state is portrayed in the film. If the film uses Hawaiian terminology in the title and promotes Hawaiian scenery, culture, or products, the amount of the credit received by the production company increases. Louisiana could easily amend its motion picture incentives to encourage films to positively depict the state’s scenery, culture, and products. Especially in the aftermath of Hurricane Katrina, it’s important to let people know that it’s safe to live and invest in Louisiana. Motion pictures can help with that effort.

B. Disadvantages

Louisiana’s motion picture incentive program is not without its disadvantages. The program is costly and inefficient. This next section examines those issues.

1. Costs

Louisiana’s film incentive program is expensive. From 2002 to 2005, the program cost the state nearly $100 million in credits. If the credits were applied only against the income of motion picture companies, the program would have no effect on the state’s budget. Without the incentives, many producers would not come to Louisiana and would pay no income tax. However, the program allows credits to be transferred to individuals who have no connection to motion picture production. The individuals who purchase the credits are Louisiana taxpayers who would pay taxes regardless of whether a motion picture was made in Louisiana. When those individuals use motion picture investor tax credits, the state loses money it would have otherwise collected. Thus, the $100 million in tax credits that have been given out directly affect the states coffers.

The LFO predicts that the transferability component of the motion picture tax credit will guarantee that all tax credits issued by the state will eventually be taken. Therefore, based on its modeling, the

72Beginning in 2006 the amount of the credit jumps to 25 percent, with an additional 10 percent employment credit. La. R.S. 47:6007(C).
73Supra note 67.
74Id.
75Id.
76Id.
77Supra note 23.
78See discussion of Hawaii’s film incentives, Part IV (p. 798).
79Supra note 67.
80Id.
LFO projects that the program will cost the state nearly $60 million a year.81 Although some of that money will be recouped through other taxes, that estimate doesn’t include the entire cost of the program. Local governments are expected to incur the cost of providing public services to productions, and the state government must pay the administrative costs of the program. The LFO hasn’t made projections on those intrinsic costs, but they should be considered when balancing the benefits and the costs of the tax incentives.82

The projections of the LFO should also only be considered as estimates. The LFO’s economic modeling assumes that motion picture production levels will remain constant at 2004 levels.83 However, there is no reason to believe that production levels won’t rise. First, incentive amounts increase dramatically beginning in 2006. Second, Louisiana is gradually building a motion picture infrastructure that will make it much easier to film in the state. Both of those considerations will make Louisiana much more attractive to motion picture productions in the future. Because there is no cap on the amount of credits that can be issued by the state, the cost of the program could be much greater than the LFO projects if the number of productions explodes.

2. Administrative Efficiency

Louisiana’s incentive program is currently administered by two separate departments. The Department of Revenue monitors and audits the investor tax credits, and the Governor’s Office of Film and Television Development certifies which productions qualify for a credit and the expenses that can be used to earn a credit. The GOFTD will also begin purchasing credits in 2007.84 The process is wasteful in that it requires the GOFTD and the DOR to coordinate efforts and communicate with each other. The LFO estimates that the 2005 changes to the motion picture investor tax credit will cost between $200,000 and $300,000 in additional administrative expenses.85 Most of those costs can be reduced if the program is designed more efficiently. For example, if the DOR were responsible for administering the entire credit procedure, the two branches could operate independently. The DOR administers all other tax matters and, therefore, has the necessary experience to administer this incentive program. Also, if it didn’t have to spend its resources buying and approving credits, the GOFTD could focus on making Louisiana more attractive to motion picture companies.

3. Economic Efficiency

That the motion picture investor tax credit is transferable is inefficient. The transferability of the credit allows individuals that have no connection to a motion picture to nonetheless benefit from the film. Because noninvestors also benefit from the credit, Louisiana spends a dollar to give 70 to 75 cents in incentives. Production companies make little profit in Louisiana, so their tax burden within the state is marginal. Consequently, by themselves, tax credits have minimal value to production companies. The motion picture investor tax credit is valuable to investors because the credit can be sold to third parties for roughly 70 to 75 cents on the dollar.86 The third-party purchaser of the credit has no particular connection to film, but is allowed to cash in the credit at full face value. Therefore, when a tax credit is used by a third party, it costs Louisiana the full amount of the credit, but the motion picture company receives only 70 percent of the value of the credit.

