

JUNE 2, 2008

DEPARTMENT: News, Commentary, and Analysis; Special Reports

CITE: State Tax Notes, June 2, 2008, p. 715;

48 State Tax Notes 715 (June 2, 2008)

48 State Tax Notes 715 - **HOLLYWOOD SOUTH: WHY FILM CREDITS ARE GOOD FOR LOUISIANA.** (Release Date: APRIL 29, 2008)
(Doc 2008-9476)

by Matthew J. Bailey

TEXT:

Hollywood South: Why Film Credits Are Good for Louisiana

Release Date: APRIL 29, 2008

by Matthew J. Bailey

Matthew J. Bailey is a Louisiana native and a graduate of George Washington University Law School. He is a legislative assistant to U.S. Sen. Mary L. Landrieu, D-La.

* * * * *

Introduction

"Quiet on the set! Background! Action!" I spent the summer of 2006 working for a judge in Shreveport, La. But during many of my lunch breaks, I walked through downtown Portland, Ore. I didn't dream it, and there was no Star Trek-esque teleporter in use. The major motion picture *Mr. Brooks* was filming downtown, and Shreveport was standing in for Portland. As someone who grew up in the backwoods of central Louisiana, I marveled as stunt drivers sped cars down the street and Demi Moore shot action scenes with costars. My memorable experience is just one of many shared by folks in Louisiana as a result of the recent movie industry explosion in the state.

MovieMaker magazine recently ranked Shreveport third in its "Top 10 Movie Cities 2008" for being a great place to "live, work, and make movies."¹ Why Shreveport, you ask? Could it be the low cost of living? The friendliness of the people? The "Anytown, USA" landscape? Although all those things play a part, the big reason that movies are filming in Shreveport and across Louisiana is because of the generous tax incentives offered by the state.² Louisiana provides income tax credits to production companies and investors as a way to build its film industry and compete with other states as a filming location.³

This report looks at those incentives from a tax policy standpoint and judges the incentives' validity as sound policy as well as their value to Louisiana. The report begins with an explanation of how the incentives operate formally and practically, including a discussion of the various parties involved. It then discusses the pros and cons of Louisiana's incentive packages and addresses the usual concerns proffered by tax policy experts. The report concludes with a discussion of the future of film incentives in Louisiana.

Overview of Louisiana Incentives

About 45 states offer some form of filmmaking tax breaks to spur the economic development and job creation offered by the film industry.⁴ Everyone's doing it. As one Hollywood journalist described the radical new trend, "It's like coming home from college to find Mom has pierced her navel, and both Dad and your high school science teacher have gotten tribal tattoos."⁵ Louisiana has set an especially aggressive example since the enactment of the Louisiana Motion Picture Incentive Act in 2002, and has experienced significant growth in the size of its movie industry.⁶ Louisiana now ranks third behind California and New York as a site for the production of movies and television shows.⁷

Louisiana's income tax credits cover almost all aspects of film production in the state, and apply to specific productions as well as infrastructure projects.⁸ Investors in individual film projects are eligible for a credit of 25 percent as long as the total base investment for the project is more than \$300,000.⁹ There's also a 10 percent credit for the amount of the base investment spent on payroll for Louisiana residents.¹⁰ The production credit is slated to be gradually reduced to 15 percent for all productions after July 1, 2012, while the payroll credit will remain constant.¹¹ There is also a 40 percent credit allowed for infrastructure projects related to film, video, or television production, such as building new studios, postproduction facilities, and soundstages.¹² The infrastructure credit is capped at \$25 million per project and will sunset on January 1, 2009.¹³

What makes Louisiana's system unique is its reliance on private investment. The law provides for the transfer of credits to any Louisiana taxpayer or back to the state film office, subject to time and notification requirements.¹⁴ "Because investors in films in Louisiana often do not earn enough money in the state to take full advantage of the tax credits, they are allowed to sell the credits to individuals or entities that can use them."¹⁵ After the state approves the credits for film producers and brick-and-mortar project investors, tax credit brokerage firms buy the credits at a discount and sell them to other Louisiana taxpayers, who reap the full-value benefits of the credits against their tax liability.¹⁶ So the film investors can use the credits to get cash upfront, but only after the relevant expenditures have been made and later approved by the state government.¹⁷

