



**Private Letter Ruling
Redacted Version
No. 07-001**

**Corporation Income Tax and Corporation Franchise Tax
Motion Picture Investor Credit as Currently Amended
February 5, 2007**

FACTS

You provided these facts:

Productions, LLC (“PP”) is producing a television movie with the working title (the “Production”). The Requesting Parties now seek certain rulings from the Louisiana Department of Revenue (the “LDR”) as to (i) Investor Company, LLC, a Louisiana limited liability company (“IC”) will earn Investor Tax Credits for investing in PP to finance the Production, and if so, whether IC will earn such Investor Tax Credits at a rate equal to 25% of such investments; (ii) whether IC will earn additional Investor Tax Credits at the rate of 10% of such investments expended by PP on payroll for Louisiana residents employed in connection with the Production; (iii) issues involving the availability, allocation, and transfer of such Investor Tax Credits; and (iv) other matters set forth herein, all based on the following statement of facts (“Statement of Facts”):

Statement of Facts

1. By a letter dated November, 2006 (a copy of which is attached hereto as Exhibit B, the “Production Certification Letter”), the Louisiana Department of Economic Development (the “LED”) and the Louisiana Governor’s Office of Film and Television Development (the “Film Office”) have approved the Production effective as of May, 2006 as a “state-certified production” as defined in La. Rev. Stat. 47:6007(B)(10). To date, the certification by the LED and the Film Office of the Production as a “state-certified production”, as such term is defined in La. Rev. Stat. 47:6007(B)(10), as evidenced by the Production Certification Letter, has not been revoked.
2. PP was formed as a limited liability company under the Louisiana Limited Liability Company Law, La. Rev. Stat. 12:1301, et seq., in 2005. PP was formed in order to produce motion pictures in Louisiana, which includes the Production. Since the date of its formation and at all relevant times described herein, PP (a) has maintained, and will continue to maintain, a registered office in the State of Louisiana; (b) has been, and will continue to be, domiciled and headquartered in Louisiana; (c) has been, and will continue to be, engaged in the business of producing nationally distributed

motion pictures, videos, television series, or commercials intended for theatrical release or for television viewing. PP is not owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the State of Louisiana or a loan guaranteed by the State of Louisiana, nor is PP owned, affiliated, or controlled, in whole or in part, by any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.

3. The sole member of PP is IC. The sole manager of PP is A Company, LLC, a Delaware limited liability company ("AC"). For federal and state tax purposes, PP and IC are classified as entities that are disregarded as entities separate from their owners.
4. IC was formed as a limited liability company under the Louisiana Limited Liability Company Law, La. Rev. Stat. 12:1301, *et seq.*, in 2005, for the purpose of investing in PP. Since the date of its formation and at all relevant times described herein, IC has maintained, and will continue to maintain, a registered office in Louisiana, and has been, and will continue to be, domiciled in Louisiana.
5. Currently, AC is the sole member and manager of IC. For federal and state tax purposes, AC is classified as an entity that is disregarded as an entity separate from its owners.
6. As disregarded entities for federal tax purposes, the activities of AC, IC and PP are reported on the federal income tax return of B Company Inc., a Delaware corporation and the sole owner of AC ("BC"). BC uses the calendar year as its tax year for federal tax purposes.
7. At this time, IC and PP are single-purpose entities that are not expected to have any business activities other than, in the case of PP, producing motion pictures in Louisiana and, in the case of IC, investing in such productions, including, in both cases, the Production. AC is in the business of, among other things, producing a limited number of nationally distributed television movies.
8. The Production Certification Letter provides for, among other things, procedures for certification of (i) the amount of Investor Tax Credits earned by IC as a result of its investment in PP; (ii) the amount of Investor Tax Credits earned by IC as a result of PP's expenditure of IC's investments on payroll of Louisiana residents employed in connection with the Production; and (iii) the amount of Investor Tax Credits earned by IC that are no longer subject to recapture, disallowance, recovery, reduction, repayment, forfeiture, decertification, or any other remedy that would have the effect of reducing or otherwise limiting the use of the Investor Tax Credits (collectively, "Recapture").
9. Pursuant to the Production Certification Letter, during or after completion of production of the Production, PP will submit to the LED and the Film Office one or more periodic "Auditor's Reports" (as defined in the Production Certification Letter) requesting that the LED and the Film Office issue a "Tax Credit Certificate" (as