The transferability of the tax credit defies logic. The individuals who benefit from purchasing tax credits are not in a special class of persons in need of credits. The beneficiaries are a few wealthy taxpayers who are influential enough to purchase the credits.87 Also, the program allows intermediary brokers to make a fortune. Motion picture companies can generate millions of dollars in excess credits, but they have no means of selling those credits to individual taxpayers. Instead, they sell the credits to an intermediate broker. The broker then breaks up the credit, typically into $10,000 blocks, and resells the blocks to individuals for roughly $8,500. A broker that purchases several million dollars worth of credits from a production company can earn hundreds of thousands of dollars off the transaction.88

Brokers are not entirely parasitic: They actively encourage production companies to film in Louisiana. Brokers encourage production companies to come to Louisiana in hopes that the production companies will sell them their tax credits. Thus, brokers possibly help increase the amount of filming activity in Louisiana. The problem with those assumptions is that motion picture production companies are sophisticated entities. There’s no reason to believe that a company wouldn’t film in Louisiana

81Id.
82Id.
83Id.
84Id.
85Supra note 34.
86Tax credits are typically sold to individuals in $10,000 increments. Thus, only individuals with substantial Louisiana income tax liability benefit from purchasing the credits.
87Supra note 23.
88Supra note 23.
except for the efforts of a tax credit broker. Companies would be aware of the benefits Louisiana offers regardless of whether brokers exist in the marketplace. Therefore, the profits being realized by brokers are most appropriately classified as waste.

4. Inequitable Benefits

According to the LFO, almost all motion picture productions in the state are filmed in Louisiana’s larger cities. The residents of those cities will directly benefit from the productions. However, the program is paid for with tax revenues received from across the state. As the program expands and becomes more costly for the state, balanced budget requirements will force statewide expenditures to be reduced in other areas. Equity mandates that the Legislature at least consider spending so much revenue on localized benefits.

IV. Incentives Across the United States

Louisiana is not alone in its attempts to attract motion picture companies. Most states have some form of incentive. This section surveys some of the methods other states use to attract motion picture producers.

A. Sales and Use Tax Exemptions

The most common motion picture incentive offered by state governments is an incentive against sales and use taxes. Generally, a state will waive the state sales and use taxes on the purchase of goods and services by a motion picture production company. State laws differ on when the motion picture company can receive the exemption. Some states offer point-of-sale redemption, while others refund the taxes at the end of the year with rebates. Chart 4.1 offers a description of how those exemptions work across the United States.

B. Hotel Taxes

The costs of housing an entire production crew can be prohibitively expensive. Many states have programs designed to attract productions by easing their housing costs. States commonly will not impose taxes on transient lodging if the accommodations are rented for an extended period of time. Typically, the required stay is 30 days; however, a few states require longer periods. Louisiana doesn’t impose its state tax on hotel accommodations for stays longer than two consecutive months.

Hawaii has the most generous housing incentive. It gives motion picture companies a refundable tax credit of up to 7.25 percent on accommodation costs incurred in producing either a motion picture or a television pilot, episode, or movie of the week. A production company qualifies for 100 percent of the credit if the production company spends at least $2 million or $750,000 for a movie or television production, respectively; uses Hawaii terminology in its title; promotes and advertises Hawaii by using its scenery, culture, or products; and is released in at least 66 percent of the United States or Japan. The production company only qualifies for 75 percent of the credit if it spends $3 million or $1 million on a motion picture or television production, respectively; employs a technical and craft crew that is at least 50 percent Hawaiian; and is released in at least 66 percent of the United States or Japan.

C. Special Incentive Programs

Like Louisiana, several states have enacted special incentive programs specifically designed to attract motion picture productions. This section focuses on several of those programs.

Florida provides motion picture production companies with a credit of up to 15 percent for qualified expenses incurred during filming in Florida. To qualify, total production costs must be at least $850,000. There is a maximum limit on the amount that can be received by a production.