It's important to understand the transactions involved in the granting and redemption of the film credits. Film producers and project investors apply to the state for the credits, and the state approves the production or infrastructure project. The necessary tax credit calculations are done and the credits are granted directly to the producers or investors. Work begins, money is spent, and the credits become effective. At some point, the producers or investors usually sell the credits for less than full value to a broker, who in turn sells them to other taxpayers (presumably for a small fee or percentage of the sale). The taxpayer can apply the full value of the credit against its state income tax liability. That investment system benefits producers and investors who need quick capital for their projects, and taxpayers who pay lower taxes after buying the credits.

The Upside of the Incentives

Aside from *Mr. Brooks*, there have been dozens of film productions in Louisiana over the last several years.¹⁸ In the Shreveport area alone, there were 25 new film and television projects in the 21-month period from October 2005 (just after Hurricane Katrina struck the Gulf Coast) to

June 2007.¹⁹ Previous theatrical releases have included such movies as *The Guardian*, *Mad Money*, *Harold & Kumar 2: Escape From Guantanamo Bay*, *The Great Debaters*, and *Welcome Home, Roscoe Jenkins*.²⁰ Along with the movies have come new studios and other infrastructure projects. The state already has six soundstages,²¹ including StageWorks of Louisiana in Shreveport.²² In what will be the seventh, Millennium Films broke ground on April 22 on a new \$10 million facility in Shreveport as the company prepares to shoot *Streets of Blood* with Val Kilmer, Curtis "50 Cent" Jackson, and Sharon Stone in May.²³ In sum, there were 53 projects in Louisiana in 2007 and about two dozen more in production as of late March.²⁴

From all appearances, the film credits have been an economic boon for star-struck Louisiana, now dubbed "Hollywood South."²⁵ Perhaps one of the most quantifiable factors is the number of new jobs created by the movie industry, evidenced anecdotally at the local level.²⁶ The new Shreveport studio is expected to employ as many as 500 production workers at any one time.²⁷ When John Grisham's *A Time to Kill* was filmed in neighboring Mississippi, the production issued 10,000 paychecks to local residents.²⁸ During his 2006 Oscar speech, President Sid Ganis of the Academy of Motion Picture Arts and Sciences hailed the creation of 600 new jobs on six films in New Orleans.²⁹ "This really shows how movies are contributing to restore the damage."³⁰

Beyond contributing to rebuilding New Orleans, the movie industry provides a higher scale of pay than many Louisiana workers are accustomed to. Many skilled laborers in New Orleans are making twice as much working in the movie industry as they made in other jobs pre-Katrina.³¹ Proponents of the credits as an economic development device ask in what other industry residents without college degrees can earn \$20 per hour.³² According to the Louisiana Economic Development Department, the film industry has meant an increase in membership for the local film union, a 31 percent annual increase in film industry wages over the last few years, and total payroll wages of almost \$200 million for residents.³³ Few Louisiana industries have job opportunities that can match those offered by the film industry.

Local economies across the state have also benefited from the tax incentives. With a growth rate of 5,000 percent since the film incentives' inception, the industry has pumped more than \$800 million into Louisiana's economy.³⁴ The money provides increased earnings for many local businesses. According to the owner of a Shreveport fabric store catering to movie producers, "This is free money. I have my normal customer base. This is icing on the cake."³⁵ The trickle-down effect and increased sales also help employees who can work more hours and make more money because of the increase in business.³⁶ The immediate positive effect on hotels, restaurants, and retailers also translates into additional local sales tax revenue. This year alone, analysts estimate that an additional \$2.8 million will be added to Shreveport's local coffers.³⁷

There are other, less tangible benefits associated with a burgeoning film industry. Movies attract tourists and their money. Just ask folks in the small Iowa community where *Field of Dreams* was filmed in 1989.³⁸ Historic Natchitoches in northwest Louisiana (incidentally, where I attended college) has benefited from movie-generated tourism for 20 years since the 1988 movie *Steel Magnolias* was filmed there.³⁹ Filming also means revitalization for some small towns that spruce up to attract movies or whose buildings receive makeovers by producers wanting to recreate historic backdrops for period films.⁴⁰ Finally, local filming has been a much-needed source of pride for many Louisiana communities where residents continue to rebuild from the hurricanes.⁴¹ The movie industry generates a positive public image, filling a niche that few other economic development projects could match in economically depressed regions.