defined in the Production Certification Letter), the form of which is attached to the Production Certification Letter as Exhibit D. In each Tax Credit Certificate, it is anticipated that the LED and the Film Office will certify the amount of Investor Tax Credits that have been earned by IC, that IC is eligible to transfer and that are no longer subject to Recapture. As required by La. Rev. Stat. 47:6007C(1), the "payroll" certified by LED and the Film Office will not include the salary of any employee to the extent it exceeds \$1,000,000.00.

10. To fund Production-related costs, IC has made or will make in calendar year 2006, and may make in the future, capital contributions to PP, approximately equal in the aggregate to the estimated total Production budget, in some combination of cash and IC's demand notes bearing a market rate of interest. Each IC Note, if any, was structured and will be structured in the future to allow PP to demand payments by IC on the IC Note as needed by PP to pay for the Production's pre-production, production and post-production costs. Each capital contribution made by IC as described in this Paragraph (10) has preceded the payment by PP of an equal amount of (a) outstanding indebtedness, if any, that PP incurred prior to such capital contribution to pay for Production-related costs plus (b) any other Production-related expenditures. All of the contributions to PP by IC described in this Paragraph (10) may occur or have occurred at a time when the Production is completed or substantially completed.
11. Investor Tax Credits earned by IC will flow through to IC's sole member, AC, at the time provided for in the written limited liability company operating agreement of IC executed in 2005 by AC as IC's sole member and manager. Currently, the IC operating agreement provides that all Investor Tax Credits earned by IC will flow through to AC immediately after they are earned by IC; however, the IC operating agreement may be amended at any time to provide that all or any portion of the Investor Tax Credits to be earned by IC will flow through to AC on a specified date or dates or upon the occurrence of a specified event or events.
12. The Investor Tax Credits that flow through to AC during a calendar year in the manner described in Paragraph (11) of this Statement of Facts, will remain with AC, whether AC is a single-member limited liability company that is disregarded for federal tax or state tax purposes or is a multi-member limited liability company that is classified as a partnership for federal tax or state tax purposes, and will not flow through to or be allocated to the member or members of AC, until such flow through or allocation of Investor Tax Credits is provided for in the written limited liability company operating agreement of AC which was executed in 2005 by BC as AC's sole member and manager. Currently, the AC operating agreement provides that all Investor Tax Credits that are allocated to, or that flow through to, AC during a taxable year shall not flow through or be allocated to the holder of any AC membership interest, but instead, shall remain with AC until such time (including in subsequent taxable years) as all or any portion of such Investor Tax Credits are (i) sold or otherwise transferred by AC or (ii) allocated upon the issuance of AC

membership interests to additional members on such terms as are agreed to by AC and such additional members.

