CHASER FINANCING, L.L.C. AND HC PRODUCTION, L.L.C.,

v.

SHERRI McCONNELL, IN HER OFFICIAL CAPACITY AS DIRECTOR, LOUISIANA DEPARTMENT OF ECONOMIC DEVELOPMENT, OFFICE OF ENTERTAINMENT INDUSTRY DEVELOPMENT.

No. 2017 CA 0315.

Court of Appeal of Louisiana, First Circuit.

Judgment Rendered: September 15, 2017.

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF EAST BATON ROUGE, LOUISIANA, DOCKET NUMBER C574211, HONORABLE R. MICHAEL CaLDWELL, JUDGE PRESIDING.

James C. Percy, Baton Rouge, LA, Counsel for Plaintiffs/Appellants, Chaser Financing, L.L.C. and HC Production, L.L.C.

Andree Matherne Cullens, Harry J. Philips, Jr., Baton Rouge, LA, Counsel for Defendants/Appellees, Donald Pierson, Jr., Secretary of the Louisiana Department of Economic Development; Sherri McConnell, former Director of the Office of Entertainment Industry Development f/k/a the Governor's Office of Film and Television; and Christopher Stelly, former Director of Film and Television for the Office of Entertainment Industry Development.

BEFORE: WHIPPLE, C.J., McDONALD, AND CHUTZ, JJ.

NOT DESIGNATED FOR PUBLICATION

WHIPPLE, C.J.

In this appeal, plaintiffs, limited liability companies involved in the production of motion picture projects, appeal the trial court's judgment granting the motion for summary judgment filed by defendants, the Secretary of the Louisiana Department of Economic Development ("the DED"), the former Director of the Office of Entertainment Industry Development ("the OEID"), and the former Director of Film and Television for the OEID, and dismissing with prejudice plaintiffs' claims arising from the alleged erroneous calculation of motion picture investor and employment tax credits for their production of the movie *Til Death.* For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

The State of Louisiana provides for certain motion picture investor tax credits for "[s]tate-certified production[s]," with the primary objective of encouraging the development of a strong capital base for the motion picture industry in Louisiana. LSA-R.S. 47:6007(A) & (C); Red Stick Studio Development, L.L.C. v. State ex rel Department of Economic Development, 2010-0193 (La. 1/19/11), 56 So. 3d 181, 182 & 186. Moreover, tax credits are also authorized for the employment of Louisiana residents in connection with the production of certain "[s]tate-certified production[s]." See LSA-R.S. 47:1125.1 (prior to repeal by 2017 La. Acts, No. 323, § 3) and LSA-R.S. 47:6007(C)(1)(b), (c), & (d).

In the fall of 2005, seeking to take advantage of these tax credits, plaintiffs, Chaser Financing, L.L.C. ("Chaser") and HC Production, L.L.C. ("HC Production"), applied to have a proposed production entitled *Hurricane Chaser* approved as a state-certified production. To be eligible to earn such credits, an applicant had to first seek an "initial certification" of the production as a "state-certified production." LSA-R.S. 47:6007(D)(1) (as amended by 2003 La. Acts, No. 551, § 3, effective 8/15/03) & 47:6007(D)(2)(a) (as amended by 2004 La. Acts, No. 7, § 1, 1st Ex. Session, effective 3/25/04). A "[s]tate-certified production" was defined at that time as "a production approved by the Governor's Office of Film and Television Development ["the GOFTD"] and [the DED]."[1] LSA-R.S. 47:6007(B)(5) (as amended by 2003 La. Acts, No. 551, § 3, effective 8/15/03). Then, upon completion of the state-certified production, the GOFTD would review the production expenses and issue a tax credit certificate to the investors. LSA-R.S. 47:6007(D)(2)(b) (as amended by 2004 La. Acts, No. 7, § 1, 1st Ex. Session, effective 3/25/04).

