Article

Louisiana's "Motion Picture Investor Tax Credit": A Uniquely Effective Economic Policy

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I. INTRODUCTION

In 1992, Louisiana became the first state to enact a film production incentive program. Although the original version of the statute failed to lure film production companies into the state like the legislators had intended, subsequent amendments succeeded, and Louisiana's "Motion Picture Investor Tax Credit" set off a race amongst the states to adopt their own versions of film incentive programs. By 2010, the number of states with some sort of film incentive offering had reached an all-time high. As more and more states entered the market to attract film production companies, the incentives offered became increasingly generous. This competition effectively created a "race to the bottom," in which film production companies were able to capitalize on an over-saturated marketplace and pick and choose from a plethora of attractive programs. In recent years, however, these policy issues, combined with concerns over state budget deficits, have caused states to re-evaluate their film incentive programs. Early adopting states, like New Mexico, and states with aggressively generous plans, like Michigan, have been forced to cut down on the amount of incentives offered or even eliminate their programs entirely.

Amongst such a bleak time for state film incentive programs, it is curious that legislators have not cut back Louisiana's program, which is one of the most aggressive in the nation. This oddity can be explained, at least in part, by the unique advantages possessed by Louisiana's program. Notably, Louisiana was the first state to adopt such a program, and thus, possesses the innate and elusive "first mover advantage." However, early adoption alone is an insufficient formula for success, as evidenced by New Mexico's recent cap of its second-in-the-nation program. Therefore, it is equally important to note that, due to the unique characteristics of the state, Louisiana gains more from incidental benefits, such as job creation, increased tourism, and infrastructure development, than other states with similar programs. This situation is a mere microcosm of a bigger lesson that states across the country would be ill-advised to jump on a "tax plan bandwagon" and try to duplicate tax plans simply because they work for another state. Each state has its own set of unique characteristics, and a benefit in one state may be more valuable than that same benefit in another state. Instead of copying another state's tax plan, states would be wise to develop original programs that best take advantage of their own inherent strengths.

II. THE WORLD OF "FILM TAX CREDITS"

A. The Economics of Hollywood

The business of making films works somewhat in defiance of the traditional notions of supply and demand. Mainly, despite the fact that the majority of all films made actually lose money at the box office, Hollywood keeps churning out hundreds of films every year.[1] Major film studios have resigned themselves to the fact that few movies make a profit from their theatrical release in the United States, as the tremendous cost of producing and marketing the films makes it nearly impossible.[2] In 2007, the average costs of making and advertising a film were $70.9 million and $35.9 million, respectively.[3] In return, the average amount of money that a studio recouped from a theatrical release was a mere $26.6 million.[4] Therefore, Hollywood studios are frequently forced to hope that their films make a profit in later markets, such as theatrical release in foreign markets, DVD sales, and licensing agreements.[5] Additionally, with the advent of cable television and the

[1] Alexander Malyshev, Note, Financing Film Through Aggressive Tax Incentives: A Losing Proposition for the States?, 19 Media L. & Pol'y 229, 233 (2010).
[2] see also Schuyler M. Moore, The Future of Money: While Private Offerings, Tax Credits, and Advertisers Have All Played a Significant Role in Film Financing, More Direct Methods May Revitalize the Market, L.A. Lawyer. (May 2013) at 20 ("The sad fact is that most films lose money."); see also Edward Jay Epstein, The Hollywood Economist 177 (2010).
[3] Edward Jay Epstein, The Hollywood Economist 177 (2010).
[4] Id.
[5] Id. at 177–78; see also Mark S. Young, James J. Gong. & Wim Van der Stede, The Business of Making

Internet as a means of alternate entertainment, the entire film industry has seen a recent decline. The percentage of Americans that attend a movie in theaters once per week has dramatically decreased from sixty-five percent in 1948 to six percent in 2008.[6] Despite these impediments that could prevent a film from making a profit or even breaking even, investors continue to invest in the hopes of catching a piece of a blockbuster money-maker.[7] For these reasons, investment in film production is considered especially risky, as compared to investment in other industries.[8]

The financing of films is a unique process and makes the risks of investing in production even more complicated.[9] Typically, most of the financing work is done before the final product ever hits the market, or in this case the theaters. Up until recently, as much as one hundred percent of a film's budget was often raised in "pre-sale markets," whereby some entity finances a portion of the film's budget in return for various rights, but that percentage has recently decreased to roughly seventy percent of a film's total budget.[10] Independent films especially have relied on "pre-sale markets" to finance a film's budget,[11] while major studio films are often financed by studio money, whereby the film producer receives funds pursuant to a preexisting development deal with a studio.[12] While movie studios often provide a portion of the funding, film makers often seek outside investors to help pay for the production of their movies.[13] The exact proportion between studio investment and private investment, as well as the details of the profit sharing between studio and individuals, varies depending on the agreements.

Regardless of the exact risks and financing techniques associated with specific films, the movie industry, like all industries, is dependent upon its profit margin, and thus the industry is constantly looking for ways to increase its revenue and decrease its costs. As a result, the phenomenon known as "runaway production" emerged. At a state level, runaway production refers to films that were conceptually developed in California, most likely in Hollywood, and then produced

Money with Movies, Strategic Finance, LSE Research Online, February 2010, at 35 (noting that "more than four-fifths of a film's revenue typically comes from home video, pay TV, and other downstream sources").

[6]Epstein, supra note 2, at 53.

[7] Id. at 176; see also Moore, supra note 2 ("The two constant forces driving film financing are blockbuster optimism and the sexiness of the industry.").

[8] Jaye A. Calhoun, Hooray for Hollywood!, Louisiana B. J., Aug. 2010, at 89.

[9] Mark Litwak, Minimizing the Risk for Motion Picture Investors, L.A. Lawyer at 18 (April 2001) (noting that "the film business [is] inherently risky).

[10] Malyshev, supra note 1, at 233.

[11] Stuart K. Kauffman, Motion Pictures, Moral Rights, and the Incentive Theory of Copyright: The Independent Film Producer as "Author," 17 Cardozo Arts & Ent. L.J. 749, 776-77 (1999) ("Perhaps the most common source of funding for independently produced films is presales, whereby some entity, usually a distributor of limited scope or a film sales company, finances a portion of the film's budget in exchange for various rights.").

[12] Id. at 776.

[13] Epstein, supra note 2, at 108.

in other states.[14] This flight of production from Hollywood has been happening for decades, and critics point to both artistic and economic reasons as the cause.[15] From an artistic point of view, a movie production team may choose to film in a specific state in order to artistically and aesthetically service the story.[16] For instance, a film centered upon New York City would likely shoot in New York. From an economic perspective, a movie production team may choose to film in a state with attractive tax incentives. The recent rise of movie production in states like Louisiana, which offer particularly aggressive incentive programs, provides strong evidence that tax incentive programs are a primary cause of domestic runaway productions.[17] The forms of these state tax incentives include tax forbearances, loan guarantees, discounted labor forces, and film tax credits which are the focus of this paper.[18] If these state incentive programs are successful in attracting films and creating an industry infrastructure within the states, then states may also have the opportunity to offer film productions a variety of attractive in-state resources such as local crew members, costume and design services, lighting and sound equipment, and even legal services. In the past decade, the number of states offering some form of film incentive has substantially increased, and these new offerings of film tax credits by states have fueled the growth of runaway production.

