STATE OF LOUISIANA

OFFICE OF
STATE INSPECTOR GENERAL

Louisiana Department of Economic Development – Horizon Entertainment

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Appendix A – Responses

JOHN BEL EDWARDS
GOVERNOR

STEPHEN B. STREET, JR.
STATE INSPECTOR GENERAL

State of Louisiana

Office of the Governor
Office of State Inspector General

June 28, 2016

Honorable John Bel Edwards
Governor of the State of Louisiana
P.O. Box 94994
Baton Rouge, LA 70804-9004

RE: Case Number 15-0037-I

Dear Governor Edwards:

This report details our investigation into the Louisiana Motion Picture Investor Tax Credit applications submitted to the Louisiana Department of Economic Development by Horizon Entertainment for the productions entitled *Saintsational* and *The Sean Payton Show.*

The report includes four recommendations that we believe, if implemented, will address the findings detailed in this report and serve to prevent further abuses of the state's Motion Picture Investor Tax Credit Program.

We provided drafts of the report to attorneys for Horizon Entertainment and to the Louisiana Department of Economic Development. Their responses are included as Appendix A.

Respectfully Submitted,

Stephen B. Street, Jr.
State Inspector General

SBS/tab
Enclosure

Executive Summary

The Louisiana Office of State Inspector General (OIG) conducted an investigation of motion picture tax credit submissions by subsidiaries of Horizon Entertainment and Productions, LLC (Horizon), once based in New Orleans. Total expenditures of $8,233,000 were reported to the Louisiana Department of Economic Development (LED) on two separate productions, *The Sean Payton Show* and *Saintsational*. Based on these submissions, Horizon and its subsidiaries received $2,616,866 in tax credits from the State of Louisiana.

OIG's investigation began after WVUE investigative reports suggested that Horizon submitted false expenses to the state on these productions. Former Horizon employees stated that Horizon did not spend the amount of money on either project that was reported to LED. Horizon denies doing anything improper.

Our investigation revealed that $1,403,161 of the expenses Horizon reported on these productions was either inflated or never incurred, an amount which correlates to an issued tax credit amount of $420,948. Additional expenses that lack sufficient documentation to justify the awarding of tax credits totaled $2,059,983, an amount which correlates to an issued tax credit amount of $617,994. Those reported expenses are displayed in the table below.

Inflated Expenses	Amount	Unsupported Expenses	Amount
HD Edit Suite Rental	727,500.00	Cameras	749,050.00
On-Line Build/Format	226,000.00	Fringe	471,036.00
Jib Camera Rental	111,600.00	Additional Tape Machines	280,400.00
Office Space/Trailers	141,500.00	Additional Audio	273,747.00
Video Tapes	99,500.00	Lighting	212,750.00
Dubs Music	38,000.00	Additional Storage	45,000.00
Car/Van Rental	29,061.00	Computer Hardware	28,000.00
Set Rental	20,000.00		
Rights/Footage	10,000.00		
Totals	**$1,403,161.00**		**$2,059,983.00**

Of the $8,233,000 in total expenses that Horizon reported to LED on these two productions, $3,463,144 was either inflated, never incurred, or lacked sufficient documentation to justify the awarding of tax credits. As a result, Horizon received at least $1,038,943 in tax credits that should not have been issued.

Details of the tax credit submissions are as follows:

On January 13, 2011, TSS Productions, LLC, a Horizon subsidiary, submitted an audited cost report to LED for the purpose of obtaining motion picture tax credits based upon expenses purportedly incurred during the production of *Saintsational*, a reality TV show intended to document the lives of the New Orleans Saints cheerleaders. With reported expenditures of $3,489,312, Horizon received $1,099,977 in tax credits for *Saintsational* on February 2, 2011. Contrary to claims originally made to LED that S*aintsational* would air, *Saintsational* never aired. LED rules do not require that a production be aired in order to qualify for tax credits.

On March 14, 2011, TCPS Productions, LLC, another Horizon subsidiary, submitted an audited cost report to LED for the purpose of obtaining motion picture tax credits on expenses purportedly incurred during the production of two seasons of *The Sean Payton Show*. With reported expenditures of $4,743,688, Horizon received $1,516,889 in tax credits for this production on June 22, 2011.