By letter dated November 30, 2005, the Secretary of the DED and the Director of the GOFTD approved *Hurricane Chaser* as a state-certified production, bearing state certification number XXXX-XXXX, rendering this production eligible for motion picture investor tax credits, employment tax credits, and sales and use tax exemptions ("the November 30, 2005 *Hurricane Chaser* initial certification").[2] However, in early January 2006, a decision was made not to produce *Hurricane Chaser.* Instead, Chaser and HC Production were contemplating producing two or three smaller films that would have an aggregate budget roughly equivalent to the proposed budget of *Hurricane Chaser.*

Meanwhile, in the 2005 legislative session, LSA-R.S. 47:6007 had been amended to change the calculation of the tax credits that could be earned. Specifically, while Act No. 456 of the 2005 Regular Session increased the percentage credit earned on qualifying expenses, it also limited the expenses that qualified for tax credits to only those production expenditures "directly incurred in this state that are directly used in a state-certified production." LSA-R.S. 47:6007(B)(1), (2) & (7) and (C)(1)(b) (as amended by 2005 La. Acts, No. 456, § 1). Thus, the amendment had the effect of limiting the calculation of investor tax credits to only those production expenses incurred in Louisiana, rather than all production-related costs.

Moreover, prior to the enactment of Act 456, LSA-R.S. 47:1125.1(A) had provided for employment tax credits of either ten or twenty percent of total aggregate payroll for Louisiana residents, depending on the total production costs in Louisiana. LSA-R.S. 47:1125.1(A) (as enacted by 2002 La. Acts, No. 6, 1st Ex. Session, effective 7/1/02). However, Act 456 limited the employment tax credits that could be earned to ten percent of the Louisiana payroll for state-certified productions receiving an effective certification date after December 31, 2005. LSA-R.S. 47:1125.1 and LSA-R.S. 47:6007(C)(1)(b), (c), & (d) (both as amended by 2005 La. Acts, No. 456, § 1). Act 456 became effective for taxable years beginning after December 31, 2005, but included a "grandfather clause," providing that the Act did not apply "to state-certified productions that have received an effective initial certification date that is prior to December 31, 2005." 2005 La. Acts, No. 456, § 2.

Because Chaser and HC Production desired to have tax credits for the proposed smaller productions calculated under the 2005 version of these laws (prior to amendment by 2005 La. Acts, No. 456, § 2), Stuart Benjamin, on behalf of Chaser and HC Production, emailed Mark Smith, the Special Projects Officer, Legislative/Congressional Liaison for the DED, on January 13, 2006, informing him that they were contemplating "shooting [three] $15 million movies starting about March or April instead of one $40-45 million movie" and inquiring as to whether, if the "same production LLC and investment LLC" that had been set up for *Hurricane Chaser* were used, "can we make it work." Smith, who had previously served as the Director of Film and Television in the GOFTD, but who no longer held any position with the GOFTD at the time Benjamin sent the email, responded to Benjamin that "[b]ased on the information you have provided, it works for me." However, Smith also included Alex Schott, the Director of Film and Television in the GOFTD at that time, in the email chain, asking Schott, "Alex, what do you think?"[3] In response, Schott replied to Benjamin and Smith, "Works for me! Thanks, Stuart."

One of the smaller films later being contemplated by Chaser and HC Production was a production entitled *Til Death.* In an attempt to establish whether the film *Til Death* would qualify to earn tax credits under the November 30, 2005 *Hurricane Chaser* initial certification (and, thus, under the 2005 version of LSA-R.S. 47:6007), Stephen Roberts and William French, tax credit brokers who were working as liaisons for Chaser and HC Production in dealings with the GOFTD, had follow-up communications with Schott to confirm Schott's position as previously communicated to Benjamin. On April 13, 2006, French emailed Smith and Schott with the following inquiry:

The Hurricane Chaser deal that we got certified last [D]ecember under 2005 rules is gearing up. They'll be in filming in a couple [of] weeks. You may recall that instead of 1 film for $45M they decided to do 2 or 3 smaller ones. The first ($15M budget) is the one getting going. They are likely to be dealing with the Louisiana spend cap on the amount of credits that they'll earn. So, they are trying to get a good read on some of their line items as to whether or not they'll constitute La. spend. Most importantly, Jean Claude Van Damme will be paid $1,000,000 for his time in Louisiana filming. This is clearly income sourced or apportioned to La. (he'll be paying all La. taxes, in fact the company will pay it for him) such that it would

qualify as La. spend under the new law. I assume that it will qualify under the old law as well. Can you please confirm?

Thereafter, on April 19, 2006, in response to French's email and to a phone inquiry from Roberts, Schott replied as follows:

Will,

Amber told me that Stephen [Roberts] called the office today asking about if these projects would qualify under the old law. I thought that we had established that they would. Could you relay that information to him?