13. AC expects to transfer and/or allocate the Investor Tax Credits for value to one or more persons (as used herein, “person” means any individual or entity) in one or more of the following ways:
 - a. AC may sell or otherwise transfer all or a portion of the Investor Tax Credits to one or more persons.
 - b. AC may issue additional membership interests to one or more persons (each, an “Additional Member”) on such terms that are agreed to by the relevant parties and as permitted by the AC limited liability company operating agreement. In such event, AC’s limited liability company operating agreement may be amended to allocate up to 100 percent of the Investor Tax Credits available to AC to the Additional Members even though under the AC limited liability company operating agreement (i) as much as 100 percent of all profit and loss of AC and as much as 100 percent of all income, gain, deduction, loss and credits (other than Investor Tax Credits) for federal tax and state tax purposes may be allocated to BC or to members of AC other than the Additional Members to whom the Investor Tax Credits are allocated; (ii) as much as 100 percent of all distributions of cash and property of AC (including distributions made in connection with the liquidation of AC) may be made solely to BC or to members of AC other than the Additional Members to whom the Investor Tax Credits are allocated; (iii) the Additional Members to whom the Investor Tax Credits are allocated may have limited voting rights or have no voting rights of any kind; (iv) control, management, direction and operation of the affairs of AC may be vested partially or entirely in BC or in persons other than the Additional Members to whom the Investor Tax Credits are allocated; (v) AC may have the right but not the obligation in its sole and absolute discretion to redeem and terminate 100 percent of the membership interest in AC of any one or more Additional Members to whom the Investor Tax Credits are allocated for a nominal cash payment (for example, \$10) to each such Additional Member after such Additional Member has been allocated the Investor Tax Credits to which it is entitled, at which time such Additional Members would be required to forfeit all rights to or with respect to any capital contribution that they made to AC and any capital account reflecting such contributions; (vi) the Investor Tax Credits allocated to the Additional Members may be vastly disproportionate compared to the relative capital accounts of and capital contributions made (or to be made) by such Additional Members; (vii) the allocation of Investor Tax Credits to the Additional Members may not be respected under principles of federal income tax law, including Sections 704(b) and 752 of the Internal Revenue Code of 1986 and the Treasury Regulations issued there under, as the same may be, modified or amended from time to time, if such Investor Tax Credits were federal income tax credits; and (viii) AC may not constitute a “partnership” for

federal tax or state tax purposes and each member of AC may agree that it will not treat AC as a “partnership,” or itself as a “partner,” or the membership interest in AC as a “partnership interest,” or the allocation of Investor Tax Credits as a partnership allocation, for federal tax or state tax purposes.

- c. BC may sell all or a portion of its membership interest in AC to one or more persons (each, a “Substituted Member”) on such terms that are agreed to by the relevant parties, in which event, the AC operating agreement may be amended to limit the rights of such Substituted Members in the manner described in Paragraph 13(b) above.
 - d. Pursuant to an amendment to its operating agreement, AC may allocate all or a portion of the Investor Tax Credits that are allocated to or flow through to AC to either BC or one or more existing or newly-created entities who are issued membership interests in AC (each a “Newco”). Upon receiving an allocation of Investor Tax Credits from AC, BC or a Newco, as the case may be, may in turn sell or allocate the Investor Tax Credits, as applicable, acquired by AC to one or more persons in one or more of the ways described in this Paragraph (13).
14. Pursuant to its operating agreement AC may retain Investor Tax Credits and then allocate, sell or otherwise transfer the Investor Tax Credits pursuant to one or more of the alternatives described in Paragraph (13) above in a calendar year that follows the calendar year in which the Investor Tax Credits were originally earned by IC or acquired by AC and to persons who were or were not members of AC in the calendar year in which the Investor Tax Credits were originally earned by IC or acquired by AC. Each successive person that acquires, whether by allocation or sale, the Investor Tax Credits earned by IC in connection with the Production will sometimes be referred to hereinafter as a “Transferee.”
 15. Some, if not all, persons who will (i) acquire a membership interest in AC and receive an allocation and flow through of Investor Tax Credits or (ii) purchase Investor Tax Credits from AC will do so after IC has made some, or all, of its capital contributions to PP, after PP has expended some, or all, of those contributions on Production-related expenses (either directly or by repaying loans used to fund such expenses) and after the Production has been certified and completed.
 16. IC, other than through direct and indirect, investments in PP, has never been, and is not currently, engaged in the business of producing films, videos, television series, or commercials of any kind and has never produced a film, video, television series, or commercial of any kind.
 17. Upon the sale or transfer of Investor Tax Credits, the seller/transferor and the transferee of the Investor Tax Credits will submit to the LDR and the Film Office the notification of transfer required by La. Rev. Stat. 47:6007(C)(4)(b).