Addressing Problems

Louisiana's experience with the film tax credits has not been entirely positive. Like any lucrative economic development program, the program is imperfect. The most prominent controversy associated with the program came in the form of a 2007 federal investigation following a whistle-blower lawsuit by a former state official. The investigation centered on whether the Louisiana Institute of Film Technology (LIFT) Productions received improper or excessive credits from the program and bribed Mark Smith, the former head of the Louisiana Film Commission.⁴² Competitors claimed that LIFT got special treatment, while review and approval of other projects' tax credits were delayed.⁴³ Apparently, the director of LIFT threatened to move productions and a planned facility out of the state unless the company's tax credit applications were immediately approved.⁴⁴ Smith eventually pleaded guilty to taking bribes in return for approving inflated production budgets for LIFT, and the investigation continues.⁴⁵

Unfortunately, that was not all the damage Smith did while heading the film commission. He also awarded the incentives to several large New Orleans music festivals, interpreting the incentive program loosely and comparing "a music festival as being like a movie in which the musicians are the actors."⁴⁶ After millions of dollars were doled out under Smith's fast and loose policy, requirements for the program were tightened around the same time that the former director pleaded guilty to the bribery charges.⁴⁷ Similarly, the program had to be clarified in response to infrastructure project proposals seeking the tax credits for "golf courses and luxury condos wrapped around film studios -- with the notion that the state would subsidize the whole package, rather than just the part having to do with motion pictures."⁴⁸ Fortunately, state officials have responded well to those situations to avoid ongoing systemic corruption regarding the film credits.

Another concern has been whether the state "may just be giving away the bank for short-term benefits."⁴⁹ Although the economic benefits to the state are clear, the question whether the credit expenditures will be eventually recovered in revenue is not. There is little tangible evidence that economic activity spurred by a state's movie industry will offset the cost to the treasury, and recouping those costs may take years.⁵⁰ One Louisiana official, an economist at the Legislative Fiscal Office, thought that the state would see a return in tax revenue equal to less than one-fifth of the credits paid.⁵¹ But **Chris Stelly, the director of the Louisiana Economic Development Department's film project**, believes that the state is getting a 75 percent return on the credits paid out.⁵² There are no concrete measurements of Louisiana's numerical returns on its tax credits, but the proof is in the competitive pudding. Following Louisiana's lead in creating permanent economic growth, 10 states beefed up their film incentive packages in 2007 alone.⁵³ As long as the cameras are rolling and studios are going up, the state is bringing in local and state tax dollars, helping local businesses, and providing new jobs for residents.

Answering the Critics

State tax policy experts have routinely dismissed as bad tax policy economic development tax incentives generally and film credits specifically. In Louisiana, however, their arguments really do not hold water. Harley Duncan of the Federation of Tax Administrators gave a paper on interstate tax competition with the subheading "The Bad -- Competition for Business Development Through Special Tax Incentives" at the National Tax Association's 1991 Annual Conference.⁵⁴ According to Duncan, state tax incentives are bad for several reasons.

First, Duncan says, economic development tax incentives are inherently difficult to target to achieve the desired results, so they do not actually stimulate any activity that would not take place without the incentives.⁵⁵ David Brunori later agreed with that assertion, attributing the passage of tax incentives to politicians who want to give the impression of creating jobs so they can get reelected.⁵⁶

In fact, Duncan and Brunori are wrong when it comes to Louisiana's film incentives. There is consensus that the only reason Louisiana's film industry has grown and succeeded is because of the existence of the tax credits.⁵⁷ Without them, productions and studios would stay in Hollywood or go to other states offering tax benefits. So in this case, the tax incentives are directly responsible for the creation of new movie jobs and the influx of production money where there would be none.

