

Revenue Information Bulletin No. 16-006 (amended)
May 19, 2016
Individual Income and Corporation Income Taxes

**Act 425 Withholding Requirements Regarding Expenses Claimed for Motion Picture
Investor Tax Credit**

Act 425 of the 2015 Regular Session of the Louisiana Legislature requires withholding on certain payments that are expended in the state and will be claimed as an eligible expense for purposes of the motion picture investor tax credit, which is created by R.S. 47:6007. Specifically, the requirements of the amended statute, R.S. 47:164(D)(2), are applicable to “any individual receiving any payments for the performance of services used directly in a production activity, which payments shall be claimed as a production expenditure for purposes of certification of tax credits...” Further, the withholding is required by “any motion picture production company, motion picture payroll services company, or other entity making or causing to be made payments...to an individual, or to an agent or agency, loan-out company, personal service company, employee leasing company, or other entity.” In such an instance, taxes are required to be withheld at “the highest individual rate of six percent, or the highest individual rate in effect at the time.”

The purpose of this Revenue Information Bulletin is to provide guidance on the new requirements and to answer questions which are frequently asked by taxpayers regarding Act 425.

1.) Which expenditures are subject to the 6% withholding requirement?

All payments made to individuals for the performance of services are subject to the 6% withholding requirements. The withholding requirement applies whether the payment is made directly or indirectly to an individual. As such, payments made directly to an individual and payments made to an agent or agency, loan-out Company, personal service company, employee leasing company or any other entity which will ultimately be received by an individual for the performance of services are subject to the 6% withholding requirement.

2.) Which services are subject to the 6% withholding requirement?

Both “Above the Line services” and “Below the Line services” are subject to 6% withholding.

R.S. 47:6007(B)(1) defines “Above the Line services” as “...services such as those of a producer, executive producer, line producer, co-producer, assistance producer, actor, director, casting director, screenwriter, and other services of job positions performed by personnel of the production that are associated with the creative or

financial control of a production and customarily considered as above the line services in the film and television industry.”

R.S. 47:6007(B)(4) defines “Below the Line services” as “...services which are not above the line services.” Accordingly, “Below the Line Services” includes the services of all personnel of the production who are not rendering “Above the Line Services.” These services include, but are not limited to, the services of an assistant director, art director, best boy electric, best boy grip, boom operator, camera operator, character generator, director of photography, costume designer, composer, dolly grip, film editor, gaffer, graphic artist, hair stylist, key grip, location manager, make-up artist, production assistant, script supervisor, sound engineer, stage manager, stage carpenter, technical director, unit production manager, video control broadcast engineer, and visual effects editor.

- 3.) Are there any expenditures that are subject to withholding for purposes of Act 425 that aren’t otherwise subject to withholding for federal purposes?

For purposes of individual income tax, Louisiana piggybacks federal law to the extent that Louisiana has not enacted a state-specific law. La. R.S. 47:290(A), which is contained in Part III-Provisions for Individuals, provides, in pertinent part, “This Part is intended to conform the Louisiana individual income tax law with the United States Internal Revenue Code, except as otherwise expressly provided...”

As such, both “Above the Line services” and “Below the Line Services,” as defined above, are subject to 6% withholding as provided in Act 425. All other expenditures are subject to tax and withholding to the extent they are subject to tax and withholding at the federal level, unless specifically provided elsewhere in Louisiana law. Commonly claimed expenditures which are not subject to tax and withholding at the federal level and thus also not subject to state tax and withholding include, but are not limited to, the nontaxable portion of meal and living per diem, reimbursements, and all fringe benefits paid by an employer, including FICA, FUTA, SUTA and Workers’ Compensation Insurance.

- 4.) Is the 6% withholding on loan-out companies required by Act 425 reported under the withholding account of the motion picture payroll company or the motion picture production company?

The withholding is reported under the account of the motion picture payroll company or the party responsible for withholding and remitting on behalf of the loan-out company.

- 5.) Is the motion picture production company required to register for a withholding account in order to remit the 6% withholding?