B. How Film Tax Credits Work

Given the inherently risky nature of film investment, in which final payouts can be massive but more than likely end up to be losses, film investors typically demand high returns in order to offset the risky nature of the industry.[19] Consequently, states, such as Louisiana, have developed tax credit incentive programs, which contribute higher overall rates of returns to production companies, in order to make investment in state film production more attractive to investors.[20] Typically, these state programs allow credits against the state income tax liabilities of taxpayers who invest in state-certified film productions.[21] To make these credits attractive to out-of-state investors, incentive programs usually provide that the tax

[14] Adrian McDonald, Note, Through the Looking Glass: Runaway Productions and "Hollywood Economics," 9 U. Pa. J. of Lab. and Emp. L., 900 (2007) (noting that runaway production also occurs at the federal level when a film developed in the United States is then produced in another country).
[15] Malyshev, supra note 1, at 229.
[16] McDonald, supra note 14, at 900.
[17] Id. at 905.
[18] Malyshev, supra note 1, at 230.
[19] Calhoun, supra note 8, at 89.
[20] Id.
[21] Id.

credits are refundable or transferable. The specifics of these state programs vary greatly, with some states offering sales tax exemptions and credits for employing locals, while other states limit the programs strictly to investment in the film production.[22] From a net tax revenue perspective, the state offering the credit benefits "if the rebates and credits it provides are less than the taxes it otherwise collects from the production."[23] However, states often consider other "soft" factors, such as the development of production-related jobs, tourism, long-term infrastructure building, and an increase in a state's revenue stream, in order to help justify results that would otherwise be deemed losses from a purely net tax standpoint.[24]

The attractiveness of these state film tax credits can, in part, be attributed to the changing world of film financing. With the recent decrease in the amount of money films are able to raise at "pre-sales markets,"[25] state tax credits have come to "provide an important lubricating function to the wheels of production by providing 'free money' to bridge the gap, in essence making the state a financial backer of the film."[26]

C. The Increasing State Trend

Over the past decade, the number of states which offer some form of a film tax credit program has exploded. Prior to Louisiana's adoption of the "Motion Picture Investor Tax Credit" in 1992, zero states offered any form of movie production incentives.[27] A decade later, in 2002, five states offered them.[28] By 2010, this number had grown exponentially, and forty states in total offered some form of movie production incentive, with twenty-eight of those states specifically offering film tax credits.[29] However, with this rapid growth, two main policy concerns have emerged: (1) an over-saturation of the state film tax credit marketplace and (2) a "race to the bottom" environment created by the increasing

[22] For a broad overview of the types of incentives each state offers, as of December 2009, see Table 1 in William Luther, et al. Movie Production Incentives: Blockbuster Support for Lackluster Policy, Tax Found Jan. 2010, at 4. For an in-depth overview of the differences in film tax incentive programs in Louisiana, Florida, and New Mexico, see Emily Patricia Graham, Compiled Comparison of Film Tax Incentives in Louisiana, Florida, and New Mexico (2011) available *at* http://www.americanbar.org/content/dam/aba/migrated/2011_build/entertainment_sports/film_incentives_compiled_comparison.authcheckdam.pdf.

[23] Malyshev, supra note 1, at 230.

[24] Id. at 230–31.

[25] Id., at 233.

[26] Id.

[27] Luther, supra note 22, at 2.

[28] Id. at 1.

[29] Id.; Joseph Henchman, More States Abandon Film Tax Incentives as Programs' Ineffectiveness Becomes More Apparent, Tax Found., June 2, 2011, at 1.

generosity of the states' incentives.[30] Critics warn that the recent increase in the number of states that offer some form of film tax credit program, combined with the realistic limit of the number of "big ticket" productions available per year, will ultimately lead to a scenario in which the market is over-saturated and there are not enough "big ticket" productions to sustain all of the states' different programs.[31] This concern leads to an increasingly competitive interstate film tax credit marketplace in which states are forced to become more and more aggressive in pursuing film projects, thus producing a "race to the bottom."[32] This fear of a "race to the bottom" is further heightened by the fact that the economic interests of film production companies and the states which attempt to lure them in are in direct opposition of each other. Obviously, film production companies benefit from larger incentive programs, while states seek lower incentives in order to gain a greater return on their investment.[33] With the recent increase in both the number of state incentive programs available and the generosity of the incentives, film production companies currently have an advantage over the states. For these reasons, critics argue that the concept of a film incentive program is a losing proposition for the states, and several states have recently begun to reconsider their programs.

Lately, the boom of state incentive programs has begun to slow. Concerns regarding overly aggressive competition among states and failure of the incentive programs to effectively generate tax revenue have caused a number of states to scale back or outright eliminate their incentive programs.[34] By 2011, eight states had conclusively suspended or permanently eliminated their programs,[35] and incentive programs in nine states were in the process of being challenged or scaled back.[36] Most notably, Michigan's and New Mexico's programs, viewed together with Louisiana's as the most aggressive in the nation, were among the programs that were recently pared back.[37] Therefore, while state film incentive programs reached record highs over the past decade, policy concerns of a "race to the bottom" in an over-saturated market have recently begun to slow their ascent and diminish their support. In fact, experts estimate that "2010 will likely stand as the peak year" with

[30] Malyshev, supra note 1, at 230.
[31] Id. at 235–36.
[32] Id. at 236.
[33] Id.
[34] Henchman, supra note 29, at 1.
[35] These states are Arizona, Arkansas, Idaho, Iowa, Kansas, Maine, New Jersey, and Washington. Id. at 1–2.
[36] These states are Alaska, Connecticut, Georgia, Hawaii, Michigan, Missouri, New Mexico, Rhode Island, and Wisconsin. Id. at 2.
[37] Id.

forty states offering a total of $1.4 billion in incentives, and the trend of increasingly lackluster support appears primed to continue.[38]

III. EVOLUTION OF LOUISIANA'S FILM TAX CREDIT PROGRAM

A. The 1992 "Motion Picture Investor Tax Credit"

In 1992, the Louisiana legislature enacted the "Motion Picture Investor Tax Credit" under section 47:6007 of the Louisiana Revised Statutes.[39] It was the first state to adopt a movie production incentive.[40] This legislation, then the largest incentive offered by Louisiana to the entertainment industry, permitted Louisiana-domiciled investors to claim a state income tax credit for losses suffered during the production of films in the state.[41] The value of the tax credits ranged from fifty to seventy percent of the investor's loss, but the specific amount of the credit depended entirely upon the size of the film production and the manner in which the tax credit was used.[42] For instance, if an investor spent more than $2 million in film production, then he or she could claim a credit of fifty percent of the total losses.[43] If an investor spent more than $10 million, then he or she could claim a sixty percent credit.[44] If an investor spent more than $25 million, then the credit increased to sixty-seven percent.[45] Finally, an investor could also use these tax credits to offset income generated from another successful production, and then, the value of the credit receivable increased to the maximum seventy percent.[46] Under the statute, any investor who received a tax credit could "carry" any unused tax credits forward for a period of ten years from the year in which the credit was earned.[47]

[38] Joseph Henchman, Fiscal Fact No. 272: More States Abandon Film Tax Incentives as Programs' Ineffectiveness Becomes More Apparent, Tax Found. (June 2, 2011), at 1, http://taxfoundation.org/sites/taxfoundation.org/files/docs/ff272.pdf.
[39] Act of July 8, 1992, No. 894, 1992 La. Acts 2452 (codified as amended at La. Rev. Stat. Ann. § 47:6007 (Supp. 2014)).
[40] Luther, supra note 22, at 2.
[41] 1992 La. Acts 2452.
[42] Id. at 2454-2455 (enacting La. Rev. Stat. Ann. § 47:6007(C)).
[43] Id. at 2454 (enacting La. Rev. Stat. Ann. § 47:6007(C)(1)).
[44] Id. at 2454-2455 (enacting La. Rev. Stat. Ann. § 47:6007(C)(2)).
[45] Id. at 2455 (enacting La. Rev. Stat. Ann. § 47:6007(C)(3)).
[46] Id. (enacting La. Rev. Stat. Ann. § 47:6007(D)).
[47] Id. (enacting La. Rev. Stat. Ann. § 47:6007(C)(4)).

While this innovative "Motion Picture Investor Tax Credit" was enacted by the Louisiana legislature in order to establish a kind of safety net for film investors by guaranteeing a return on bad investments and thus to attract film producers to invest in the state, the statute was ultimately flawed and unsuccessful.[48] Some critics argue that this failure is attributable to the fact that the statute only compensated investors for losses and that savvy film production companies do not invest in productions that they believe will be unprofitable.[49] Additionally, these critics note that these film tax credits had to be used against a taxpayer's Louisiana income tax liability.[50] Because so few film production companies are based in Louisiana, these production companies have little or no Louisiana tax liability. Consequently, the incentive of this tax credit was essentially rendered worthless.[51] Thus, the 1992 "Motion Picture Investor Tax Credit" failed to attract business as legislators' had hoped, and the state substantially amended the statute in 2002, 2003, and 2005.[52]

B. The 2002 and 2003 Amendments

The original 1992 version of the "Motion Picture Investor Tax Credit" statute failed to incentivize film production companies, and in 2001, the year before substantial statutory amendments, Louisiana hosted only two film productions.[53] In 2002, the Louisiana legislature attempted to fix some of the problems associated with the original statute, specifically the impractical requirement that an investor must suffer a loss as a pre-requisite for eligibility.[54] The 2002 amendment allowed investors to claim tax credits for expenditures in Louisiana rather than merely losses in the state.[55] Specifically, an eligible taxpayer could claim a credit for every dollar spent in Louisiana on a certified film project. To be eligible for the credit, the taxpayer was required to be an investor and not merely a film production company.[56]

[48] See John Grand, Motion Picture Tax Incentives: There's No Business Like Show Business, 39 State Tax Notes 10 (2006), at 791, available at http://taxprof.typepad.com/taxprof_blog/files/2006-2997-1.pdf.
[49] See id. at 792.
[50] Id.
[51] Id.
[52] Id.
[53] Luther, supra note 22, at 10.
[54] Act of April 17, 2002, No. 6, § 1, 2002 La. Acts 1125, 1126-1130 (codified as amended at La. Rev. Stat. Ann. § 47:6007 (Supp. 2014)).
[55] Id. at 1128-1129 (enacting La. Rev. Stat. Ann. § 47:6007(C))
[56] Id. at 1128 (enacting La. Rev. Stat. Ann. § 47:6007(C)(1)).