Another of Duncan's concerns is that a few large firms disproportionately benefit, creating unfair competitive effects among those businesses that are left out.⁵⁸ Although that may be true when states award special incentives for individual companies for, say, new plant constructions, it is less so with Louisiana's incentives program. Filmmakers from out of state and within the state are equally eligible to receive the credits. Although most of the credits are paid out to a handful of large production companies, any producer or investor that meets the law's requirements and wants to film or build in Louisiana can receive the credits. After the LIFT Productions controversy, Louisiana has had to work to repair its image, but state officials were able to alleviate any fears of corruption within the program.

Brunori believes that one of the biggest problems with the tax incentives is that they are horizontally inequitable. "Rather than building a tax system that provides a level playing field for all businesses, the politicians decide to pick winners (and thus losers)."⁵⁹ In Louisiana's case, however, the identities of those "losers" are not readily apparent. Brunori suggests that businesses that have invested in the state in other ways are the losers because they did not receive any tax incentives.⁶⁰ Although it is true that other industries in the state are not going to get similar treatment, I hardly see how that negates the positive effects that the film incentives have brought. Further, if other industries or businesses are unhappy, they certainly are keeping quiet. The concept of horizontal inequity might seem unbearable in academia. But practically speaking, it is much less of an issue in a state with such a large economic void to fill.

Brunori also asserts that tax incentives shrink the tax base, causing the average Joe to contribute a little more.⁶¹ Again, that simply is not the case with Louisiana's film credits. Those tax incentives have created a thriving industry where one did not exist and would not have existed otherwise. Because of that growth, more money is being spent locally, more movie vendor businesses are cropping up, and more Louisianians are finding good-paying jobs. Brunori's argument that a shrinking tax base hurts a state goes hand in hand with his position that the incentives do not actually spur any activity that would not occur anyway. Because the incentives have clearly achieved their purpose in Louisiana, the former argument also fails. Only time will tell what the effect will be on tax revenues, and then only if a system can be developed to measure the sum total of the stimuli on the local and state systems. My bet is that the tax base and tax revenue will grow in the long run because of the incentives.

It is easy for the usual naysayers to crunch hypothetical numbers and state that Louisiana is losing its shirt. But to do so ignores the reality of more jobs paying better wages (again, jobs that otherwise would not exist), enabling Louisianians to spend more money. Those workers pay

income tax on their higher pay and sales tax on the new stuff they are able to buy. As production workers and actors move into the state, they purchase new or second homes and pay property tax.⁶² Young people may decide to remain in the state instead of joining many of their predecessors who left for greener pastures. Though many of the positive factors are hard to measure, they should not be ignored.

The Future of the Louisiana Credits

For Louisiana, the film tax incentives program has proved to be a successful economic development tax policy.⁶³ Industry experts agree on the importance of the tax credits to the movie industry in the state. "Take away the incentives and you've just taken away the film industry."⁶⁴ Louisiana should hang on to the production incentives as long as they continue to bring new movie and television productions to Louisiana and spur local economic development. Because the state is close to reaching its saturation point in soundstages and production facilities, the Legislature should do nothing to stop the sunset of the 40 percent infrastructure tax credits at the end of this year.⁶⁵ Like the ongoing production incentives, those credits have been effective in fostering a viable growth environment for the movie industry. By adopting the film credits, Louisiana has done a good thing for its residents and should be able to look forward to a brighter future because of the credits.

FOOTNOTES

/1/ Jennifer M. Wood, "Top 10 Movie Cities 2008," *Movie-Maker*, Winter 2008, accessed on Apr. 14, 2008, at http://www.moviemaker.com/articles/print/top_10_movie_cities_2008_best_places_to_make_movies_20080128/.

/2/ See Adrian McDonald, "Through the Looking Glass: Runaway Productions and 'Hollywood Economics,'" [9 U. Pa. J. Lab. & Emp. L. 879, 880 \(Summer 2007\)](#) [hereinafter McDonald article].

/3/ La. R.S. 47:1122 (2007).