In addition to a generous housing credit, Hawaii offers a refundable tax credit of 4 percent on

91Larry Garrison, “State Tax and Other Incentives for Motion Picture and Television Production,” J. Multistate Tax’n 30 (June 15, 2005).
93Hawaii Rev. Stat. section 235-17(b).
95Id.
96Id.
98Id.
99Id.
100Hawaii Rev. Stat. section 235-17(b).
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<thead>
<tr>
<th>State</th>
<th>Incentive</th>
<th>Citation</th>
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<tbody>
<tr>
<td>Alaska</td>
<td>Alaska has no state sales tax.</td>
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<tr>
<td>Arkansas</td>
<td>One hundred percent refund of taxes on purchase of property or services. Expenditures must be at least $500,000 in a 6-month period or exceed $1 million in a 12-month period.</td>
<td>Ark. Code Ann. sections 15-4-2001 et. seq.</td>
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<tr>
<td>California</td>
<td>No tax on services performed in connection with production, exploitation, or distribution of motion pictures.</td>
<td>18 Cal. Code Regs. section 1529.</td>
</tr>
<tr>
<td>Delaware</td>
<td>Delaware has no state sales tax.</td>
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<tr>
<td>Florida</td>
<td>Exemption for the purchase or lease of qualified property for production of motion pictures and other qualified productions.</td>
<td>Fla. Stat. section 212.08(5)(f).</td>
</tr>
<tr>
<td>Georgia</td>
<td>Exemption for the purchase or lease of production equipment and service by a certified film producer or certified production company.</td>
<td>Ga. Rules of Department of Revenue. Sales and Use Tax Division, section 560-12-2.</td>
</tr>
<tr>
<td>Montana</td>
<td>Montana has no state sales tax.</td>
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<tr>
<td>New Hampshire</td>
<td>New Hampshire has no state sales tax.</td>
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<tr>
<td>New York</td>
<td>Exemption of taxes on tangible personal property, services, and specified utilities used in qualified productions.</td>
<td>N.Y. Tax Law section 1115(a)(39).</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Reduction of taxes to 1 percent on purchases of cameras, film, and props/building materials used in actual filming of movies.</td>
<td>N.C. Sales and Use Tax Bulletin, section 20.</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Exemption on purchase of tangible property and services to qualified productions.</td>
<td>68 Okla. Stat. section 1357(21).</td>
</tr>
<tr>
<td>Oregon</td>
<td>Oregon has no state sales tax.</td>
<td></td>
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<tr>
<td>Pennsylvania</td>
<td>Exemption of taxes on tangible personal property sold to or used by a producer in the production of a qualified motion picture.</td>
<td>72 Pa. Stat. Ann. section 7204(54).</td>
</tr>
<tr>
<td>South Carolina</td>
<td>No tax on expenditures made by a motion picture production company that spends at least $250,000 within 12 months.</td>
<td>S.C. Code Ann. section 12-62-30.</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Refund of taxes on purchases of goods and services of at least $500,000.</td>
<td>Tenn. Code Ann. section 67-6-530.</td>
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<td>Texas</td>
<td>Exemption on sale, lease, rental, storage, or use of tangible personal property or services in connection with the production of a motion picture.</td>
<td>Tex. Tax. Code Ann. section 151.3185.</td>
</tr>
<tr>
<td>Utah</td>
<td>Exemption on the purchase, lease, or rental of machinery or equipment used in production or postproduction of a motion picture.</td>
<td>Utah Code Ann. section 59-12-104(60).</td>
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production costs. The rules governing this credit generally follow the procedures set forth for the housing credit.\textsuperscript{101} Hawaii also has a high-tech business investment credit.\textsuperscript{102} The credit is equal to 100 percent of high-tech business investments made in Hawaii.\textsuperscript{103} Motion picture productions are considered high technology business activities. The credit is spread over five years, with the taxpayer receiving 35 percent of the credit in the year the investment is made, 25 percent a year later, 20 percent in year three, and 10 percent the remaining two years.\textsuperscript{104} There is a maximum amount that can be received in any one year.\textsuperscript{105} Finally, the credit is nonrefundable. However, if the credit is not used in the year it is earned, the taxpayer can carry it forward indefinitely.\textsuperscript{106}

Mississippi promotes motion picture production through its Motion Picture Incentive Act.\textsuperscript{107} The act contains two major components. The first allows a 10 percent payroll tax credit to production companies.\textsuperscript{108} The credit applies to all payroll expenses made in Mississippi; the credit is nonrefundable and can be carried forward for only 10 years.\textsuperscript{109} The second part of the act gives investors a 10 percent rebate on any investment made in Mississippi.\textsuperscript{110} The amount of the investment is determined by the amount of money spent in Mississippi, excluding payroll expenses.\textsuperscript{111}