TCPS Productions, LLC, hired the Malcolm Dienes CPA firm to perform a cost audit for the first season of *The Sean Payton Show*. After Malcolm Dienes excluded disputed amounts from the audit, Clint D. Mock CPA, LLC was hired to perform a separate audit report, which was submitted instead. (Mr. Mock was also hired to prepare audit reports for *Saintsational* and Season 2 of *The Sean Payton Show*.) Horizon's reported qualifying costs for Season 1 of *The Sean Payton Show* increased by $373,493 in the Clint Mock audit.

Our investigation further revealed that Horizon repeatedly engaged in circular bank transfers of funds with its subsidiaries, creating the false impression that it had spent larger sums of money on both projects. In one example involving Season 2 of *The Sean Payton Show*, funds totaling $2,195,998 were incrementally transferred from Horizon's checking account to the production account and then back to the Horizon account on the same day in amounts no larger than $39,000. Horizon conducted 263 circular transfers that day, which created the appearance that Horizon spent $2,195,998 on the project, when the total was reached only by repeated deposits and withdrawals of the same money. Similar circular transfers occurred concerning the second season of *The Sean Payton Show* and the *Saintsational* project.

Horizon provided LED with bank records reflecting the above transfers and a general ledger showing the dates of deposits and withdrawals prior to the issuance of tax credits on these projects.

Inflated Expenses and Expenses Not Incurred

On January 13, 2011, Horizon submitted an audited cost report to LED for the purpose of obtaining motion picture tax credits for expenses purportedly incurred during the production of *Saintsational*, a reality TV show intended to document the lives of the New Orleans Saints cheerleaders. Based upon reported expenditures of $3,489,312, Horizon received $1,099,977 in tax credits for *Saintsational* on February 2, 2011. Contrary to claims originally made to LED that *Saintsational* would air, *Saintsational* never aired. LED rules do not require that a production be aired in order to qualify for tax credits.

On March 14, 2011, Horizon submitted an audited cost report to LED to obtain motion picture tax credits for expenses purportedly incurred during the production of two seasons of *The Sean Payton Show*. Based upon its reported expenditures of $4,743,688, Horizon received $1,516,889 in tax credits for *The Sean Payton Show* on June 22, 2011.

Horizon hired Clint D. Mock CPA, LLC to provide an audit report of *Saintsational* expenses. LED rejected the audit upon learning that the invoices to support the audit findings did "not present the actual production expenditures made by Horizon in creating the certified production, but simply Horizon's estimate of the market value of its services." LED found that actual expenditures for *Saintsational* were "not presented in the submitted Production Expenditure Report."

Mr. Mock prepared a second cost audit, which he stated was performed to ensure that the transactions listed in the general ledger "actually took place, ie: real monies changed hands." (Mr. Mock was also hired to prepare audit reports for the submissions on *The Sean Payton Show*). However, Mr. Mock stated to us that he did not audit Horizon's costs because Horizon was not his client. The audit submitted to LED, therefore, shows costs which Horizon assessed to the parent company of *Saintsational* and not necessarily costs actually incurred.

OIG investigators interviewed former Horizon employees who stated that Horizon did not spend the amount of money on either production that was claimed in the audit reports. Items on the reports that appear to be inflated or to have never been incurred are listed below.

HD Edit Suite Rental

Horizon claimed an expense of $502,500 for the use of an editing facility during both seasons of *The Sean Payton Show*. It also claimed an HD Edit Suite Rental in the amount of $225,000 for *Saintsational*, which was filmed and produced at least partially at the same time as Season 1 of *The Sean Payton Show*. According to Patrice Gunter, the former Controller at WVUE, and Rachel Wisdom, an attorney for Louisiana Media Company, WVUE charged Horizon no rent for its use of WVUE facilities. Horizon executed a Memorandum of Understanding with the owners of WVUE, which provided Horizon the use of WVUE facilities for an ownership interest, but no monetary exchange.

Horizon employees stated that edit suites are rented by units of time and not by the number of productions during that time. As such, had Horizon actually incurred an edit suite rental cost, it would not have had to pay the lessor for *The Sean Payton Show* Season 1 *and Saintsational* because the two shows were produced at least partially during the same time period. Another employee stated that some S*aintsational* footage was used in certain episodes of *The Sean Payton Show*.

In a written response to LED's questions during its review of the tax credit application and audit, Horizon confirmed that the edit suite rental was for space at Horizon's post production facility in New Orleans. Former Horizon employees stated that Horizon's only post facility was at the WVUE studios.

On-Line Build/Frmt-Layback

Former Horizon employees described On-Line Build/Frmt-Layback as an old television post production method. Horizon reported expenses for this item as $176,000 for both seasons of *The Sean Payton Show* and $50,000 for *Saintsational*.