After receiving Schott's response, French replied to Schott, copying Roberts and Benjamin:

I think that we are all on the same page here. It is governed by the old law. We may do 2 or 3 pictures instead of one, but all will be done and accounted for under the previously-issued certification for Hurricane Chaser. We funded $40M in investment in December and did some pre-production work at the time. Therefore, we'll earn 2005 [income tax credits] on up to $40M in investment (plus overhead on that amount), though we can't ask that they be issued until the money has been spent. . . . I think there was just a small miscommunication on our end that we should have resolved internally. Thanks for getting in touch with me on it though.

Schott responded to French's email by simply saying, "Excellent. Thanks." However, no approval was sought from the Secretary of the DED at that time regarding the substituting of an entirely different production under the November 30, 2005 *Hurricane Chaser* initial certification and state certification number.

Thereafter, *Til Death* was produced, and HC Production submitted to the DED a Cost Report of Production Expenditures for *Til Death* for the period of December 23, 2005 through July 6, 2006, requesting certification of investor tax credits pursuant to LSA-R.S. 47:6007. However, the DED refused to issue tax credits for the production of *Til Death* under the *Hurricane Chaser* state certification number.

HC Production eventually submitted an application on March 5, 2007, seeking to have *Til Death* approved as a state-certified production. On March 20, 2007, the Secretary of the DED and the Director of the OEID (the successor of the GOFTD[4]) qualified *Til Death* as a state-certified production, assigning it state certification number XXXX-XXXX, and on April 25, 2007, the DED and the OEID issued a Tax Credit Certification Letter under state certification number XXXX-XXXX, certifying that Chaser had earned tax credits totaling $556,728.20 pursuant to LSA-R.S. 47:6007(C)(1)(b) (as amended by 2005 La. Acts, No. 456, § 1)(the version of the statute in effect at the time of the March 20, 2007 initial certification to *Til Death* as a state-certified production) for the Louisiana expenditures related to *Til Death.* Investor tax credits were not allowed for non-Louisiana expenditures.

Chaser and HC Production then filed the instant suit against the Director of the OEID, the Secretary of the DED, and the Director of Film & Television of the OEID, contending that the

production of *Til Death* qualified for incentive tax credits pursuant to the state certification number initially assigned to *Hurricane Chaser* and, thus, that investor tax credits and employment tax credits for the production of *Til Death* should have been calculated under the 2005 versions of LSA-R.S. 47:1125.1 and 47:6007.[5] Asserting claims based on detrimental reliance, Chaser and HC Production contended that, if calculated under the 2005 versions, the investor and employment tax credits to which they were entitled for *Til Death* totaled $1,526,068.00, less the previously issued amounts of $556,728.20 in investor tax credits and $28,567.70 in employment tax credits.[6]

On July 19, 2016, defendants filed a motion for summary judgment, contending that, as a matter of law, Chaser and HC Production were not entitled to investor tax credits pursuant to LSA-R.S. 47:6007 for non-Louisiana expenditures incurred in the production of *Til Death.* Following a hearing on the motion, the trial court granted summary judgment and dismissed Chaser and HC Production's claims with prejudice by judgment dated November 4, 2016.

From this judgment, Chaser and HC Production appeal, contending that the trial court erred in: (1) granting defendants' motion for summary judgment based on a finding that Chaser and HC Production's claims did not meet the standards for detrimental reliance or judicial estoppel, and (2) finding that the statements of public officials in this case did not constitute a promise on which Chaser and HC Production could rely for purposes of a detrimental reliance claim.

DISCUSSION

The summary judgment procedure is favored and designed to secure the just, speedy, and inexpensive determination of every action. LSA-C.C.P. art. 966(A)(2). It is properly granted if the motion, memorandum, and supporting documents show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(A)(3) & (4). The court may consider only those documents filed in support of or in opposition to the motion for summary judgment and shall consider any documents to which no objection is made. LSA-C.C.P. art. 966(D)(2).

The burden of proof is on the mover. However, if the mover will not bear the burden of proof at trial, on the issue before the court on the motion for summary judgment, the mover's burden does not require him to negate all essential elements of the adverse party's claim. Rather, the mover need only point out to the court the absence of factual support for one or more elements essential to the adverse party's claim. The burden is then on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. LSA-C.C.P. art. 966(D)(1).