No, as previously established, the withholding is reported under the account of the motion picture payroll company or other party responsible for withholding and remitting. In such instance, the motion picture payroll company or other party responsible for withholding and remitting should obtain one account for its own employees (“001 account”) and a separate account for persons receiving payments for the performance of services used directly in a production activity which payments will be claimed as a production expenditure for purposes of receiving a motion picture investor tax credit (“002 account”). Both accounts are located under the state ID number of the motion picture payroll company or other party responsible for withholding and remitting and should appear on the W-2 as shown below.

22222	Void <input type="checkbox"/>	a Employee's social security number	For Official Use Only OMB No. 1545-0008		
b Employer identification number (EIN)		1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code		3 Social security wages		4 Social security tax withheld	
		5 Medicare wages and tips		6 Medicare tax withheld	
		7 Social security tips		8 Allocated tips	
d Control number		9		10 Dependent care benefits	
e Employee's first name and initial		Last name	Suff.	11 Nonqualified plans	
f Employee's address and ZIP code		13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third party sick pay <input type="checkbox"/>		12a See instructions for box 12	
		14 Other		12b	
				12c	
				12d	
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax
LA	1234567-001	XXX.XX	XX.XX		
LA	1234567-002	XXX.XX	XX.XX		

Form W-2 Wage and Tax Statement 2016
 Department of the Treasury—Internal Revenue Service
 Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.
 For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.
 Cat. No. 10134D
Do Not Cut, Fold, or Staple Forms on This Page

6.) Is the 6% loan-out company withholding reported any differently to the Department of Revenue than regular employee withholding?

No, the withholding is reported quarterly in the same manner but is remitted to the separate account established for persons receiving payments for the performance of services used directly in a production activity which payments will be claimed as production expenditure. In addition, the motion picture payroll company or other party responsible for withholding and remitting will need to submit a quarterly report

for each motion picture production in Excel format using Form R-6165-Act 425 Quarterly Report.

- 7.) Who gets credit for the 6% withholding on a payment to a loan-out company, the loan-out corporation or the individual?

The withholding is credited to the individual, who will file either a nonresident or resident Louisiana income tax return.

- 8.) Does the motion picture payroll company need to issue any special form to the loan-out company reflecting the 6% withholding?

Yes, an annual statement which reflects the amounts withheld and remitted on behalf of each loan-out company as reflected in the quarterly reports.

- 9.) What are the filing requirements of the loan-out company?

Each loan-out company must submit an L-3 to the Department of Revenue and submit either a W-2 or 1099 where applicable to each person receiving compensation for the performance of services.

- 10.) Is the 6% withholding applied to the gross payment without regard to allowances for dependency credits claimed by the individual?

Act 425 mandates withholding at the rate of 6% on all payments for the performance of services, as defined above, irrespective of any allowances for dependency credit.

- 11.) Does the withholding only apply to projects that are claiming the motion picture investor tax credit?

Yes, the 6% withholding requirement only applies to payments made either directly or indirectly to an individual for the performance of services, as defined above, which expenditures seek to be eligible to be claimed as production expenditure for purposes of certification of tax credits.

- 12.) When and by whom is the administrative fee of \$200 dollars submitted?

The \$200 dollar administrative fee that is applicable per motion picture production is to be submitted by the motion picture production company that will ultimately apply for a motion picture investor tax credit. It should be submitted by the motion picture production company upon receipt of the initial certification letter from the Louisiana Department of Economic Development. A copy of the initial certification letter, Form R-6160-Act 425 Fee Voucher, and payment should be sent to the following address:

Revenue Information Bulletin 16-006

May 19, 2016

Page 5 of 5

Tax Credit Registry
P.O. Box 1071
Baton Rouge, LA 70821

For questions concerning this matter, please contact the Policy Services Division at (225) 219-2780. For questions concerning a taxpayer's account, please contact the Customer Contact Center at (855) 307-3893.

Kimberly Lewis Robinson
Secretary