/4/ Billy Hamilton, "That's Entertainment, Too," *State Tax Notes*, Aug. 27, 2007, p. 591, Doc 2007-18946, or [2007 STT 167-5](#).

/5/ Todd Longwell, "States Play the Credit Card to Lure Filming," *The Hollywood Reporter*, Apr. 12, 2007, accessed on Mar. 17, 2008, at http://www.hollywoodreporter.com/hr/content_display/film/features/e3if206c7ce0370e2e29ac34b9d1e6cb9e?imw=Y [hereinafter *HollywoodReporter*].

/6/ See Alexandyr Kent, "Experts Expect Northwest Louisiana's Film Industry to Grow," *Shreveport Times*, Mar. 17, 2008, accessed at <http://www.shreveporttimes.com> [hereinafter Kent article 1].

/7/ *Id.*

/8/ See La. R.S. 47:6007(C).

/9/ La. R.S. 47:6007(C)(1)(b)(i).

/10/ La. R.S. 47:6007(C)(1)(b)(ii).

/11/ See La. R.S. 47:6007(C)(1)(c) & (d).

/12/ See La. R.S. 47:6007(C)(2)(a) & (b).

/13/ La. R.S. 47:6007(C)(2)(a).

/14/ See La. R.S. 47:6007(C)(5).

/15/ Gordon Russell and Robert Travis Scott, "FBI Probes State's Movie Office," Nola.com, Mar. 30, 2007, accessed on Apr. 16, 2008, at http://blog.nola.com/topnews/2007/05/fbi_probes_states_movie_office.html [hereinafter Nola.com 1].

/16/ Robert Travis Scott, "LIFT Tax Credits on Hold Amid FBI's Abuse Probe," New Orleans Time-Picayune, June 9, 2007, accessed on Apr. 16, 2008, at <http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-8/1181369734128160.xml&coll=1>.

/17/ Nola.com 1, supra note 15.

/18/ See generally The Internet Movie Database (IMDB), PowerSearch Results from April 18, 2008, accessed at <http://www.imdb.com/List?locations=shreveport&&substrings=on>.

/19/ Alexandyr Kent, "Northwest Louisiana Attracts 25 Film, TV Projects in 21 Months," Shreveport Times, June 25, 2007, accessed on Mar. 17, 2008, at <http://www.lafilm.org/media/index.cfm?id=1006> [hereinafter Kent Article 2].

/20/ See IMDB Search, supra note 18.

/21/ Jaime Guillet, "Film Tax Credits Near Sunset," New Orleans City Business, Mar. 17, 2008, accessed at <http://www.neworleanscitybusiness.com/print.cfm?recid=30208> [hereinafter City Business].

/22/ See Kent article 2, supra note 19.

/23/ Alexandyr Kent, "Millennium Films to Break Ground for \$ 10M Studio," Shreveport Times, Apr. 18, 2008, accessed at <http://www.shreveporttimes.com> [hereinafter Kent article 3].

/24/ See Stacey Plaisance, "Movies Shooting All Over the State," Associated Press, Mar. 29, 2008, accessed at <http://www.wvlv.com>.

/25/ Id.

/26/ See generally McDonald article, supra note 2, at 884.

/27/ Kent article 3, supra note 23.

/28/ McDonald article, supra note 2, at 885.

/29/ Blog post "Louisiana at the Oscars," Louisiana Film and Television, Mar. 7, 2006, accessed Mar. 7, 2008 at <http://www.lafilm.org/blog>.

/30/ Id.

/31/ Milena Merrill, "Are We Dumping the Baby With the Bathwater?" The Business of Film (blog), Nola.com, accessed on Mar. 17, 2008, at http://blog.nola.com/business_of_film/2007/06/the_lift_saga_continues_what.htm [hereinafter Business of Film].

/32/ See McDonald article, supra note 2, at fn. 394.

/33/ Motion Picture summary, Louisiana Economic Development, accessed on March 10, 2008, at <http://www.louisianaforward.com/come-to-louisiana/industries/entertainment/motion-picture.aspx>.

/34/ Id.