In 2003, the legislature again amended the statute with the goal of increasing the attractiveness of the tax credits.[57] Under this amendment, an eligible taxpayer could sell or transfer a received tax credit to any Louisiana taxpayer who could then use that credit to reduce his or her own state tax liability.[58] Prior to this change, film tax credits were essentially worthless to out-of-state investors who had little to no tax liability to the State of Louisiana. However, with this newfound transferability, film tax credits became substantially more valuable to eligible investors. Film production companies, in particular, supported this change since it enabled them to earn cash quickly within a state where they would otherwise likely not have any serious tax liabilities.[59]

In addition to adding a transferability provision, the 2003 amendment also expanded the scope of the tax credit program. Prior to 2003, the statute permitted tax credits only for funds spent in the actual state, and after the 2003 amendment, these tax credits could apply to any investments made in Louisiana that were spent on a state-certified film.[60] In other words, this change allowed investors to receive credit for dollars "invested in" Louisiana state-certified films, even if those dollars were actually spent in other states. This broadening of the scope of the original statute was meant to give film investors more flexibility and increase the attractiveness of the tax credit program. In this respect, these amendments were successful, and in the two years following the 2002 amendment, the state experienced a 2850%increase in its entertainment production industry, with an economic impact increase of more than 500%.[61] However, these changes also brought on new critiques. Most prominently, critics pointed to the fact that state tax credits could now be awarded for money spent outside the state, and, thus, the value of the program to Louisiana was called into question.[62]

C. The 2005 Overhaul

With the effectiveness of the film tax credit program in question, the Louisiana legislature enacted a series of substantial amendments in 2005 that were meant to balance the need to attract investors and the need for the program to provide benefits to the state.[63] The amount of receivable credit remained dependent

[57] Act of June 27, 2003, No. 551, §§3 and 6, 2003 La. Acts 2067, 2068-69 and 2071 (codified as amended at La. Rev. Stat. Ann. § 47:6007 (Supp. 2014)); Act of July 7, 2003, No. 1240, §3, 2003 La. Acts 3769, 3772-74 (codified as amended at La. Rev. Stat. Ann. § 47:6007 (Supp. 2014)).
[58] 2003 La. Acts 3769 at 3772 (enacting La. Rev. Stat. Ann. § 47:6007(C)(4)).
[59] Joshua R. Schonauer, Note, Star Billing? Recasting State Tax Incentives for the "Hollywood" Machine, 71 Ohio St. L.J. 381, 404 (2010).
[60] 2003 La. Acts 3769 at 3773 (La. Rev. Stat. Ann. § 47:6007(B)(1)).
[61] Schonauer, supra note 59, at 402.
[62] Grand, supra note 49, at 793.
[63] Act of July 11, 2005, No. 456, §1, 2005 La. Acts 2157, 2157-67 (codified as amended at La. Rev. Stat. Ann. § 47:6007 (Supp. 2014)).

upon the size of investments made in the state and the date on which the project was certified by the state. For state productions certified after January 1, 2004,[64] the amended statute permitted an investor to receive a ten percent income tax credit for every one dollar spent on the production of a film or television show in the state, as long as the total amount spent in Louisiana was $300,000 or greater.[65] If the total investment was greater than $8 million, then the tax credit increased to fifteen percent for every one dollar spent.[66] For state-certified productions approved by the state on or after January 1, 2006,[67] the amount of available tax credit increased, and an investor who spent at least $300,000 in the state could receive a credit worth twenty-five percent of his total investments.[68] Additionally, the investor could receive another ten percent credit if his or her money was used to employ a Louisiana resident, although this additional employment-based tax credit was limited to the first $1 million paid to each employee per year.[69] For state-certified productions approved by the state on or after July 1, 2009, an investor who spent at least $300,000 in the state could receive a thirty percent tax credit.[70] The investor could then receive another five percent tax credit if his or her money was used to employ a Louisiana resident as long as that employee's salary was equal to or less than $1 million per year.[71]

Although the tax credits remained transferable, the Louisiana legislature became concerned with the new "middle market" that was developing to allow brokers to purchase credits from investors and then sell them to third parties. Therefore, effective January 1, 2007, the 2005 amendment authorized the Governor's Office on Film and Television Development (GOFTD) to purchase the

[64] Amended to "after January 1, 2004 but before January 1, 2006" by Act of July 11, 2007, No. 456, §2, 2007 La. Acts 2467, 2472 (codified as amended at La. Rev. Stat. Ann. § 47:6007 (Supp. 2014)) and which is currently in effect.
[65] 2005 La. Acts 2157 at 2161-62 (enacting La. Rev. Stat. Ann. § 47:6007(C)(1)(a)(i)).
[66] Id. at 2162 (enacting La. Rev. Stat. Ann. § 47:6007(C)(1)(a)(ii)).
[67] Amended to "on or after January 1, 2006 but before July 1, 2010" by 2007 La. Acts 2467 at 2472. The ending date of "July 1, 2010" was then amended to "July 1, 2009" by Act of July 9, 2009, No. 478, §1, 2009 La. Acts 2964, 2968 (codified as amended at La. Rev. Stat. Ann. § 47:6007 (Supp. 2014)) and which is currently in effect.
[68] 2005 La. Acts 2157 at 2162 (enacting La. Rev. Stat. Ann. § 47:6007(C)(1)(b)(i)).
[69] Id. (enacting La. Rev. Stat. Ann. § 47:6007(C)(1)(b)(ii)).
[70] Id. (enacting La. Rev. Stat. Ann. § 47:6007(C)(1)(c)(i)).
[71] Id. (enacting La. Rev. Stat. Ann. § 47:6007(C)(1)(c)(ii)). The 2005 amendment also provided that for productions certified on or after July 1, 2012, an investor who spends at least $300,000 could receive a fifteen percent tax credit. Again, the investor could receive an additional ten percent credit if the money is used to employ a Louisiana resident as long as that employee's salary was equal to or less than $1 million per year. Id. (enacting La. Rev. Stat. Ann. § 47:6007(C)(1)(d)). However, an amendment in Act of July 9, 2009, No. 478, § 1, 2009 La. Acts 2964, 2969 (codified as amended at La. Rev. Stat. Ann. § 47:6007 (Supp. 2014)) took out this entire provision.

tax credits for seventy-two percent of their face value.[72] Beginning on January 1, 2009 and every second year afterward, the amount that the GOFTD was to pay for the tax credits was to increase by two percent, until the total percent of face value equaled eighty percent.[73] Therefore, by the year 2015, each investor is guaranteed to receive in cash at least eighty percent of the face value of the credit from the GOFTD. An investor also has the option of selling the tax credits in the private market. Upon completion of the film production and receipt of all tax credits, the investor can choose to sell the credits to an independent broker who will then turn around and sell them to individuals or companies for a slight mark-up.