Horizon invoices used to support this expense contain a description of the service as Video and/or Audio Sweetening. Horizon's former employees explained that sweetening is the final fine tuning of a production before it is released. Some also stated that no sweetening was done to either of these productions. This is normally performed by an outside source because it is a very technical task which requires a highly skilled person. There was no time to send footage out for sweetening because of the short amount of time between the filming of *The Sean Payton Show* and its air time.

A former employee referred to the OIG by Horizon stated that he performed Sweetening work on *Saintsational* and *The Sean Payton Show* Season 1. He also stated that he oversaw Sweetening work performed by another employee during *The Sean Payton Show's* first season. However, that other employee stated to OIG that he performed no Sweetening on either production.

Another former employee referred to the OIG by Horizon stated that he performed "sound mixing" work on *Saintsational*. He also stated that neither *Saintsational* nor *The Sean Payton Show* was sent off for Audio or Video Sweetening as was done with another Horizon project.

Horizon invoices to *The Sean Payton Show* indicate thirty minute increments of Video and Audio Sweetening at $3,000 per unit. If Horizon employees had actually performed this service, they would have been paid their regular salary for doing so, not $6,000 per hour. Other Horizon invoices to *The Sean Payton Show* for Video and Audio Sweetening charged 18 weeks at $5,000 per week.

Jib Camera Rental

A jib camera is a crane-like device with a video camera attached to a boom arm. In Season 1 of *The Sean Payton Show*, Horizon reported Jib Camera expenses of $2,400. Wron Kennedy rented his jib to the production and operated it at a rate of $150 per week, which included one day of filming over approximately 16 weeks. Season 2 of *The Sean Payton Show* reported a jib camera expense of $15,000. Mr. Kennedy stated that Horizon purchased its own jib at the end of Season 1 for approximately $15,000, and used it during Season 2. Mr. Kennedy operated Horizon's camera during Season 2 and was paid $75 per episode. Horizon provided a document to OIG showing that the jib was purchased in October 2009, but provided nothing to show its purchase price or when it was delivered and put into service.

LED allows production companies to claim tax credits on equipment rented to themselves. In order to qualify for tax credits, LED requires that expenditures are actually incurred, are priced at fair market value, and are production related expenses that are not double-dipped.

Horizon reported a jib camera expense of $111,600 for *Saintsational*. The production was shot during the same time period as Season 1 of *The Sean Payton Show*, which appears to have been before Horizon purchased its own jib. Mr. Kennedy stated that his jib may have been used twice for *Saintsational*.

The Horizon invoice to support the *Saintsational* expense claimed a 60 week rental of a jib camera, an operator, a jib assistant, and travel days. Jason Sciavicco, the majority owner of Horizon, stated in an email to his auditor that the jib expense included the jib, a jib operator, and a jib assistant. Horizon employees stated that the jib was rarely used on *Saintsational*, and that there was no jib assistant. Horizon stated through its attorneys that the invoices were really for 60 days of rentals, as projected in a proposed budget submitted to LED, not 60 weeks as stated on the invoices.

Clint Mock stated that he would not have included the charge on his report had he known that the jib camera had not been used for the amount of time reported.

Office Space/Trailers

Horizon claimed to have incurred Office Space expenses totaling $71,500 for both seasons of *The Sean Payton Show* and $70,000 for *Saintsational.* Horizon employees stated that Horizon's only offices were located at WVUE's studios in New Orleans and that Horizon paid no rent to WVUE. Ms. Gunter and Ms. Wisdom confirmed that Horizon was charged no rent at WVUE. Horizon executed a Memorandum of Understanding with Louisiana Media Company Two, LLC, which provided Horizon the use of WVUE facilities for an ownership interest in Horizon with no monetary exchange.

At least four Horizon employees stated that Horizon did not own and never used trailers for either production. One former employee referred to the OIG by Horizon stated that trailers were used on *The Sean Payton Show* but not on *Saintsational*.

Two employees stated that Mr. Sciavicco once came into their office asking for a picture of a trailer that could be used as a production trailer because he needed to convince someone that Horizon owned such a trailer.

Video Tape Purchases

Horizon claimed to have spent $34,000 for at least 1,250 video tapes during Seasons 1 and 2 of *The Sean Payton Show*. It also claimed to have spent $57,500 on 2,200 DVC Pro Stock tapes and $8,000 on Digibeta tapes for *Saintsational*. Some Horizon employees stated that those numbers are greatly exaggerated and that there is no way that so many video tapes were used during the production of these shows.