Summary judgment is appropriate when all the relevant facts are marshalled before the court, the marshalled facts are undisputed, and the only issue is the ultimate conclusion to be drawn from those facts. Willig v. Pinnacle Entertainment, Inc., 2015-1998 (La. App. 1st Cir. 9/16/16), 202 So. 3d 1169, 1173. On appeal, summary judgments are reviewed *de*

novo, with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate: whether there is any genuine issue of material fact and whether the mover is entitled to judgment as a matter of law. Willig, 202 So. 3d at 1172.

The doctrine of detrimental reliance is designed to prevent injustice by barring a party from taking a position contrary to his prior acts, admissions, representations, or silence. Luther v. IOM Company LLC, 2013-0353 (La. 10/15/13), 130 So. 3d 817, 825. Pursuant to LSA-C.C. art. 1967, "[a] party may be obligated by a promise when he knew or should have known that the promise would induce the other party to rely on it to his detriment and the other party was reasonable in so relying." To establish detrimental reliance, a party must prove three elements: (1) a representation by conduct or word, (2) justifiable reliance, and (3) a change in position to one's detriment because of the reliance. Estoppels are not favored in Louisiana law; therefore, a party cannot avail himself of the doctrine if he fails to prove all of the essential elements of the claim. Luther, 130 So. 3d at 825.

As noted by the Louisiana Supreme Court, "Louisiana jurisprudence applying estoppel to tax matters has been described as running a spectrum." Showboat Star Partnership v. Slaughter, 2000-1227 (La. 4/3/01), 789 So. 2d 554, 561 n.12. At one end of the spectrum, when the tax statutes are clear and unambiguous, estoppel has not been applied. On the other hand, where a statute is not clear or where the Department of Revenue has adopted regulations or administrative policies regarding the scope and application of a tax statute, but the Department abruptly departs from that established precedent, estoppel has been applied because the taxpayer is entitled to rely on such an interpretive position, and the Department must be bound to act with administrative consistency. Showboat Star Partnership, 789 So. 2d at 561 n.12; see also Hitachi Medical Systems America, Inc. v. Bridges, 2015-0658, p. 14 (La. App. 1st Cir. 12/9/15), 2015 WL 8479021 at *7, (unpublished), writ denied, 2016-0042 (La. 2/26/16), 187 So. 3d 1004.

Some cases have applied a more burdensome standard when determining whether a party has proven detrimental reliance against a governmental agency,[7] requiring the party to establish: (1) unequivocal advice from an unusually authoritative source, (2) reasonable reliance on that advice by an individual, (3) extreme harm resulting from that reliance, and (4) gross injustice to the individual in the absence of judicial estoppel. See Showboat Star Partnership, 789 So. 2d at 562, and Hitachi Medical Systems America, Inc., XXXX-XXXX at p. 14, 2015 WL 8479021 at *7; but see Luther, 130 So. 3d at 825-827 (wherein the Louisiana Supreme Court noted that "[i]t has been suggested that proving detrimental reliance against a governmental agency should be more burdensome," but nevertheless concluded that the defendants therein failed to prove all the elements of detrimental reliance, "even if the lesser standard were applied").

On appeal, Chaser and HC Production assert that the trial court erred, as a matter of law, in dismissing their claims by finding that they were unreasonable in relying on the representation of Schott, the Director of the GOFTD, that *Til Death* qualified under the 2005 initial state certification number assigned to the production *Hurricane Chaser.* Chaser and

HC Production argue that they were told "by the people who administered the program" that *Til Death* would qualify under the certification number previously assigned to *Hurricane Chaser,* and they were not told prior to expending millions of dollars based on this interpretation that approval could come only from the Secretary of the DED or that they had to submit a new application for initial certification of *Til Death.* They contend that the testimony demonstrates that they would not have produced the film without those clear and unequivocal statements, promises and representations.

Chaser and HC Production further contend that the versions of LSA-R.S. 47:6007 in effect in 2005 and 2006, specifically LSA-R.S. 47:6007(D)(2)(a) (as amended by 2004 La. Acts, No. 7, § 1, 1st Ex. Session, effective 3/25/04) and 47:6007(D)(2)(c) (as redesignated by 2005 La. Acts, No. 456, § 1), actually gave the authority for initial certification to the GOFTD, which was headed by Schott. They further contend that nothing in the statute required the Secretary of the DED to approve Schott's interpretation of *Til Death*'s status as a "grandfathered" production entitled to credits under the law in effect in 2005. Therefore, they argue that Schott had the authority to determine the extent and effect of his initial certification and, thus, to determine that *Til Death* had an initial certification date in 2005 as a "grandfathered" production under the November 30, 2005 *Hurricane Chaser* state certification number. As such, they further aver that they could not have been unreasonable in relying upon Schott's determination.