Additionally, the 2005 amendment sought to promote the development of film infrastructure in the state by creating a new fifteen percent tax credit on investments made in infrastructure projects.[74] As a pre-requisite to receiving this new credit, the base investment of the project must be greater than \$300,000.[75] However, to receive this infrastructure credit, a project must be state-certified, and the infrastructure credit expired on January 1, 2008. As of 2013, the legislature has not chosen to extend this expired provision.[76]

Finally, the 2005 amendment attempted to fix the shortcomings of the prior versions of the statute by removing the burdensome requirement that the investor must be a Louisiana resident.[77] With this change, an eligible investor merely needed to be a Louisiana taxpayer, and he or she no longer needed to be domiciled in the state.[78] Furthermore, the 2005 amendment recognized the critique that state tax credits could be awarded for money spent outside the state, thereby decreasing the value of the program to the state.[79] Although subsequent amendments have been imposed by the legislature, none of these changes have been as substantial as those made in 2005, and the statute remains generally as it did in 2005.[80]

D. Procedure to Receive the Film Tax Credits[81]

[72] 2005 La. Acts 2157 at 2164 (enacting La. Rev. Stat. Ann. § 47:6007(C)(4)(f)).
[73] Id.
[74] Id. (enacting La. Rev. Stat. Ann. § 47:6007(C)(1)(b)(iii)).
[75] Id.
[76] Matthew J. Bailey, Note, Hollywood South: Why Film Credits Are Good for Louisiana, 48 State Tax Notes 715 (2008), available at http://www.thelouisianawavestudio.com/pdfs/Tax_Analyst_LA_Film_Credits.pdf ("Because the state is close to reaching its saturation point in soundstages and production facilities, the Legislature should do nothing to stop the sunset provision of the. . . infrastructure tax credits at the end of the year."); Calhoun, supra note 8, at 90.
[77] 2005 La. Acts 2157 at 2161-63 (enacting La. Rev. Stat. Ann. § 47:6007(C)(1)).
[78] Id.
[79] See supra note 20 and accompanying text.
[80] After 2005, the Louisiana legislature passed session amendments. 2007 La. Act, No. 456, §2 (2007) (effective July 1, 2007); 2009 La. Act, No. 478, §1 (2009) (effective July 9, 2009); 2009 La. Act, No. 530, §1 (2009) (effective July 10, 2009). 2010 La. Act, No. 633, §2 (2010) (effective July 1, 2010).
[81] For the official application procedure as designated by the Louisiana Office of Economic Development (LOED), see the "How to Apply" section of the official website, available at http://www.louisiana

In order to qualify for the film tax credits explicated in the Louisiana statute, a film production must be certified by the Louisiana Office of Economic Development (LOED). To apply for certification, a film production company must fill out the LOED's official application form[82] and then submit the application either online or through regular mail. The LOED charges a filing fee equal to two tenths of a percent (0.2 percent) of the total amount of tax credits for which the production qualified. However, the LOED limits that fee to a $200 minimum and a $5,000 maximum. In addition to the completed application form and the filing fee, a production company must also submit the following: a detailed preliminary budget including the estimated base investment and Louisiana payroll; a multimarket commercial distribution plan; a script including a synopsis and a list of the principal elements such as cast, producer, and director; a statement that the production qualifies as a "state-certified production;"[83] and estimated beginning and completion dates.[84] The production company applicant must also provide the name of the Louisiana Limited Liability Company involved with the production company, as well as a Louisiana tax identification number. Inherent in this procedure is the requirement that out-of-state production companies doing business in the state form state-based limited liability companies.

After the aforementioned requirements are met and the initial certification procedure is complete, the LOED will notify the Louisiana Department of Revenue of the specifics of the production. Before the LOED can issue a final certification, which indicates the amount of film tax credits receivable, the production company applicant must submit to the LOED a cost report of the production expenditures, audited by a Louisiana licensed certified public accountant. If the film tax credit for employment of locals is sought in the application, the production company applicant must provide a schedule that includes the names of the payees, the taxpayer identification numbers of all payees, the addresses of all payees, and the amount of money each payee received.[85] Then, the production company applicant must submit a notarized statement indicating conformity with and agreeing to:

economicdevelopment.com/page/motion-picture-investor-tax-credit (Louisiana Office of Economic Development).

[82] The official "Motion Picture Production Application" is available at http://www.louisianaeconomic development .com/page/motion-picture-investor-tax-credit (Louisiana Office of Economic development).

[83] " 'State certified production' means a production approved by the office and the secretary which is produced by a motion picture production company domiciled and headquartered in Louisiana and which has a viable multi-market commercial distribution plan."
La. Rev. Stat. Ann. § 47:6007(B)(16) (2012).

[84] Calhoun, supra note 8, at 91.

[85] See id.

> (1) pay all outstanding liabilities incurred in Louisiana, (2) publish a notice in the local papers (where filming took place) once a week for three consecutive weeks informing the public of the need to file creditor claims by a specific date, (3) that outstanding obligations are not waived if creditors fail to file by the deadline, and (4) not claim the tax credit until it has notified the Department of Revenue in writing that all of the requirements have been fulfilled.[86]

Finally, upon completion of all of these requirements, the LOED will officially certify a film production, thereby making it eligible to receive the state's film tax credit incentives.

E. Recent Developments

Since the enactment of the "Motion Picture Investor Tax Credit" in 1992 and its subsequent amendments, Louisiana's film incentive program has undoubtedly succeeded in attracting film production into the state. Prior to the revamping of the statute in 2002, Louisiana had hosted only a handful of films throughout its entire history, and these films were produced in the state predominately for aesthetic reasons. For instance, Louisiana hosted films about the state such as *The Kingfish* and films set in the South such as *King Creole* and *A Streetcar Named Desire*.[87] In the two years after 2002, the state experienced a 2850 percent growth in its entertainment production industry, and the entertainment industry's impact on the state economy jumped from roughly $20 million per year to over $100 million per year.[88] In fact, since the legislation was amended in 2002, more than five hundred projects have been filmed in Louisiana, generating billions of dollars in economic activity.[89] The state now ranks third, behind California and New York, as the largest motion picture production center in the entire country.[90]

[86] Id.

[87] Louisiana in the Movies, Louisiana 101, available at http://www.louisiana101.com/movies.html (last visited Mar. 3, 2012).

[88] Schonauer, supra note 58, at 402; Josh Spector, Louisiana Tax Incentives Get $100 Million Results, The Hollywood Reporter, Oct. 1, 2003, at 17.

[89] *Lights, Camera, Louisiana!*, Louisiana Public Square, May 15, 2011, at 1, available at http://beta.lpb.org/images/lps_uploads/lps201105filminla.pdf.

[90] Jack Egan, *Bayou state's film slate booms,* Variety, Sept. 10, 2009, available at http://www.variety.com/article/VR1118008412.

Furthermore, the quality of the productions filmed in the state has been generally quite high, with Academy Award nominees for Best Picture *The Curious Case of Benjamin Button* and *The Blind Side* and big-budget blockbusters *The Green Lantern* and *Battleship* all lured into the state by the attractive incentive program. However, despite the indisputable success of the state's film tax credit program in attracting film production into the state, the program has recently experienced some setbacks and become the topic of public concern.

The state's film tax credit program suffered a public blow in 2007 when a federal investigation uncovered a culture of corruption amongst the state's most prominent film players. This scandal highlighted the incentive program's susceptibility to fraud. In 2007, the Federal Bureau of Investigation launched an inquiry into Mark Smith, then the head of the Louisiana Film Commission, and allegations of improper transactions of tax credits to the Louisiana Institute of Film Technology (LIFT) in return for bribe money.[91] Smith eventually pleaded guilty to approving inflated production budgets for LIFT in return for roughly $60,000 in bribe money.[92] Additionally, Malcolm Petal, a New Orleans-based attorney and the Chief Executive Officer of LIFT, also pleaded guilty for participation in conspiracy to bribe the film office.[93] They admitted the inflated budgets and subsequent film tax credits were meant to help lure film productions into the state, but in actuality, this situation created a public scandal and cast a slight shadow on the reputation of the state's incentive program.

In addition to suffering from public charges of corruption and fraud, the film tax credit program has also become the topic of recent public policy debate. Mainly, the debate centers on whether the film tax credits being offered to out-of-state productions are actually "paying their own way."[94] A 2010 national research report by the Center on Budget and Policy Priorities, a nonprofit and nonpartisan research organization in Washington, D.C., reported that: (1) the money lost through tax credits is actually not made up in tax revenue from film production; (2) overall, states' film tax credit programs are a "waste;" and (3) any local jobs the film industry creates are generally low-paying positions that do not build the economy.[95] The research study created a small ripple in the community with locals questioning

[91] Bailey, supra note 75, at 715.
[92] Id.; Schonauer, supra note 58, at 403.
[93] Schonauer, supra note 58, at 403 n.132.
[94] See John Pope, Louisiana film tax credits aren't paying their way, researchers find, The Times Picayune, Nov. 18, 2010, available at http://www.nola.com/politics/index.ssf/2010/11/louisiana_film_tax_credits_are.html.
[95] Robert Tannewald, Center on Budget and Policy Priorities, State Film Subsidies: Not Much Bang For Too Many Bucks (2010), available at http://www.cbpp.org/cms/?fa=view&id=3326.

whether the incentive plan was too aggressive and whether change was needed to make it lucrative to the state.[96] In response to the research study, Sherri McConnell, former Executive Director of Louisiana Economic Development's Office of Entertainment Industry Development, made a public statement in which she called the incentive program a "perfect fit" for the state of Louisiana.[97] She dismissed the research study, citing unmentioned benefits to the state[98] and noting that the study was negative towards typical state film incentive programs but specifically qualified that Louisiana and New Mexico have been successful in developing show-business infrastructures.[99]

In addition to the 2010 national research report by the Center on Budget and Policy Priorities, the Louisiana Legislators' Auditor's Office released a 2013 audit reporting that the state's tax credit program cost the state nearly $170 million in lost tax revenue in 2010.[100] The review was conducted in order to evaluate the financial impact of the tax credit program, and the audit found that, in 2010, the Louisiana Department of Economic Development granted an estimated $196.8 million in motion picture credits, while the state only received roughly $27 million in direct tax revenue from productions shot in Louisiana.[101] Although these numbers appeared damning, proponents of the program were quick to point out that the audit acknowledged that the state's film program generates a substantial amount of indirect tax revenue by creating a demand for various jobs, goods, and services but did not attempt to measure how much money the state took in through these indirect means.[102] Will French, President of the Louisiana Film and Entertainment Association, a nonprofit organization, touted the importance of these indirect benefits and noted that the film industry "brings into Louisiana more than a billion dollars of outside capital every year, and has resulted in the establishment and support of hundreds, if not thousands, of local businesses."[103] Ultimately, this public policy discussion is still on-going, with both proponents and opponents of the state's film tax credit program arguing the merits of the statute.