Horizon employees explained that some cameras that Horizon used recorded on both tapes and video cards. Horizon's former Post Production Coordinator stated that tapes were used on *The Sean Payton Show* while Horizon was converting from tapes to cards in 2010. Other employees stated that cards were used more often because of the ease in which footage can be downloaded to an external storage device. After download, the cards can be wiped and reused.

According to some former Horizon employees, videotapes were erased and reused. Other former employees stated that Horizon never erased or reused videotapes and that Horizon used up to eight videotapes per day.

Former Horizon employees stated that Horizon used video shot by WVUE during Saints games for both productions. This required no video tapes and caused no expense to Horizon because WVUE provided the footage to Horizon at no cost.

A Horizon photographer stated that Horizon bought new Panasonic Vari Cams in October 2009, which record onto electronic cards instead of videotape. There was no need for videotapes after that time.

In a response provided by its attorney to an OIG request for documentation of the video tape expenses, Horizon reported that the video tapes were purchased over the years and were not "purchased specifically for" these two productions. Horizon also explained to LED that "none of the tape stock was purchased specifically for this production." No proof of payment was provided to support Horizon's purchase of videotapes for either production. Horizon provided photographs of videotapes found in storage in Georgia to support its claim that videotapes were used for both productions. However, OIG was unable to verify that the tapes in the photographs were actually used on either production.

Car/Van Rental

After a Season 1 cost of $111, Horizon claimed a $30,000 expense on its cost report for Car/Van Rental for Season 2 of *The Sean Payton Show*. Actual invoices provided to support the Season 2 rentals total $939 and include rentals for a Buick Enclave ($176.30), an unknown Hertz vehicle ($590.91), a Mercedes C300 ($102.95), and a Chrysler van ($68.84). Hollywood Trucks granted Horizon the free use of a van between October 1, 2010 and October 1, 2011 in exchange for advertising on the show. The use of the van is memorialized in a written agreement and valued at $23,000. Horizon corroborated this in its attorney's response to an OIG request.

Horizon claimed that expenses for *The Sean Payton Show* were incurred only until February 15, 2011. Even if the non-monetary amount claimed for the Hollywood Trucks agreement qualified for tax credits (which it did not) any amount assessed past that date would not have been incurred on activities related to *The Sean Payton Show*. Chris Stelly of LED informed Horizon on August 4, 2010 that "any 'non-monetary' transactions will NOT qualify according to law."

Mr. Sciavicco signed a statement prior to release of the audit report attesting that it contained no non-monetary transactions. Clint Mock's audit report states, "There were no non-monetary transactions included in the cost of this production." According to Mr. Mock, his inclusion of the Van Rental expense may have been different had he known that no funds were expended with this transaction. LED would have also rejected the cost had its true nature been disclosed.

Set Rental

Horizon claimed a Set Rental expense of $20,000 on its Season 2 audit report for *The Sean Payton Show*. The show was filmed at the New Orleans Saints practice facility in Metairie. According to Horizon's former Director of Operations, Horizon paid no rent for the set, which once was used by the New Orleans Voodoo Arena Football team. She also stated that Horizon reported an amount to the Saints that was higher than the actual cost to construct the set and that much of the set's labor and materials was donated.

Patrice Gunter, who now works for the New Orleans Saints, stated that the Saints paid a third party vendor $10,000 to create a set for *The Sean Payton Show*, an amount that Horizon was supposed to repay. Ms. Gunter thinks that Horizon repaid the $10,000 after receiving tax credits from the State of Louisiana.

Ms. Gunter also stated that WVUE gave Horizon $180,000 to produce *The Sean Payton Show*. That money was to be repaid to WVUE but the show only generated $150,000 in revenue, leaving Horizon with a debt of $30,000 to WVUE. WVUE did not pursue collection of that debt, but decided to end its relationship with Horizon instead.

Dubs Music

A $38,000 item referred to as Dubs Music appeared on the *Saintsational* audit report. Horizon employees explained that Dubs, listed with a cost of $15,000, is the duplication of videotapes. In its response to LED inquiries, Horizon explained that "Dubs are the different tapes needed for delivery of episodes or shows to the network or distributors." Former Horizon employees explained that costs for dubbing are normally incurred when a production company distributes copies of its final product.

The remaining $23,000 of the invoice is described as "Close Captioning." *Saintsational's* post production employees had no knowledge of closed captioning ever being added to the episodes, which is not required unless an episode appears on air. Three *Saintsational* episodes were completed but never appeared on air. A former Horizon editor stated that the three episodes were immediately shipped to a network before any closed captioning was added.