RULING

Based on the foregoing, you requested each of the following specific rulings. Being in agreement with your analysis and conclusions, I here by rule as follows:

Investor Tax Credits Rulings

- A. A motion picture production company is defined in La. Rev. Stat. 47:6007(B)(5) as a company engaged in the business of producing nationally distributed motion pictures. A company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the state or a loan guaranteed by the state, any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy cannot be a motion picture production company. Under Paragraph (2) of the Statement of Facts, PP qualifies as a “motion picture production company”.
- B. La. Rev. Stat. 47:6007 gives the Film Office and the LED, jointly, the exclusive authority to determine whether a production qualifies as a state-certified production. Therefore, because the Film Office and the LED, as evidenced in the Production Certification Letter, have approved the Production as a “state-certified production,” as defined in La. Rev. Stat. 47:6007(B) (10), the LDR will abide by such determination.
- C. As an investor that is domiciled in Louisiana and is not a motion picture production company, IC is eligible to earn Investor Tax Credits under La. Rev. Stat. 47:6007(C)(1) and is entitled to claim and use any Investor Tax Credits that IC earns by virtue of its investments in PP in accordance with La. Rev. Stat. 47:6007(C)(3)(c) even if IC does not have any Louisiana tax liability.
- D. AC, each Newco, each Substituted Member and each Transferee are each eligible under La. Rev. Stat. 47:6007(C)(1) and 47:6007(C)(4) to receive an allocation and/or transfer of Investor Tax Credits as described in the Statement of Facts above and each of them is entitled to claim and use in accordance with La. Rev. Stat. 47:6007(C)(3) any Investor Tax Credits of which it receives an allocation and/or transfer, even if it does not have any Louisiana tax liability.
- E. La. Rev. Stat. 47:6007(C)(4) provides for the transferability of Investor Tax Credits not previously claimed by any taxpayer against its income tax. IC is eligible to transfer any Investor Tax Credits that it earns and each of AC, each Newco, each Substituted Member and each Transferee is eligible to transfer any Investor Tax Credits that it acquires as long as such credits have not been previously claimed by any taxpayer against Louisiana income tax.

Under La. Rev. Stat. 47:6007(C)(3) an entity not subject to Louisiana corporate income tax may allocate any Investor Tax Credits it receives to its partners or members. As a single member limited liability company that is not subject to Louisiana corporation income tax, IC is eligible to allocate any Investor Tax Credits that it earns. Each of AC, each Newco, each Substituted Member and each Transferee will be eligible to allocate any Investor Tax Credits it acquires only if it is an entity not subject to Louisiana corporation income tax.

- F. IC is a single-purpose entity whose only business activities are investing in the Production. IC is not involved in the actual production of the Production, and therefore, is not a "motion picture production company" within the meaning of La. Rev. Stat. 47:6007(C)(1).
- G. For purposes of La. Rev. Stat. 47:6007(C)(1) the contribution of an interest bearing note will constitute an investment in an amount equal to the original principal amount of the note if payment of the entire principal amount of any such note can be demanded at any time and if such principal amount is immediately available (subject to reasonable payment deadline such as five business days) upon any such demand. If a note does not meet the criteria set forth in this ruling paragraph, then the amount of the investment will be deemed to be the fair market value of the note on the day it is contributed to the production company. After a production is completed, the only amounts that will be considered an "investment" will be amounts that are not in excess of bona fide debt or other obligations of the motion picture production company related to the state-certified production. Investments made in a motion picture production company for the production of a state-certified production during pre-production, production, or post-production, will be presumed to be in keeping with the objectives of the statute which include "[a]ttract[ing] private investment for the production of motion pictures, videotape productions, and television programs." Once production is completed, then to the extent that the motion picture production company does not have bona fide debt or other obligations related to the state-certified production, any funds contributed will not be considered an "investment" for purposes of the Investor Tax Credit. IC will be treated as making an investment in PP on each date that it makes a contribution of cash or a note to PP (assuming any such note meets the criteria set forth in this ruling paragraph) in a manner consistent with Paragraph (11) of the Statement of Facts even though the Production may have been completed or substantially completed at the time of each such contribution. The amount of the investment will be the amount of any cash contributed and the original aggregate principal amount of any notes contributed. Investor Tax Credits earned by IC as a result of each such contribution shall be earned as of the date the expenditure of such contribution by PP on the Production.
- H. Louisiana Revised Statutes 47:6007(C)(1) provides that for state-certified productions approved by the Film Office on or after January 1, 2006 and prior to July 1, 2010, if total base investment is greater than three hundred thousand dollars, investors shall be allowed a tax credit of twenty-five percent of the actual portion of