[96] See infra Parts III.B and IV for further discussion on the criticisms of the incentive program.
[97] Pope, supra note 94.
[98] Id. ("It employs many citizens, it's environmentally friendly, it encompasses the entire state, and it takes advantage of native talent.").
[99] Id.
[100] La. Legislators' Auditor's Office, La. Dep't of Econ. Dev. and La. Dep't of Revenue Motion Picture Tax Credit Program, Performance Audit, Apr. 24, 2013, at 2, available at http://app1.lla.la.gov/PublicReports.nsf/5A685258D794067E86257B57005B8D58/$FILE/00032357.pdf.
[101] Id. at 2.
[102] See Richard Thompson, State auditor says film tax credits cost Louisiana $170 million in lost taxes in 2010, The Times Picayune, Apr. 29, 2013, available at http://www.nola.com/politics/index.ssf/2013/04/state_auditor_says_film_tax_cr.html.
[103] Id.

IV. DEBATING THE EFFECTIVENESS OF FILM TAX CREDIT PROGRAMS

A. How to Measure Their Value?

From the most basic economic perspective, film tax credit programs are "effective," or beneficial to the state offering them, if the dollar value of the credits that the program provides is less than the total taxes it otherwise collects from the film production.[104] For example, a state that collects $20 million in taxes from a $100 million production, but awards $35 million in various tax credits, ultimately loses money and has an "ineffective" incentive program under this analysis. Based on this net tax revenue standard, essentially every state incentive program is ineffective, and thus, critics argue that the whole concept of state film incentive programs is poorly realized. However, proponents of film incentive programs argue that these programs provide benefits to states beyond the mere net taxes collected from film production, thereby rendering the programs ultimately "effective." In their final calculations, these proponents include incidental benefits brought into the state by incoming film production such as local job creation, increased positive attention to the state, and boosts in local tourism. While critics of the incentive programs acknowledge the existence of these incidental benefits, they argue that these "trickledown" benefits are negligible compared to the losses sustained in tax revenue, and critics maintain their position that the state film incentive programs are a losing proposition.

When measuring the value of film tax credit programs, proponents often include the benefits of job creation. For instance, advocates of incentive programs take into consideration how many locals the film production company might hire, what the salaries of those jobs are, and how permanent any of those jobs may become.[105] Proponents of tax credits argue that, in addition to creating jobs at the local level, these incentives help create an industry that provides a higher scale of pay than state workers may otherwise receive.[106] Usually, proponents highlight the fact that recent college graduates can easily make $20 per hour as opposed to minimum wage.[107] However, critics discount the inclusion of job creation when weighing the effectiveness of these state film tax credit programs. These critics reason that most film production jobs require specialized skills, such as expertise in

[104] Malyshev, supra note 1, at 230.
[105] Luther, supra note 22, at 7.
[106] Bailey, supra note 75, at 715.
[107] Id.

audio or visual production, and therefore, most film production jobs are filled by out-of-state workers.[108] Furthermore, critics argue that even the finite number of jobs that are filled by locals consist of merely temporary positions. Since production on a single film is a short-term project compared to other ventures, these critics argue that locals are left "unemployed" until another film comes along, and therefore, film production provides "job shifting" and not "job creation."[109] Finally, from a job creation perspective, critics note that these state film incentive programs merely move these jobs into one state at the expense of another. For every film job filled by a Louisiana or New Mexico resident, a California resident remains out of a job.[110]

Proponents of incentive programs also oftentimes include the elusively defined benefit of "tourism" when valuing the effectiveness of their movie production incentives. State travel and tourism offices see film productions as a form of "free advertisement" which can help showcase the positive aspects of the state.[111] Additionally, if tourism increases due to positive film portrayals, then the state receives an increase in tax revenue from hotels and local sales taxes. However, critics dismiss this benefit by pointing to a lack of evidence that the correlation between positive film portrayal and increased tourism is either large or powerful.[112] These critics scoff at the notion that "places like Lansing, Michigan will become the next Hollywood."[113]

Finally, critics and skeptics of the effectiveness of state tax credit programs point to the indirect expenses that states incur in efforts to lure in film production companies. For instance, states usually supply police officers to direct traffic and emergency crews to wait on stand-by, and these state expenses very likely benefit the film production's bottom line at the detriment of the state taxpayers.[114] Therefore, these critics urge state policymakers and citizens to be aware that the actual cost of movie production incentives may be higher than those reported by the government's film offices.[115]

B. A Look at the "Effectiveness" of Other States' Programs

1. New Mexico

[108] Luther, supra note 22, at 8.
[109] Id.
[110] Id. at 9.
[111] Id. at 11.
[112] Id.
[113] Id.
[114] Id. at 7.
[115] Id. (arguing that these indirect benefits to film production companies are presented in a "non-transparent" manner and are often hidden within the budgets of other departments).

Along with Louisiana's and Michigan's plans, New Mexico's film incentive program is viewed as among the most aggressive and generous in the country. An early adopter, New Mexico enacted its program in 2002 in part due to a recurring budget surplus and a state constitution that required a balanced budget.[116] The state's program received a steady stream of funds from the Severance Tax Permanent Fund, a fund financed by lucrative royalties from the state's industries of natural gas, oil, and coal extraction, which were at record high prices in the early 2000s.[117] The state's new program focused on attracting films at the front-end of production, through the offering of no-interest loans, and at the back-end of production, through a refundable tax credit. Under the Severance Tax Bonding Act, the state was authorized to provide up to a $15 million no-interest loan to reputable film productions within the state.[118] New Mexico also established a twenty-five percent refundable tax credit that eligible film productions within the state could receive.[119] Unlike Louisiana's program, New Mexico's plan did not set up any minimum budget or expenditure requirement. But similar to Louisiana's program, New Mexico's incentive program was an undisputed success in attracting film productions to the state. In the first two years following the enactment of the program, New Mexico increased its film production from zero projects to twenty-five projects, and this new industry generated more than $200 million in revenue.[120] As the second state to adopt any type of film incentive program, behind only Louisiana, New Mexico quickly became a major player in the film production game. Between 2003 and 2008, roughly ninety major productions took place in the state, and New Mexico became known as "Tamalewood," the alternative to Hollywood.[121]

Despite the program's success in creating a newfound film industry and attracting major productions into the state, New Mexico's film tax credits have come under attack in recent years. Governor Susana Martinez has been especially vocal in advocating a proposal to scale back the state's program. Citing severe budget concerns and the fact that the film credits cost the state more than $70 million in tax revenue in 2010, the Governor proposed a revision to pare back the

[116] Schonauer, supra note 58, at 397.
[117] Id. at 397, n.95.
[118] N.M. Stat. Ann.§ 7-27-5.26(B) (2008).
[119] Id. § 7-2F-1(B).
[120] Schonauer, supra note 53, at 401.
[121] Deborah Baker, *New Mexico works for its "Tamalewood" title,* LOS ANGELES TIMES, April 4, 2008, available at http://articles.latimes.com/2008/apr/04/entertainment/et-newmexico4.

incentives from twenty-five percent to fifteen percent.[122] Legislators in support of this proposal pointed to the state's poor financial condition and called upon "schools and education and every department and agency within state government to tighten their budget, [including] the film industry."[123] This proposal went before the state's Senate in March of 2011, where legislators voted to preserve the twenty-five percent refundable tax credit.[124] However, in a significant blow to the state's film industry, the Senate voted to cap the program's funding at a "rolling" $50 million per year. In this "rolling" cap, any accrued incentives that exceed the yearly $50 million limit get "rolled over" into the next fiscal year.[125] For example, the state can spend $75 million in a single year, but then it must take the exceeded $25 million out of the budget for the next year. Therefore, despite its advantages in being an early mover and offering a plethora of attractive incentives, even New Mexico's successful program has faced harsh criticism and suffered as a result of state budgetary concerns. While the substance of the state's program remains substantially the same as it was when first enacted in 2002, the new budget cap and recently proposed revisions show that even the most aggressive and "successful" programs are not safe from critique.