New Jersey has taken a different approach to attracting productions. The New Jersey Film Production Assistance Act makes loan guarantees to certain film projects.\textsuperscript{112} The loan guarantees are limited to either 30 percent of the total amount borrowed or $1.5 million, whichever is less.\textsuperscript{113} To qualify for a loan guarantee, a motion picture production company must shoot at least 70 percent of the film in New Jersey, spend 50 percent of its total budget in the state, borrow at least one-half of its production budget from a third party, pay prevailing wages to film employees, and post completion bonds.\textsuperscript{114}

New York offers the Empire State Film Production Credit, which is a refundable credit against income or corporate franchise tax in an amount equal to 10 percent of qualified expenses.\textsuperscript{115} The production must be partially filmed on a set, stage, or production facility within New York and at least 75 percent of the set, stage, or production facility expenses for the production must be spent at the New York location.\textsuperscript{116} The credit also applies to other expenses incurred in New York, provided that 75 percent of the total shooting days are filmed in the state and the production spends at least $3 million at its New York set, stage, or production facility.\textsuperscript{117} Finally, New York City provides an additional 5 percent refundable credit if the above production requirements are completed in the city.\textsuperscript{118}

Like New York, Oklahoma provides motion picture producers with a rebate of up to 15 percent of

\begin{table}[h]
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\begin{tabular}{|l|l|l|}
\hline
\textbf{State} & \textbf{Incentive} & \textbf{Citation} \\
\hline
Vermont & Exemption of taxes on sale or use of machinery and equipment used in manufacture of tangible personal property. & 32 Vt. Stat. Ann. section 9741(14). \\
\hline
Virginia & Exemption on leases, sales, and rentals of tangible personal property used in qualified productions. & Va. Code Ann. section 58.1-609.6. \\
\hline
Washington & Exemption on the rental of production equipment and the sale of production services to a motion picture producer. & Wash. Rev. Code section 82.08.0315. \\
\hline
\end{tabular}
\caption{Chart 4.1 — Sales and Use Tax Incentives by State (continued)}
\end{table}

\textsuperscript{101} For a further discussion of the requirements to qualify for the production cost credit, see supra fn 99.
\textsuperscript{102} Hawaii Rev. Stat. section 235-110.9(a).
\textsuperscript{103} Hawaii Rev. Stat. section 235-110.9(b).
\textsuperscript{104} Id.
\textsuperscript{105} Id. The maximum amount that can be taken in the year the credit is received is $700,000. This amount decreases each year, resulting in a maximum amount of $200,000, which can be taken the fifth year after the credit is received.
\textsuperscript{106} Hawaii Rev. Stat. section 110.9(c).
\textsuperscript{107} Miss. Code Ann. section 57-89-1 et seq.
\textsuperscript{108} Miss. Code Ann. section 57-89-5.
\textsuperscript{109} Id.
\textsuperscript{110} Miss. Code Ann. sections 57-89-3 and -7.
\textsuperscript{111} Id.
\textsuperscript{112} N.J. R.S. 34:1B-178 et seq.
\textsuperscript{113} N.J. R.S. 34:1B-182(c).
\textsuperscript{114} N.J. R.S. 34:1B-182(b).
\textsuperscript{115} Production costs are any costs for tangible property used and services performed directly and predominantly in the production (including preproduction and postproduction) of a qualified film. Production costs shall not include costs for a story, script, or scenario to be used for a qualified film, and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers (other than background actors with no scripted lines). Production costs generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. N.Y. Tax Law section 24(2b)(2) (McKinney 2006).
\textsuperscript{116} N.Y. Tax Law section 24(a)(2) (McKinney 2006).
\textsuperscript{117} Id.
\textsuperscript{118} New York City, N.Y., Rules, Tit. 43 sections 7-01 et seq.
Oklahoma production expenses. A producer qualifies for the credit if the production has a minimum budget of $2 million; $1.25 million must be spent in Oklahoma. The amount of the credit depends on the number of Oklahoma citizens employed. If 50 percent of the crew are Oklahoma residents, the production qualifies for the full 15 percent rebate. A production qualifies for a 10 percent rebate if 25 percent to 49 percent of its production crew are residents of Oklahoma. Otherwise, the production will receive only a 5 percent rebate. The total amount allocated for rebates each year is $5 million.