/35/ Allison Bath, "Film Incentives Line Many Pockets," Shreveport Times, Mar. 17, 2008, accessed at <http://www.shreveporttimes.com>.

/36/ See id.

/37/ See id.

/38/ See David Eggert, "Michigan to Pile on Incentives to Lure Filmmakers," Associated Press, Feb. 17, 2008, accessed on Mar. 10, 2008, at <http://www.sfgate.com> [hereinafter Michigan Incentives].

/39/ See Vickie Welborn, "Region Reaps Benefits From Growing Film Industry," Shreveport Times, Mar. 17, 2008, accessed at <http://www.shreveporttimes.com>.

/40/ See id. As an aside, that reminds me of one of my favorite episodes of The Andy Griffith Show, in which the citizens of Mayberry changed the look of the town to make it more glamorous for a motion picture production, only to be admonished by the filmmakers who chose Mayberry because of its old-fashioned look. See "Mayberry Goes Hollywood," The Andy Griffith Show (1961), <http://www.imdb.com/title/tt0512511/>.

/41/ See Kent article 1, supra note 6; Kent article 2, supra note 19.

/42/ See Nola.com 1, supra note 15.

/43/ Id.

/44/ Robert Travis Scott, "LIFT Officials Pressured State to Speed Tax Credits," New Orleans Times-Picayune, June 4, 2007, accessed on Mar. 17, 2008, at http://blog.nola.com/business_of_film/2007/06/the_lift_saga_continues_what.htm l.

/45/ Karen Setze, "Former Film Commission Director Pleads Guilty in Tax Credits Case," State Tax Notes, Sept. 17, 2007, p. 747, Doc 2007-20935, or [2007 STT 178-14](#).

/46/ Gordon Russell, "State's Film Incentive Program Helped Bankroll Music Fests," New Orleans Times-Picayune, Dec. 8, 2007, accessed on Mar. 17, 2008, at http://blog.nola.com/times-picayune/2007/12/states_film_incentive_program/print.html.

/47/ Id.

/48/ Id.

/49/ See McDonald article, supra note 2, at 943.

/50/ Id. at 942.

/51/ See McDonald article, *supra* note 2, at fn. 394.

/52/ See Kent article 2, *supra* note 19.

/53/ According to Angela Miele, vice president of tax policy for the Motion Picture Association of America. See Michigan Incentives, *supra* note 38.

/54/ See Harley T. Duncan, "Interstate Tax Competition: The Good, the Bad, and the Ugly," *State Tax Notes*, Aug. 24, 1992, p. 266 [hereinafter Duncan].

/55/ Id. at 269.

/56/ David Brunori, "We're Not Even Pretending That Tax Incentives Work Anymore," *State Tax Notes*, Feb. 6, 2006, p. 407, Doc 2006-1743, or [2006 STT 24-6](#) [hereinafter Brunori 1].

/57/ See *supra* at notes 2 and 53; see also Hollywood Reporter, *supra* note 5 ("And to compete in the current climate, states need incentives."); Kent article 1, *supra* note 6 ("Without the state's tax credit program for the entertainment industry . . . Louisiana wouldn't have a film industry").

/58/ See Duncan, *supra* note 54, at 269.

/59/ David Brunori, "My Last Harrah on Film Credits," *State Tax Notes*, Apr. 7, 2008, p. 57, Doc 2008-7007, or [2008 STT 68-4](#) [hereinafter Brunori 2].

/60/ See *id.*

/61/ See *id.*

/62/ "The Shreveport housing market has enjoyed a bump with California movie executives purchasing second homes for less than the down payment cost on their primary residences. Movie mechanics and others are also buying first-time homes." *Business of Film*, *supra* note 31.

/63/ See generally McDonald article, *supra* note 2, at 944 ("The Louisiana and New Mexico models show how proactive legislation fosters the movie industry at highly-successful levels").

/64/ Quote by Stephen Katz, cofounder of the Center for Entertainment Industry Data and Research, an organization that studies industry trends from a global perspective. Kent article 1, *supra* note 6.

/65/ See generally City Business, *supra* note 21.

END OF FOOTNOTES

***** End of Document *****