the base investment made by that investor, plus an additional tax credit of ten percent of the portion of the base investment expended by the motion picture production company on payroll for Louisiana residents employed in connection with the production. Therefore, if the combination of one or more Auditor's Reports and Tax Credit Certificates indicates that the aggregate "base investment," as defined in La. Rev. Stat. 47:6007(B)(1), with respect to the Production exceeds three hundred thousand dollars, then, in accordance with La. Rev. Stat. 47:6007(C)(1)(b)(i), IC will earn and be entitled to claim an amount of Investor Tax Credits equal to 25% of the portion of such base investment contributed to PP by IC (including each dollar of cash contributed and each dollar of the original aggregate principal amount of the notes contributed by IC to PP in a manner consistent with Paragraph (10) of the Statement of Facts) plus an additional 10% of the portion of such base investment contributed to PP by IC (including each dollar of cash contributed and each dollar of the original aggregate principal amount of the notes contributed by IC to PP in a manner consistent with Paragraph (10) of the Statement of Facts) to the extent IC's investment is expended by PP on payroll (excluding the portion of any employee's salary that exceeds \$1,000,000.00) for Louisiana residents employed in connection with the Production. Louisiana Revised Statutes 47:6007(C)(1)(e) provides that the Investor Tax Credit shall not exceed the total base investment in the production. Base investment is defined as the actual investment made and expended by a state-certified production in Louisiana. Therefore, if the combination of one or more Auditor's Reports and Tax Credit Certificates indicates that the aggregate base investment equals or exceeds the amount of Investor Tax Credits earned by IC as a result of its investments in PP, then the amount of Investor Tax Credits will not be limited by operation of La. Rev. Stat. 47:6007(C)(1)(e).

- I. The Film Office has the exclusive authority under La. Rev. Stat. 47:6007(D)(2)(d) to determine whether funds were properly expended with respect to a state-certified production prior to issuing a Tax Credit Certificate. Additionally, LDR is aware of the Production Certification Letter whereby, among other things, LED and the Film Office may review and examine the findings of the certified public accountant prior to issuing a Tax Credit Certificate. Although LDR does not concede its authority to examine PP or IC, to the extent that the LED and the Film Office certify by the issuance of a Tax Credit Certificate funds as having been expended by PP with respect to the Production, then the LDR will abide by such certification and will not, under La. Rev. Stat. 47:6007(E), under La. Rev. Stat. 47:6007(F), or otherwise, seek to Recapture any Investor Tax Credits associated with such expenditures unless such Recapture is approved or requested by the LED and the Film Office; provided, however, that the LDR may bring to the attention of the LED and the Film Office any Investor Tax Credits taken in excess of those earned, or fraud or material misrepresentation associated with the transactions described herein of which the LDR becomes aware.
- J. The LDR further acknowledges and agrees that following the issuance of the Tax Credit Certificate by the LED and the Film Office, the LDR will not initiate any

action against BC, AC, IC, PP or a Transferee as the case may be, under La. Rev. Stat. 47:6007(E), 47:6007(F), or otherwise, to recapture, disallow, recover, reduce, decertify, require repayment of, require forfeiture of or otherwise limit the use of the Investor Tax Credits allocated or transferred to a Transferee, as the case may be, unless (i) LDR determines that BC, AC, IC, PP or one or more Transferees individually or collectively claimed more Investor Tax Credits than the LED and the Film Office certified by issuance of one or more Tax Credit Certificate, or (ii) BC, AC, IC, PP or the Transferee committed fraud or made a material misrepresentation when, in each case, claiming or utilizing the Investor Tax Credits. In the case of BC, AC, IC, PP or one or more Transferees individually or collectively claiming more Investor Tax Credits than the LED and the Film Office certified by issuance of the Tax Credit Certificate any action to disallow, recover, reduce, or otherwise limit the use of the Investor Tax Credits will be directed solely against the person claiming more Investor Tax Credits than the LED and the Film Office certified. In the case of fraud or material misrepresentation when claiming or utilizing the Investor Tax Credits on an income or franchise tax return any recapture action will be directed solely against the person committing the fraud or making the material misrepresentation.