South Carolina overhauled its incentive package during the summer of 2005. The South Carolina Motion Picture Incentive Act provides for employee wage rebates and a supplier rebate. South Carolina also offers a credit to taxpayers that invest in a company producing a motion picture in the state. The employee wage credit allows a 15 percent rebate on payroll expenses to persons subject to South Carolina withholdings. To qualify for the employee wage rebate, a production company must spend at least $1 million in the state. The rebate applies only to employees making less than $1 million. The supplier rebate offers a 15 percent rebate on all goods and services purchased within the state, excluding payroll expenses, to production companies spending over $1 million in South Carolina. The South Carolina incentive package also authorizes a 20 percent investment credit for taxpayers investing in qualified production companies or qualified companies that build production or postproduction facilities. The total amount of credits an individual taxpayer can earn is capped based on the type of investment. The amount of the credit that a taxpayer may claim in any given year is limited to half of the taxpayer’s income tax liability for that year and the total amount of credits claimed can’t exceed $100,000.

Finally, Vermont has a unique method of attracting motion pictures. Its program focuses attention on the actors and actresses in the production. A nonresident that receives income in Vermont for a dramatic performance may be eligible to receive an income tax reduction. The taxpayer pays income tax based on the rate the taxpayer would pay to his or her home state. However, if Vermont’s tax rate is lower than the home state, the Vermont rate applies. That incentive may be very attractive to motion picture stars who earn multimillion dollar salaries for their performances.

V. Recommendations

A delicate balance must be maintained between Louisiana’s need to foster its nascent motion picture industry and its responsibility to maintain an effective government. Unnecessary waste hurts Louisiana residents. The motion picture incentives offered by the state have proven to be successful at establishing a new industry. Films that would have been produced in California, Canada, or elsewhere are now being filmed in Louisiana. Those productions bring new employment opportunities, invest millions of dollars into the economy, and advertise the state on the silver screen. However, the program has problems, the most glaring of which is the enormous amount of waste it generates.

As noted earlier, the transferability of motion picture investor tax credits is problematic. The state has tried to fix this problem. Thus far its efforts have been piecemeal and ineffective. Beginning in 2007, the GOFTD will begin purchasing the tax credits for 72 percent of their face value. The purchase amount will increase 2 percent every two years until the amount reaches 80 percent. Allowing the GOFTD to purchase motion picture investor tax credits will reduce the amount of profiteering by brokers. However, section 47:6007 will not prevent credits from being sold to third parties. The law continues to permit motion picture production companies to sell the credits to individuals. Individuals will continue to demand the credits because they save money by purchasing them. The 2005 amendments ensure only that motion picture companies receive a higher return on the sale of their credits.

The simple solution to the problem is to make the credits refundable. The statutory changes necessary...
to make the credit refundable are simple. Appendix 1 to this report (p. 803) offers a proposal that would make that change. By making the credits refundable, the state would simply pay the motion picture companies the value of any unused credits. Currently, motion picture production companies receive 70 percent to 75 percent of the face value of their credits. Louisiana can continue offering the same level of incentives to production companies by refunding 75 percent of any unused credits directly to the production company. If the credits were refundable instead of transferable, Louisiana would be assured that every dollar of incentives it gives to motion picture companies actually goes to the film producers and not to private individuals.

That solution would also save Louisiana millions of dollars. The LFO projects that under the current system, all of the nearly $60 million in credits that Louisiana will issue annually will be claimed by taxpayers. Therefore, the program costs the state $60 million a year. If the state refunds only 75 percent of the credits it issues, Louisiana will immediately save $15 million a year.

Moreover, making the credits refundable would save Louisiana money in other areas as well. Under the current system, the state incurs needless expenses because the DOR and the GOFTD both administer the program. Those administrative expenses include tracking the transfer of credits, purchasing the credits by the GOFTD, and auditing past returns to ensure the credits have not previously been used. The entire process requires a coordinated effort between two governmental offices. If the credits were refundable, the DOR would administer all aspects of the refund process, streamlining the process and reducing administrative costs.

If Louisiana made the credit refundable, it would not blaze a new trail in motion picture incentives. Many states already offer refundable credits. The Empire State film production credit offers a fine example for Louisiana to follow in that respect. According to the New York State Governor’s Office for Motion Picture and Television Development, New York sets aside $25 million a year to cover the costs of the refundable credits. Money is paid out of the account on a first-come, first-served basis.