We first address Chaser and HC Production's argument that the versions of LSA-R.S. 47:6007 in effect both in 2005 and 2006 actually gave the authority for initial certification to the GOFTD alone and, thus, that Schott had the authority to determine that *Til Death* had an initial certification date in 2005 as a "grandfathered" production under the *Hurricane Chaser* state certification number. In November 2005, when *Hurricane Chaser* was certified, and in 2006, the time when the January and April 2006 emails seeking to substitute smaller productions and ultimately *Til Death* under the state certification number assigned to *Hurricane Chaser,* a "state-certified production" was specifically defined as a production approved by both the GOFTD and the DED. LSA-R.S. 47:6007(B)(5) (as amended by 2003 La. Acts, No. 551, § 3, effective 8/15/03) & LSA-R.S. 47:6007(B)(10) (as amended by 2005 La. Acts, No. 456, § 1) ("`State-certified production' shall mean a production approved by the Governor's Office of Film and Television Development and the Department of Economic Development. . . ." (Emphasis added)). In their brief to this court, Chaser and HC Production acknowledge that the DED and the GOFTD did not both approve *Til Death* as a state-certified production until March 20, 2007, assigning it state certification number XXXX-XXXX at that time, which was well after the December 31, 2005 effective initial certification date necessary to entitle a production to tax credits under the law prior to amendment by 2005 La. Acts No. 456.

Nonetheless, Chaser and HC Production rely on LSA-R.S. 47:6007(D)(2)(a) (as amended by 2004 La. Acts, No. 7, § 1, 1st Ex. Session, effective 3/25/04) and 47:6007(D)(2)(c) (as redesignated by 2005 La. Acts, No. 456, § 1) for the contention that the GOFTD had the authority alone to initially certify productions and, thus, that Schott, as Director of the GOFTD at that time, on his own could determine that *Til Death* had an initial certification

date in 2005 under the November 30, 2005 *Hurricane Chaser* initial certification and state certification number. We conclude that while LSA-R.S. 47:6007(D)(2)(a) (as amended by 2004 La. Acts, No. 7, § 1, 1st Ex. Session, effective 3/25/04) and 47:6007(D)(2)(c) (as redesignated by 2005 La. Acts, No. 456, § 1) did provide that the GOFTD "shall submit its initial certification of a project as a state-certified production to investors and to the secretary of the Department of Revenue," this subsection cannot be read alone, so as to support the strained position that these provisions somehow granted sole authority to the GOFTD to make the determination of initial certification, rather than merely tasking the GOFTD with the duty of submitting the initial certification to the investors, once an approval of initial certification had been made. In addition to a "state-certified production" being specifically defined as one approved by both the DED and the GOFTD as set forth above, the versions of LSA-R.S. 47:6007 in effect in 2005 and 2006 further provided that the Secretary of the DED and the GOFTD were to determine what projects qualified as state-certified productions.[8] See LSA-R.S. 47:6007(D)(1) (as amended by 2003 La. Acts, No. 551, § 3, effective 8/15/03) and (as amended by 2005 La. Acts, No. 456, § 1).

In statutory construction, courts should give effect to all parts of a statute and should not give a statute an interpretation that makes any part superfluous or meaningless, if that result can be avoided. McLane Southern, Inc. v. Bridges, 2011-1141 (La. 1/24/12), 84 So. 3d 479, 483.[9] To give LSA-R.S. 47:6007(D)(2)(a) (as amended by 2004 La. Acts, No. 7, § 1, 1st Ex. Session, effective 3/25/04) and 47:6007(D)(2)(c) (as redesignated by 2005 La. Acts, No. 456, § 1) the strained interpretation suggested by Chaser and HC Production would render meaningless the other provisions of the versions of the statute in effect in 2005 and 2006, which clearly envision participation by the Secretary of the DED in the initial certification process. Rather, a reading of the statute as a whole, giving effect to all sections therein, demonstrates that the decision to grant such initial certification was a determination to be made by both the GOFTD and the DED.[10] LSA-R.S. 47:6007(B)(5) (as amended by 2003 La. Acts, No. 551, § 3, effective 8/15/03) & LSA-R.S. 47:6007(B)(10) (as amended by 2005 La. Acts, No. 456, § 1) and LSA-R.S. 47:6007(D)(1) (as amended by 2003 La. Acts, No. 551, § 3, effective 8/15/03) and (as amended by 2005 La. Acts, No. 456, § 1).