- K. Every production that is approved by LED and the Film Office as a state-certified production is issued a unique identification number. As described in Paragraph (9) of the Statement of Facts, LED and the Film Office will issue a Tax Credit Certificate in response to each Auditor's Report submitted pursuant to the Production Certification Letter. In the event any Investor Tax Credits are allocated, transferred or sold, then a copy of the credit certificate or certificates evidencing such Investor Tax Credits allocated, transferred or sold must be submitted as part of the notice required by La. Rev. Stat. 47:6007(C)(4)(b). The notice requirement of La. R.S. 47:6007(C)(4)(b) will be met if, in lieu of the credit certificate or certificates evidencing the Investor Tax Credits allocated, sold or transferred, the transferor and the transferee submit a copy of the Tax Credit Certificate that include the unique identification number associated with the state-certified production.

Transfer and Allocation of Investor Tax Credit Rulings

- L. Investor Tax Credits earned by IC will flow through to IC's sole member, AC, at the time provided for in the limited liability company operating agreement of IC. Currently, the IC operating agreement provides that all Investor Tax Credits earned by IC will flow through to AC immediately after they are earned by IC; however, the IC operating agreement may be amended at any time to provide that all or any portion of the Investor Tax Credits to be earned by IC will flow through to AC on a specified date or dates or upon the occurrence of a specified event or events.
- M. Investor Tax Credits that are allocated to and flow through to AC in accordance with Paragraph (11) of the Statement of Facts will remain with AC, whether AC is a single-member limited liability company that is disregarded for federal tax or state

tax purposes or is a multi-member limited liability company that is classified as a partnership for federal tax or state tax purposes, and will not flow through to or be allocated to the member or members of AC, until such flow through or allocation of Investor Tax Credits is provided for in the limited liability company operating agreement of AC as described in Paragraph (12) of the Statement of Facts.

- N. Louisiana Revised Statutes 47:6007(C)(4)(e) states that a transferee of the Investor Tax Credit has only the right to claim and use the Investor Tax Credit that was available to the transferor at the time of the transfer and that the LDR shall disallow the Investor Tax Credit claimed if the transferor did not have the right to claim or use the Investor Tax Credit at the time of the transfer. This provision prevents a transferee from claiming the Investor Tax Credit if the transferor did not own the Investor Tax Credit at the time of the transfer. BC, AC, IC, PP, each Newco, each Substituted Member and each Transferee will each have the right to claim and use the Investor Tax Credits, at the time earned or at the time of the allocations or transfers described in the Statement of Facts, as the case may be, notwithstanding their lack of sufficient Louisiana tax liability to use the Investor Tax Credits.
- O. The 10-year carry forward period during which any Investor Tax Credits may be used begins on the first day of the calendar year immediately following the calendar year in which the credits were originally earned, regardless of whether or for what period of time the Investor Tax Credits remain with the person originally entitled to claim them prior to flowing through or being allocated to or being transferred to one or more persons who utilize the Investor Tax Credits to reduce their Louisiana tax liability.
- P. Each of BC, AC, IC, PP, each Newco, each Substituted Member and each Transferee may allocate (except if it is taxed as a corporation), sell or otherwise transfer in any year within the carry-forward period applicable to the Investor Tax Credits all or any portion of the Investor Tax Credits that have not previously flowed through or been allocated to such company's members or sold or otherwise transferred even if such allocation, sale or transfer occurs in a year following the year in which the Investor Tax Credits were originally earned or acquired by the transferring or allocating company. Any such allocation, sale or other transfer of Investor Tax Credits will constitute a valid transfer of Investor Tax Credits under La. Rev. Stat. 47:6007.
- Q. The Investor Tax Credits may be allocated or transferred to and claimed by any person or entity in any calendar year within the 10-year carry forward period even if the Investor Tax Credits are allocated or transferred to that person or entity (i) in a calendar year following the calendar year in which the Investor Tax Credits were earned by IC or acquired by the allocating or transferring company (ii) or if that person or entity was not a member of the allocating or transferring company in the calendar year in which the Investor Tax Credits were earned or acquired.
- R. Each of AC, IC, PP, each Newco, each Substituted Member and each Transferee may admit additional members or substituted members at any time, on such terms that are agreed to by the relevant parties and permitted by their respective limited