2. Michigan

While Michigan enacted its film incentive program years after early adopting states like New Mexico and Louisiana, the state quickly became a competitor in the film production game. In 2008, Michigan enacted an extremely aggressive film incentive program that critics dubbed "preposterously generous."[126] As a latecomer to the incentive game galvanized by Louisiana and New Mexico in 2002, Michigan was compelled to offer the most generous program in the country in an effort to lure production away from early adopting states. The state's program required a $50,000 expenditure within the state, but offered a refundable, assignable tax credit of up to forty-two percent of the total expenditures of a production company.[127] Specifically, film production companies that expended more than $50,000 in designated "core-communities" were eligible for a forty-two percent tax

[122] *Susana Martinez's Proposal to Scale Back Film Tax Incentives,* NMSEEN, Jan. 12, 2011, available at http://www.nmseen.us/index.php?do=/Viber/blog/susana-martinez-s-proposal-to-scale-back-film-tax-incentives/.

[123] Id. (statement of Senator John Ryan).

[124] Alex Ben Block, *New Mexico State Senate Votes to Preserve Film Tax Credit Program*, THE HOLLYWOOD REPORTER, (Mar. 16, 2011, 3:06 PM) http://www.hollywoodreporter.com/news/new-mexico-state-senate-votes-168530.

[125] NEW MEXICO FILM OFFICE, PRODUCTION RESOURCES (2012), available at http://www.nmfilm.com/filming/incentives/tax-rebate.php#cap.

[126] Luther, supra note 18, at 1.

[127] MICHIGAN FILM OFFICE, MICHIGAN FILM PRODUCTION FAQS (2012), available at http://www.michiganfilmoffice.org/cm/files/film-Incentive-Combined-FAQs.pdf.

credit, while expenditures in all other non "core-communities" were eligible for a forty percent tax credit.[128] This "core-community" designation was not especially burdensome, as the Michigan Film Office listed 136 populous cities throughout the state as official "core-communities."[129] Furthermore, compensation payments made to all "above the line" personnel, such as writers, directors, and actors, and to "below the line" personnel who were Michigan residents, such as crew members, were included in the expenditures eligible for the forty or forty-two percent tax credit.[130] Compensation payments made to "below the line" personnel who were not Michigan residents were eligible for a thirty percent tax credit.[131]

While the aggressive generosity of the incentive program transformed the state into an attractive filming destination, concerns about the costs of awarding such tax credits soon became prominent. Upon taking office in 2011, Governor Rick Snyder began to express concerns that the incentive program was causing the state to give back more in rebates than it was bringing in. He reviewed the state's budget deficit and concluded that incentives across all industries had to be immediately down-sized, including those for films.[132] These concerns were bolstered by a 2010 study by the state's Senate Fiscal Agency that concluded that Michigan was only getting back 17.5 cents in taxes for every dollar spent in credits. Consequently, in October 2011, Gov. Snyder announced a new state budget that capped the total film incentive program at $25 million per year.[133] This $25 million cap represented a steep drop-off from the prior year in which the state approved $115 million in tax rebates and credits.[134] Additionally, in 2012, Michigan unveiled a substantial revision of its film incentive program. Applicable to all film projects approved after December 31, 2011, the new program raised the in-state expenditure

[128] Id.

[129] For a map of the designated "core-communities," see MICHIGAN FILM OFFICE, MICHIGAN CORE COMMUNITIES (2012), available at http://www.michiganfilmoffice.org/cm/files/Core_comms-2010-3.pdf.

[130] MICHIGAN FILM OFFICE, MICHIGAN FILM PRODUCTION FAQS (2012), available at http://www.michiganfilmoffice.org/cm/files/film-Incentive-Combined-FAQs.pdf. There was a $2 million cap on salary per employee per production.

[131] Id.

[132] Carol Hopkins, *Michigan film industry awaits tax credit decision,* The NEWS-HERALD, Nov. 15, 2011, available at http://www.thenewsherald.com/articles/2011/11/15/business/doc4ebf4e7087bfc233671694.txt?viewmode=fullstory.

[133] Alexander Eichler, *With Film Incentive Capped, Michigan's Movie Jobs Face An Uncertain Future,* THE HUFFINGTON POST, (Nov. 16, 2011, 10:05 PM) http://www.huffingtonpost.com/2011/11/17/michigan-film-incentive-jobs_n_1098247.html.

[134] Id.

requirement to $100,000 and decreased the maximum tax reimbursement for direct production expenditures to twenty-seven percent.[135]

While the effects of the capped and decreased incentive program have yet to be fully realized, Michigan has already begun to feel its impact. Large film companies and projects immediately fled upon Gov. Snyder's announcement in February 2011 that the state was planning to limit its film incentives.[136] Marvel Studios walked away from plans to film the summer blockbuster *The Avengers* in the state and took the project to Ohio instead. Likewise, plans to film the upcoming *Iron Man 3*, *Starbright*, and *Freelancers* fell through as film studios "took their productions elsewhere because it was unclear whether they'd be awarded the amount in incentives they asked for."[137] Residents in the state are already feeling the losses from these abandoned projects. Local film businesses are angry that Hollywood studios are taking their big-budget investments to other states, and labor forces and infrastructure businesses that were once built by the program are now being forced to leave to find work.[138] The Michigan Film Office admits that there is a perception within the state that the film industry has died.[139]

3. Budget Concerns

As evidenced by the recent caps and revisions placed upon multiple states' film incentive programs, "film subsidies are drawing closer scrutiny as states face massive budget cuts."[140] Both New Mexico's and Michigan's legislatures cited budget deficits as the motivating factor behind the cutbacks of their film incentive programs. With projected deficits for the 2012 fiscal year of $450 million in New Mexico and $1.3 billion in Michigan,[141] the states' legislatures were vocal in their criticisms of the programs and took quick action to cap and curb their spending. It

[135] "Direct production expenditures" is defined as development, preproduction, production or postproduction
expenditures attributable to a qualified production and subject to taxation in the state. Also, an extra three percent can be attained if film is produced at a "qualified" facility" as defined by MICHIGAN FILM OFFICE, MICHIGAN FILM PRODUCTION FAQS (2012), available at http://www.michiganfilmoffice.org/cm/files/film-Incentive-Combined-FAQs.pdf. This extra three percent is meant to encourage utilizing Michigan infrastructure.

[136] Eichler, supra note 129.

[137] Id.

[138] Melissa Burden, *Revised film aid program kicks off $25M initiative offers grants rather than state tax credits*, MICHIGAN ENTERTAINMENT NETWORK, Jan. 10, 2012, available at http://michiganentertainmentnetwork.com/blog/blog/2012/01/10/revised-film-aid-program-kicks-off25m-initiative-offers-grants-rather-than-state-tax-credits/.

[139] Id.

[140] Richard Verrier, *Michigan governor proposes slashing film tax credits*, LOS ANGELES TIMES, Feb. 18, 2011, available at http://articles.latimes.com/2011/feb/18/business/la-fi-ct-michigan-film-credits-20110218.

[141] David Combs, *State Budget Gaps: How Does Your State Rank?*, STATELINE, Mar. 15, 2011, available at http://www.stateline.org/live/ViewPage.action?siteNodeId=136&languageId=1&contentId=15158.

is extremely curious then that the criticism and outcry against the Louisiana film incentive program, both amongst the public and the legislature, has not been nearly as vocal or emphatic. Louisiana's projected budget deficit for the 2012 fiscal year totaled an enormous $1.6 billion,[142] so it appears that the budgetary concerns that fueled New Mexico's and Michigan's legislative action are even more pressing in Louisiana. Likewise, given the fact that Louisiana's program is often compared to New Mexico's and Michigan's in terms of aggressiveness and success in attracting film productions, it also appears that Louisiana stands to gain similar tax revenue benefits from capping or revising its program. Why, then, have Louisiana lawmakers not taken action to eliminate, suspend, or revise the state's film incentive program? Although the answer to this question is debatable, at least part of the explanation lies in the unique advantages Louisiana's program possesses, as compared to other states' programs. Mainly, given the unique qualities of both the film program and the local economy, Louisiana receives benefits from film tax credits that cannot be duplicated by other states' programs.