In light of the fact that LSA-R.S. 47:6007 required approval of a state-certified production by both the GOFTD and the DED, we are constrained to conclude, even without applying the heightened burden sometimes applied to detrimental reliance claims against a governmental agency, that there is an absence of support for one of the elements of Chaser and HC Production's claims of detrimental reliance, i.e., that their reliance on the representations of the Director of the GOFTD (and a past Director of the GOFTD) was reasonable. See generally Luther, 130 So. 3d at 826. As stated above, the "grandfather clause" of 2005 La. Act No. 456 provided that the Act did not apply to state-certified productions that had "received an effective initial certification date prior to December 31, 2005." (Emphasis added). Because, at all times relevant herein, LSA-R.S. 47:6007 required approval of a state-certified production by both the DED and the GOFTD, the decision of both the DED and the GOFTD to certify a production would clearly be necessary for an initial certification to be "effective."

In sum, equitable considerations and estoppel cannot be permitted to prevail when in conflict with the positive written law. Luther, 130 So. 3d at 826. Thus, where positive written law requires the approval of both the DED and the GOFTD for initial certification of a state-certified production, a claim of detrimental reliance cannot be established based on the representation of one, but not the other. Thus, Chaser and HC Production cannot establish an essential element of their claim, i.e., that they were reasonable in relying on a representation by the Director of the GOFTD, without the knowledge or approval of the Secretary of the DED, that *Til Death* would qualify as a "grandfathered" production under the November 30, 2005 *Hurricane Chaser* initial certification.[11] Accordingly, pretermitting the question of whether such a substitution of one production with an entirely new production under the initial certification of the first production could even be achieved under the statute at the time without a new initial certification and separate and distinct unique identifying number,[12] we conclude, on our *de novo* review, that defendants established their entitlement to summary judgment dismissing Chaser and HC Production's suit with prejudice.

CONCLUSION

For the above and foregoing reasons, the November 4, 2016 judgment, dismissing with prejudice Chaser Financial, L.L.C. and HC Production, L.L.C.'s claims, is affirmed. Costs of this appeal are assessed equally against Chaser Financial, L.L.C. and HC Production, L.L.C.

AFFIRMED.

[1] At the time Chaser and HC Production submitted their application, the GOFTD, an office within the DED, administered the motion picture tax credit program. LSA-R.S. 36:109(J) (as amended by 2003 La. Acts, No. 551, § 1, effective 8/15/03) & LSA-R.S. 51:938.1 (as amended by 2003 La. Acts, No. 551, § 4, effective 8/15/03). However, by 2006 La. Acts, No. 346, § 1, and 2007 La. Acts, No. 456, § 3, the OEID became the successor office to the GOFTD and carried out these functions.

[2] The initial certification of *Hurricane Chaser* as a state-certified production was based on certain "representations and conclusions" detailed in the initial certification letter, including representations that the total production budget was estimated to range from $40 million to $50 million, with the Louisiana expenditures ranging from $8 million to $10 million, and that HC Production "will produce one or more films, including the feature film currently entitled `*Hurricane Chaser,'* within the twelve-month period from the date of this certification."

[3] Smith also had not been the Director of the GOFTD at the time that *Hurricane Chaser* received initial certification on November 30, 2005. Rather, Schott was the Director at that time and signed the November 30, 2005 initial certification letter on behalf of the GOFTD.

[4] See footnote 1 supra.

[5] By 2007 La. Acts, No. 456, § 2, LSA-R.S. 47:6007 was amended to provide in subsection (D)(1)(b) that the Secretary of the DED, the OEID, and the Division of Administration "shall determine, through the promulgation of rules, an appeals process in the event that an application for or the certification of motion picture production . . . tax credits is denied." Rules regarding the appeals process, which provide for an appeal to the Secretary of the DED and, thereafter, an appeal of an adverse final agency decision to the Nineteenth Judicial District Court, were not

promulgated until January 2010, after suit had been filed herein. See La. Reg. 36:56 (Jan. 2010), and La. Admin. Code tit. 61, § 1607(E) (2017).