liability company operating agreements (as may be amended from time to time), and any Investor Tax Credits that are earned by or that flow through or are allocated to or acquired by any of the foregoing may be allocated among their respective members in any manner set forth in their respective operating agreements, provided the allocating company has not elected to be classified as a corporation for federal and Louisiana state tax purposes.

- S. Specifically, with respect to each of AC, IC, PP, each Newco, each Substituted Member and each Transferee if any of the foregoing admits additional members or substituted members on terms, including but not limited to the terms set forth in Paragraph (13)(b) or (13)(c) above, and the rights of such members are limited in the manner set forth in Paragraph (13)(b) or (13)(c) above, any allocation of Investor Tax Credits by the allocating company to such additional or substituted members will constitute a valid allocation of Investor Tax Credits under La. Rev. Stat. 47:6007, provided that the allocating company has not elected to be classified as a corporation for Louisiana state tax purposes.
- T. The allocation of Investor Tax Credits from IC to AC as described in Paragraph (11) above, the allocation of Investor Tax Credits from AC to each Transferee as described in Paragraph (13) and Paragraph (14) above, will constitute a valid allocation of Investor Tax Credits under La. Rev. Stat. 47:6007 (i) in each case even though the allocation of such Investor Tax Credits may be disproportionate compared to the relative capital account of and capital contributions made (or to be made) by the person receiving the allocation and (ii) regardless of whether the allocation of Investor Tax Credits is or would be respected under principles of federal income tax law, including Sections 704(b) and 752 of the Internal Revenue Code of 1986 and the Treasury Regulations issued thereunder, as the same may be modified or amended from time to time, if such Investor Tax Credits were federal income tax credits.
- U. AC, IC, each Newco, each Substituted Member and each Transferee may sell or otherwise transfer in any year within the carry-forward period applicable to the Investor Tax Credits all or any portion of the Investor Tax Credits that have not previously been sold or that have not flowed through or been allocated to such company's members even if such sale or transfer occurs in a year following the year in which the Investor Tax Credits were originally earned or acquired by the transferring company. Any such sale or other transfer will constitute a valid transfer of Investor Tax Credits under La. Rev. Stat. 47:6007.
- V. Any person receiving an allocation or transfer of Investor Tax Credits, including BC, IC, AC, or any other Transferee will have the right to claim and use the Investor Tax Credits of which it receives an allocation or transfer at the time of such allocation or transfer regardless of whether (i) such person is an individual, a trust, an entity that is disregarded as an entity separate from its owner for federal tax purposes, an entity that is classified as a partnership for federal tax purposes, an S corporation, a C corporation or an entity taxed as a corporation for federal tax purposes and (ii) the

person allocating the Investor Tax Credits is an individual, a trust, an entity that disregarded as an entity separate from its owner for federal tax purposes, or an entity that is classified as a partnership for federal tax purposes, or (iii) the person transferring the Investor Tax Credits is an individual, a trust, an entity that is disregarded as an entity separate from its owner for federal tax purposes, an entity that is classified as a partnership for federal tax purposes, an S corporation, a C corporation, or an entity taxed as a corporation for federal tax purposes.