C. Louisiana: A Unique Model

Under an analysis of a program's "effectiveness" based solely on the difference between tax revenue generated by film productions and film tax credits awarded by the state, Louisiana's program, like all programs in the country, is a failure. Research studies have attempted to quantify the amount of money recouped for every dollar awarded in tax credits, but the exact findings vary. A 2005 study by the Legislative Fiscal Office found that Louisiana gained only $0.18 in tax revenue from films for every one dollar of tax credit that it awarded, and a study by the Economic Research Associates in 2009 decreased this number to $0.13 in taxes for every one dollar spent on film tax credits.[143] A recent 2013 audit conducted by the Louisiana Legislative Auditor's Office found that the state gained about $0.15 for every one dollar spent.[144] Looking at these studies alone, Louisiana's program appears to be a failure, costing the state between $0.82 and $0.87 for every dollar awarded. However, looking at the "effectiveness" of Louisiana's program measured only by the net tax revenue generated by films creates an incomplete

[142] Id.

[143] CENTER ON BUDGET AND POLICY PRIORITIES, supra note 90, at 16. In the boom year of 2010 in which state incentive programs likely hit their peak, the average state program generated $0.25 in tax revenue from films for every $1.00 it awarded in subsidies. Id. at 1.

[144] Louisiana Legislators' Auditor's Office, Louisiana Department of Economic Development and Louisiana Department of Revenue Motion Picture Tax Credit Program, April 2013, available at http://app1.lla.la.gov/PublicReports.nsf/5A685258D794067E86257B57005B8D58/$FILE/00032357.pdf.

picture. As the first state to adopt a film incentive program, Louisiana possesses a "first mover advantage" that other states cannot match. Additionally, Louisiana is a state whose program offers several unique benefits that cannot be quantified in a formalistic net tax revenue calculus, but nevertheless must be considered when evaluating the "effectiveness" of the program.

Even critics of the general concept of movie production incentives admit that Louisiana may have a "first mover advantage" since it was the first state to adopt an incentive program.[145] The "first mover advantage" refers to the concept "that early entry into a new industry or product category gives any firm an almost insuperable head start."[146] In essence, simply by being the first to enter an industry or area, in this case the area of state film incentives, and establishing itself as a film production center, Louisiana has an innate advantage over states, such as Michigan, which will continuously be playing a game of catch-up as they try to establish their programs in an already saturated marketplace. Other states have recognized this advantage unique to Louisiana. For example, when evaluating a proposal by the Alabama Film Office in support of adopting a state film incentive program, doubters pointed to the fact that the proposal bases five of its eleven reasons for implementation on the proposed success of Louisiana. While voicing some doubt as to the effectiveness of the film tax credits on Louisiana's economy, these critics also admit that Louisiana has an advantage by being among the first to adopt a film tax credit program. They warn states in the position of "late-adopters" not to overestimate results from early-adopting states, since "the 30th state to do something will [not] reap as many benefits as the first."[147] In addition to possessing an innate advantage by being the "first mover" among states, Louisiana's program also offers unique benefits to the state that are not included in a net tax revenue analysis.

First, the film industry brings valuable jobs to Louisiana; even though labor positions in the film production industry are typically temporary and, thus, are arguably not ideally suited to benefit locals, these jobs fulfill some needs that are unique to Louisiana citizens.[148] For instance, based on average per capita incomes of citizens, Louisiana residents likely stand to benefit more from these jobs than citizens of other states. In 2004, the per capita personal income of a Louisiana resident was $27,219, as compared to the average per capital personal income of $29,754 of people in the surrounding southeastern states.[149] Since average Louisiana residents earned about $2,535 less per year than their southeastern

[145] Luther, supra note 22, at 8.
[146] Fernando Suarez & Gianvito Lanzolla, The Half-Truth of First-Mover Advantage, 83(4) Harv. Bus. Rev. 121,(2005), *available at* http://turbo.kean.edu/~jmcgill/1stmover.pdf.
[147] Luther, supra note 22, at 8 (alteration to original).
[148] Grand, supra note 48, at 795.
[149] Id.(citing the Bureau of Economic Analysis, http://www.bea.gov/bea/regional/spi)

neighbors, Louisiana citizens stand to gain more from the lucrative film jobs that offer average starting wages of $20 to $25 per hour plus benefits.[150] Additionally, with the state now the third largest center for film production in the country,[151] these film jobs are not quite temporary since "many of the workers in the industry can move from production to production during the course of the year."[152] So while jobs on individual projects may end, Louisiana citizens have more opportunities for maintaining year-round work than citizens in other states.

These incidental employment benefits are not purely hypothetical. In 2012, film production generated 14,011 total jobs for Louisiana residents, totaling more $717.9 million in household earnings.[153] Using these numbers to calculate an implied average annual wage for Louisiana residents employed in film production related jobs, studies show that the average Louisiana resident employed in a film production related job made approximately $51,239 in 2012.[154] This total is substantially higher than the average annual wage of Louisiana workers in the private sector, which totaled $40,810 at the end of 2012.[155]

Furthermore, as a state that had virtually no film industry prior to the enactment of its incentive program and now finds itself as the third largest film production center in the entire country, Louisiana again benefits uniquely as compared to other states. Unlike states such as California and New York that were epicenters of film production prior to the state incentive program boom in the 2000s, Louisiana is not giving away credits to companies that would have located to and filmed in the state anyway.[156] The criticism that states are essentially giving away money in credits to film companies that would have filmed in a state, like California, regardless of an incentive program, does not apply to Louisiana.[157] Also, since the tax credits actually do lure in productions,[158] the majority of jobs brought into the state through film productions are "additional" jobs, as opposed to jobs that

[150] Id.
[151] Egan, supra note 90. Louisiana ranks behind only California and New York.
[152] Grand, supra note 48, at 795.
[153] Loren C. Scott & Associates, The Economic Impact of Louisiana's Entertainment Tax Credit Programs, 16(2013) available at http://www.wwl.com/Another-winning-year-for-movie-making-in-New-Orlea/17944375/.
[154] Id. at 17.
[155] Id.
[156] See Mark Robyn, Film Production Incentives: A Game California Shouldn't Play: Joint Oversight Hearing: The Committee on Revenue and Taxation and the Committee on Arts, Entertainment, Sports, Tourism, and Internet Media, TAX FOUND., Mar. 21, 2011.
[157] Julia O' Donoghue, Louisiana's tax credits for the film industry reviewed, THE TIMES PICAYUNE, November 4, 2013, *available at* http://www.nola.com/politics/index.ssf/2013/11/louisiana_film_industry_tax_cr.html ("If Louisiana cuts its film industry incentives, there would be no reason for movie productions to stay in the state.").
[158] See supra Part II.E.

would have existed in Louisiana anyway.[159] Likewise, the money spent by productions at Louisiana businesses constitutes "additional" sales revenue that local businesses likely would not have received absent the film tax credits. This "additional" revenue is quite significant, with studies estimating the film industry spending over $1 billion in sales at local firms and businesses in 2012 alone.[160]

Additionally, as a state where entertainment is part of its culture and where the film tax credits have created a workforce centered around film production, Louisiana stands to actually lose jobs if the incentive program is scaled back or eliminated. In a state known for its artists, jazz musicians, and penchant for performers of all kinds, the entertainment industry has long been a piece of Louisiana's culture. Prior to the incentive program, Louisiana residents who wanted to work in the entertainment industry were often forced to move to Los Angeles or New York to find work.[161] With the enactment of the incentive program and the subsequent boom in entertainment jobs, residents flocked back to the state in a kind of "reverse-migration."[162] If the state were to pare back or repeal its incentive program, these Louisiana residents would likely be faced with their previous problem of a lack of work, and they, along with the thousands of locals who have more recently turned to employment in the film industry,[163] would likely be forced to flee the state in search of work.