[6] Chaser and HC Production initially sought a writ of mandamus ordering the Director of the OEID to issue a tax certification letter for *Til Death* under the state certification number assigned to *Hurricane Chaser,* pursuant to the law in effect in 2005. However, the trial court dismissed the claim for writ of mandamus on a dilatory exception of improper use of summary procedure, granting leave to plaintiffs to amend. Thereafter, Chaser and HC Production asserted various claims, including a claim for declaratory judgment, a detrimental reliance claim, and claims of violation of their state and federal constitutional rights. The trial court later granted an exception of prescription as to the state and federal constitutional claims.

As to the declaratory judgment claim, Chaser and HC Production sought a declaration that they were entitled to a *Til Death* Tax Credit Certification Letter under the state certification number assigned to *Hurricane Chaser,* pursuant to the law in effect in 2005. Regarding the detrimental reliance claim, they contended that they were entitled to damages based on the representations of defendants that *Til Death* would receive tax credits under the *Hurricane Chaser* state certification number and pursuant to the law in effect at the time of that initial certification. However, despite their request for a declaratory judgment declaring their entitlement to a Tax Credit Certification Letter pursuant to the law in effect in 2005, Chaser and HC Production later clarified in opposition to defendants' motion for summary judgment that their claim is for damages and not for the issuance of the tax credits, as those tax credits would now be worthless.

[7] This matter does not involve the Department of Revenue's interpretation of a tax statute, as in Showboat Star Partnership and Hitachi, but instead involves the DED's interpretation of a tax credit statute. However, application of the more burdensome standard of proving detrimental reliance against a governmental agency has not been limited to claims against the Department of Revenue, having also been applied by this court in a case involving the Louisiana State Police, Riverboat Gaming Enforcement Division. See Eicher v. Louisiana State Police, Riverboat Gaming Enforcement Division, 97-0121 (La. App. 1st Cir. 2/20/98), 710 So. 2d 799, 804, writ denied, 98-0780 (La. 5/8/98), 719 So. 2d 51.

[8] While the versions of the statute in effect in 2005 and 2006 provided that the Secretary of the DED and the GOFTD were to determine, through the promulgation of rules, what projects qualified, no rules had yet been promulgated at the time of the initial certification of *Hurricane Chaser* or *Til Death.*

[9] Additionally, we note that tax credits, like tax exemptions, are to be strictly construed against the person claiming the credit and must be clearly, unequivocally and affirmatively established by the taxpayer. Southlake Development Company v. Secretary of Department of Revenue and Taxation for State of Louisiana, 98-2158 (La. App. 1st Cir. 11/5/99), 745 So. 2d 203, 206, writ denied, 99-3405 (La. 2/4/00), 754 So. 2d 235; and Ethyl Corporation v. Collector of Revenue, 351 So. 2d 1290, 1293 (La. App. 1st Cir. 1977), writ denied, 353 So. 2d 1035 (La. 1978).

[10] Moreover, in advocating that LSA-R.S. 47:6007(D)(2)(a) (as amended by 2004 La. Acts, No. 7, § 1, 1st Ex. Session, effective 3/25/04) and 47:6007(D)(2)(c) (as redesignated by 2005 La. Acts, No. 456, § 1) granted sole authority to the GOFTD to approve or grant an initial certification, Chaser and HC Production ignore the second sentence in those provisions, which specifically provided that "[t]he initial certification shall include a unique qualifying number for each state-certified production." The November 30, 2005 initial certification letter for "*Hurricane Chaser*" issued by both the Secretary of the DED and the Director of the GOFTD listed a "unique identifying number," i.e., the state certification number, for only *Hurricane Chaser.* And while a listed consideration in granting initial certification for *Hurricane Chaser* was the representation that HC Production "will produce one or more films," including *Hurricane Chaser,* within twelve months of the date of the certification, no other films were initially certified or given a unique state certification number therein.

The "unique identifying number" assigned to *Til Death* was not assigned until March 20, 2007, when the DED and the GOFTD issued an initial certification letter for that particular production, assigning *Til Death* its unique state certification number XXXX-XXXX.

[11] Indeed, the lack of support for this essential element of their claim is highlighted by the fact, as mentioned above, that the 2005 *Hurricane Chaser* initial certification under which they sought to substitute the production *Til Death* had been approved by both the Director of the GOFTD and the Secretary of the DED.

[12] We note that LSA-R.S. 47:6007 did not then, and does not now, specifically address, and thus did not specifically approve or prohibit, the substitution of a state-certified production with a new and different production under the same initial certification and state certification number of the original production.