Application of Tax Credit Rulings

- W. Any person, whether an individual or entity, who is allocated or transferred Investor Tax Credits may use the Investor Tax Credits to offset such person's tax liability that accrued during (i) the same tax year in which the Investor Tax Credits were earned or (ii) any subsequent tax year in which the Investor Tax Credits could have otherwise been carried forward by the person who originally earned the Investor Tax Credits, in each case, regardless of the tax year during which the Investor Tax Credits were allocated or transferred to such person and, in the case of an allocation of Investor Tax Credits, regardless of the tax year during which such person became a member or partner of the entity allocating such Investor Tax Credits.
- X. If (i) a person, whether an individual or entity, received an extension of time to file its tax return for a particular tax year and (ii) such person timely paid its tax liability for such tax year prior to filing its tax return for such tax year, then, subject to Paragraph (W), such person may nevertheless use the Investor Tax Credits to offset such tax liability but, no interest will be paid on the refund on any overpayment that arises from the use of the Investor Tax Credits.
- Y. If (i) a person, whether an individual or entity, received an extension of time to file its tax return for a particular tax year, (ii) such person had at the time that the payment of its tax liability for such tax year was due (without regard to the extension) a written purchase agreement to acquire Investor Tax Credits sufficient to offset the tax liability; (iii) such person files its tax return for such year on or before the extended due date of the return; and (iv) such person acquires the Investor Tax Credits prior to filing its tax return, then, subject to Paragraph (W), such person may claim the Investor Tax Credits at the time of filing its tax return on or before the extended due date to offset the outstanding tax liability reflected on such return and will not incur any interest or penalty for not having paid the tax liability when due except to the extent the Investor Tax Credits claimed on the return are insufficient to satisfy any portion of the tax liability not paid when due.

- Z. Under the provisions of La. Rev. Stat. 47:1675(B), a person who is allocated or transferred Investor Tax Credits may claim the Tax Credit prior to any other equally applicable, refundable Louisiana tax credits and will receive a refund of the refundable tax credits that the person is thereby unable to use, subject to the ruling in Paragraph (W) above.
- AA. Any person may acquire and claim the Investor Tax Credits and utilize them to offset that person's Louisiana tax liabilities (which the Investor Tax Credits may otherwise offset) whether or not (i) in the case of an individual, such individual is a Louisiana resident and (ii) in the case of an entity, such entity is domiciled in Louisiana, organized under Louisiana law or headquartered in Louisiana.

Other Rulings

- BB. As of the date of this PLR, neither LDR, LED, nor the Film Office has promulgated any rules or regulations under La. Rev. Stat. 47:6007.
- CC. Revenue Information Bulletin No. 05-001, dated January 14, 2005, sets forth the supporting documents that should be attached to the tax return with respect to claiming Investor Tax Credits. Louisiana taxpayers who have earned, received an allocation of, or purchased the Investor Tax Credit will claim the credits on the non-refundable credit schedules incorporated in the Louisiana income tax returns. A specific line is provided for the Investor Tax Credits on both the individual income tax return and the corporation income tax return. Individuals will claim the credits on the lines provided for them on Schedule G of the IT-540. Corporations will claim the credits on the lines provided for them on Schedule NRC of the 620.
- DD. This private letter ruling has been signed by the Secretary of Revenue in whom has been invested all power and authority conferred by Title 47 of the Louisiana Revised Statutes and therefore has the requisite authority to bind LDR. The regulation that authorizes LDR to issue private letter rulings, LAC 61:III.101, states that private letter rulings will be binding on LDR only as to the taxpayer or taxpayers making the request and only if the facts provided were truthful and complete and the transaction was carried out as proposed. If these requirements are met, LDR will be bound by this private letter ruling.
- EE. The regulation that authorizes the Department to issue private letter rulings, LAC 61:III.101, states that private letter rulings will be binding on the Department only as to the taxpayer or taxpayers making the request and only if the facts provided were truthful and complete and the transaction was carried out as proposed. If these requirements are met, the Department will be bound by this private letter ruling. The requirement that the statement of facts be complete is interpreted by the Department to mean that all relevant facts have been stated. In addition to the facts stated, some assumptions have been made based on the Department's understanding of the transactions proposed. As long as all facts relevant to the ruling request have been

provided in the request and the necessary assumptions made by the Department are true, the complete statement of facts requirement has been met.

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