Finally, Louisiana's incentive program offers the unique advantage of "free advertising" for Louisiana's prominent tourism industry. A pillar of Louisiana's economy, tourism is the state's second largest industry, employing 120,000 people and generating roughly $9 billion in revenue every year.[164] Since the tourism industry is so well-established and lucrative to the state, Louisiana stands to benefit more from films' "free advertising" than states with less vigorous tourism industries. Although the benefits of the film tax credits to the state's tourism industry are difficult to quantify, officials maintain that such policies, and the film productions they attract, are important and beneficial to tourism.[165]

[159] See Robyn, supra note 148.
[160] Scott, supra note 153, at 16.
[161] See Film Industry: Permanent Film Incentive Spurs Industry Growth, EQ Q4 Louisiana Economic Quarterly 16, (2009).available athttp://www.louisianaeconomicdevelopment.com/assets/LED/docs/EQ/2009/EQ_Q4_09.pdf.
[162] Id. at 17.
[163] See Baxstarr Consulting Group LLC,Fiscal & Economic Impact Analysis of Louisiana's Entertainment Incentives, (2011) [hereinafter FISCAL & ECONOMIC IMPACT ANALYSIS].
[164] The State of Louisiana, Louisiana Secretary of State (2012) *available at* http://www.sos.la.gov/Home/OtherServices/AllAboutLouisiana/LouisianaFacts/TheStateofLouisiana/tabid/1021/Default.aspx. (Link did not work for me)
[165] See Evaluating the Effectiveness of State Film Tax Credit Programs,, prepared by Ernst & Young LLP, at p. 8, available at http://www-deadline-com.vimg.net/wp-content/uploads/2012/05/Motion-Picture-assoc.-film-credit-study__120510071748.pdf ; Duck Dynasty Crucial to Louisiana Tourism, says Lt. Governor Jay Dardenne, December 22, 2013, available at http://www.newsday.com/entertainment/tv/reality-tv/duck-dynasty-crucial-to-louisiana-tourism-says-lt-governor-jay-dardenne-1.6658027.

Furthermore, even compared to states with similarly large tourism industries, Louisiana still captures a unique benefit since, "in the aftermath of Hurricane Katrina," officials have noted that it is especially "important to let people know that it's safe to live and invest in Louisiana."[166] For instance, in 2004, the year before the storm, approximately 10.1 million out-of-state people flocked to New Orleans, Louisiana's hottest tourist destination.[167] After Hurricane Katrina in August 2005, the entire tourism industry suffered losses and setbacks, with tourism in New Orleans decreasing to a mere 3.7 million visitors in 2006.[168] With such a previously lucrative industry in decline, the state stood to benefit from any form of positive marketing in order to show people that both the state and its business industry were open for investment. Therefore, "free advertisement" from films is uniquely valuable to Louisiana, as compared to other states that may not be as dependent on tourism or which have not recently experienced such a one-of-a-kind image problem.

Ignoring these benefits to Louisiana's economy and the state's residents when evaluating the "effectiveness" of the film incentive program creates an incomplete picture of the impact of Louisiana's program. In fact, a recently commissioned study by Louisiana Economic Development actually found that the film incentive program has an overall positive effect on attracting productions to the state and providing economic benefits to local businesses and employees.[169] When including incidental benefits such as job creation and increased activity in the local economy, the research study found that the incentive program generates $5.71 in economic output for every one dollar of issued tax credit.[170] While these incidental benefits are plentiful and prominent in Louisiana and thus contribute to the "effectiveness" of the state's program, they are also likely unique in the sense that other states may not be able to duplicate them.

D. The Future of Louisiana

By revamping its film incentive program in 2002, Louisiana kicked off the trend of local film incentive programs. Throughout the 2000s, states across the country enacted their own incentive programs, hoping to capture a piece of

[166] Grand, supra note 48, at 796.
[167] Gil Rudawsky, Five Years After Hurricane Katrina, New Orleans Tourism Rebounds, Daily Finance (Aug. 27, 2010, 1:00 PM), http://www.dailyfinance.com/2010/08/27/five-years-after-hurricane-katrina-new-orleans-tourism-rebounds/.
[168] Id.
[169] FISCAL & ECONOMIC IMPACT ANALYSIS, supra note 163, at 2.
[170] Id.

Louisiana's success. This trend reached a fever pitch in 2010 with forty states offering roughly $1.396 billion worth of incentives.[171] However, over the last couple of years, several states have cut back or outright eliminated their incentive programs. Essentially, these states have been unable to duplicate and sustain the success of Louisiana's flagship film incentive program. Fueled by the innate advantage of being the first state to adopt such a program, Louisiana has been able to create an "effective" film production industry. However, early adoption alone is an insufficient model for success, as evidenced by New Mexico's recent cap of its second-in-the-nation program. Therefore, it is equally important to note that Louisiana receives several unique environmental and economic benefits that do not necessarily translate to a similar program's success in another state.

While the recent failures of several states' film incentive programs serve as a cautionary tale against trying to replicate Louisiana's success, these failures also paint a bigger picture lesson: states would be ill-advised to jump on a "tax plan bandwagon" and attempt to duplicate tax plans simply because they work for another state. Simply copying another state's tax plan and hoping to generate the same benefits will very likely lead to a disappointment of expectations. Such hasty action fails to take into account the innate benefits associated with the "first mover advantage." More importantly, such action disregards the fact that specific states may have unique advantages— environmental, economic, structural, etc.— that cannot be duplicated by other states. For instance, a shipping tax on maritime activity in Louisiana or New York will not have the same economic impact in a landlocked state. Instead of wasting resources copying other states' programs in the slight hope of duplicating their success, states would be wise to look internally and then devise a tax plan that is ideally suited to their own strengths and needs. This type of thoughtful action is especially important in today's society as states continue to feel the effects of the recent economic downturn and are forced to "rely heavily on tax incentives, including credits, exemptions, and deductions, to encourage businesses to locate, hire, expand, and invest within their borders."[172]

As a first adopter with unique environmental and economic advantages, Louisiana is in the enviable position of being able to decide how to proceed with its film incentive program, without the pressing public and legislative cries for suspension or revision. Given the recent developments in other states, Louisiana's wisest move may be to simply maintain the current version of its film incentive program. As more and more states eliminate, suspend, and pare down their film incentive programs, Louisiana may be able to gain a sizeable advantage simply by

[171] Henchman, supra note 29, at 4.

[172] Pew Center of the States, Evidence Counts: Evaluating State Tax Incentives for Jobs and Growth1 (2012), *available at* http://www.pewcenteronthestates.org/uploadedFiles/015_12_RI%20Tax%20Incentives%20Report_web.pdf.

maintaining its program at the status quo. Two of its most formidable and aggressive competitors, New Mexico and Michigan, recently placed caps on their programs, and film production companies have already begun to steer business away from those states. Consequently, Louisiana stands an excellent chance of picking up film projects that would previously have shot in those states, and it can potentially increase economic activity in its film industry without taking any action to increase its incentives. In fact, Louisiana may already have begun to experience growth at the expense of other states' failures, as 2012 was a record-breaking year for New Orleans-based filming, with a 23% increase in spending for tax credit film projects,[173] and preliminary numbers for 2013 indicate an equally lucrative, if not more, year.[174]

While the exact correlation between the increase in film production in Louisiana and the decrease of incentives in other states is impossible to determine, the fact that Louisiana has maintained its aggressive program in a decreasingly competitive market likely plays a substantial role. In the long run, Louisiana may even be able to sustain a permanent film industry infrastructure that can survive without the offering of any incentives. Essentially, the ideal scenario is that a state may host enough productions on a yearly basis that it can become a self-sustaining industry, with a lasting infrastructure, that no longer needs state subsidies of any form, including tax credits. So far, "[n]o state has achieved this economic development model with film tax incentives; [although] the closest is Louisiana, which has seen substantial infrastructure investment" and has built up a qualified labor force to work on film projects.[175] While this goal is clearly far from completion and may even seem idealistic, the first step towards its achievement lies in Louisiana's ability to increase its attraction of film production into the state. The currently changing marketplace of state film incentive programs offers a unique opportunity for Louisiana to bring more film productions into the state, without having to sacrifice net tax revenue by increasing the maximum amount of incentives available. Essentially, Louisiana can bring more economic benefits to its communities simply by maintaining the status quo. For this reason, Louisiana's best strategy in the complex and ever-changing film production game is to continue

[173] Office of the Mayor of New Orleans, Press Release, Jan. 3, 2013, http://www.nola.gov/mayor/press-releases/2013/20130103-city-announces-record-breaking-year-for-f/.

[174] Don Ames, Another winning year for movie making in New Orleans, WWL.com, *available at* http://www.wwl.com/Another-winning-year-for-movie-making-in-New-Orlea/17944375.

[175] Joseph Henchman, Important Questions to Ask in Evaluating a Film Tax Incentive Program: Hearing of the Finance Committee of the Alaska House of Representatives, TAX FOUND., Mar. 22, 2012, at 2. (Addition of text).

to offer its current incentives, which will allow the state to increase its benefits at no additional cost.