Productions applying for refunds after the account runs out of money are the first to be paid in the following year.

New York’s system guarantees that its Legislature knows the exact amount that has been granted to the motion picture industry at any point in time. That ensures that the Legislature can control the maximum amount its spends on the program. Louisiana currently has no cap on the amount of credits that can be issued. If the number of productions increases dramatically, the state’s budget could be drastically impacted. By allocating the maximum amount of credits allowable in any given year, the Louisiana Legislature could budget for the cost of the program. If the program continued to be successful, the Legislature could easily increase the amount of money dedicated to the program.

That policy also has the advantage of encouraging companies to invest earlier in a calendar year. Under the current policy, there is no particular incentive to invest either at the beginning or end of the year. If the amount of credits authorized per year is limited and credits are refunded on a first-come, first-served basis, motion picture companies will try to earn their credits in the beginning of a year rather than at the end of the year.

Louisiana should not give away money unnecessarily. Motion picture companies are likely to produce films in Louisiana if its incentive program is better than those offered by other states. However, benefits that are excessively generous only cost the state money. Aside from Hawaii, which has geographic limitations on its ability to compete with Louisiana, South Carolina offers the most generous incentive package. It gives producers a 20 percent credit on investment and production companies a 15 percent refundable credit on wages. Louisiana offers a 25 percent transferable credit on investment and a 10 percent transferable credit on wages beginning in 2006. Clearly, Louisiana’s credit is much more valuable than South Carolina’s. Because Louisiana can reduce the amount of the credits it issues and offer a competitive tax incentive program, it should.

Finally, the Louisiana Legislature should consider adding requirements to its incentive package to make sure it is getting the best possible deal. Like Hawaii, Louisiana could offer extra incentives if a film advertises the state in a productive manner.

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144 Supra note 67.
145 The $15 million estimate is not entirely accurate because motion pictures companies will use a small percentage of the credits they earn to eliminate their Louisiana income tax liability. When the companies use those credits, they use 100 percent of the credits value. Thus, the $15 million figure will be slightly less, depending on the Louisiana income tax liability of motion picture production companies in any given year.
146 N.Y. Tax Law section 24 (MiKinney 2006).
147 5 N.Y. Comp. Codes R. and regs. section 170.5.
148 Id.
149 Id.
150 La. R.S. 47:6007 (West 2006).
151 See the discussion on Hawaii’s tax incentive program at Part IV. B and C (p. 798).
152 See the discussion on South Carolina’s tax incentive program at Part IV. C (p. 801).
Louisiana could also encourage motion picture production companies to borrow from Louisiana financial institutions by offering loan guarantees for qualified productions that borrow from Louisiana banks. If adopted, each of these suggestions would ensure Louisiana is not losing too much money to the film industry.

VI. Conclusion

Louisiana’s motion picture incentive program has advantages and disadvantages. Motion picture production companies don’t harm the environment when they produce films. Productions provide positive advertising for the state. Most importantly, motion picture companies create jobs and spend money in Louisiana. Louisiana needs new industries to move in and help rebuild the state’s economy, especially in the aftermath of hurricanes Katrina and Rita. Further developing Louisiana’s motion picture industry can help with this process. However, offering excessive incentives is needlessly costly. The administration of the Louisiana motion picture industry can help with this process. However, offering excessive incentives is needlessly costly. The administration of the Louisiana motion picture tax credit program needs to be overhauled and the transferability of credits should be eliminated. If the Louisiana Legislature makes necessary changes now, the program can become an effective means of creating long-lasting prosperity in the state.

APPENDIX 1

An Act

To amend and reenact R.S. 47:6007(C)(4), relative to the transferability of the Motion Picture Investor Tax Credit; to provide incentives for motion picture infrastructure development.

Be it enacted by the Legislature of Louisiana:

Section 1: R.S. 47:6007(C)(4) is hereby amended and reenacted as follows:

Section 47:6007(C)(4) Refund of the Credit. A taxpayer that cannot use all of his motion picture investor tax credit in the year earned may apply to the Department of Revenue for a refund of all or part of the credit. The refund amount shall be equal to 75 percent of the value of the credit. The Department of Revenue shall promulgate rules and regulations governing the refund process.

Section 2. This Act shall become effective for taxable years beginning after December 31, 2005, and shall not apply to state-certified productions that have received an effective initial certification date that is prior to December 31, 2005.