Horizon did not respond to our request for documentation supporting the cost of closed captioning. Horizon's accountant stated that many Horizon documents were destroyed pursuant to a records retention policy.

The invoice does not enumerate a Music cost, but, according to former employees, refers to the cost of accessing and using music libraries for the purpose of adding a soundtrack to the show.

Rights/Footage

The *Saintsational* audit report included a $10,000 expense referred to as Rights/Footage. The description of the expense in the General Ledger is "Music Fees." Employees responsible for the post production portion of *Saintsational* stated that the music used on the project caused no expense to Horizon because Horizon already subscribed to music library services from which music could be used at no additional cost. They also stated that Mr. Sciavicco did not allow them to spend extra funds on music for the series. They stated that one of the cheerleaders, who was also a musician, donated her own music to the project at no cost. Further, former employees stated that production companies do not have to pay fees to use music on their projects unless the production airs. *Saintsational* never aired.

Lack of Supporting Documentation

Horizon merged both seasons of *The Sean Payton Show* into a single tax credit application, and aggregated all expenditures into a short period of time at the end of both seasons. Doing so inhibited our ability to track invoices and payments over the entire span of the project. Also, Horizon received tax credits for renting its own equipment to itself, which is allowed by LED rules. However, current LED rules do not require usage logs to support the amounts claimed for those rentals.

Examples of insufficient documentation to conduct a proper accounting of tax credit claims are further discussed below. The costs associated with those related party items total $2,059,983, which amounts to $617,995 in tax credits.

Equipment Rental Claims

Horizon claimed a $125,000 expense for lighting equipment on *The Sean Payton Show* and a Lighting/Gaffer expense of $87,750 for *Saintsational*. With no usage logs for such equipment, it is impossible to verify the legitimacy of these claimed expenses. Former Horizon employees stated that Horizon owned lighting that was used on the shows, and that WVUE provided free lighting for Horizon's use.

According to witnesses, many of the cameras used on both productions belonged to Horizon. Horizon included claims of $520,000 for camera rental on *The Sean Payton Show* and $229,050 on *Saintsational*. Again, without usage logs, the accuracy of invoices and amounts claimed on cost reports cannot be verified.

A combined total of $273,747 for Additional Audio Equipment Rental similarly lacks usage logs to justify such expense claims. No documents were provided to show the purpose or actual cost of this claimed expense.

Horizon claimed a *Saintsational* expense of $280,400 for Additional Tape Machines. Horizon explained to LED that the machines were video tape recorders that "were not purchased, but rented from Horizon." Horizon explained to Mr. Mock that the cost included "several tape machines for a period of over 6 months," the rental costs of which ranged from $200 per week to $1,500 per week. No usage logs were provided to support the claim that use of the machines was exclusively related to *Saintsational* during the 277 total weeks that Horizon claims to have used them.

Horizon invoiced *Saintsational* $45,000 for Additional Storage and *The Sean Payton Show* $28,000 for Computer Hardware Rental. No information was provided to enable confirmation of the true nature of the expenses. There are no equipment descriptions, usage logs, or documents to ensure that the equipment was used exclusively on the productions during the timeframe reported.

Personnel Upcharge and Fringe

Prior to submitting its audit to the state, Horizon engaged the Malcolm Dienes CPA firm to provide an audit report. Chris Stelly, LED's Director of Film and TV, and Katie Kuchler, an accountant at Malcolm Dienes, rejected Horizon's attempt to include a ten percent upcharge *and* a fifteen percent fringe charge on claimed expenses. Correspondence from Mr. Stelly and Ms. Kuchler explained to Mr. Sciavicco that tax credits would not be issued as calculated for both charges.

Horizon then terminated Malcolm Dienes and hired Clint D. Mock CPA, LLC. Mr. Mock included the upcharge and the fringe on his audit report. Despite its communication with Horizon, LED allowed the issuance of tax credits on both the upcharge and the fringe amount, which totaled $169,954 for *Saintsational* and $301,082 for both seasons of *The Sean Payton Show*.

For example, a co-host was hired to appear on *The Sean Payton Show*, and was paid $28,750 during Season 1. Horizon, however, included an upcharge on the actual amount paid, and claimed that it paid the co-host $54,000. In addition to the $25,250 ($54,000-$28,750) that Horizon added to its actual cost, it added another $8,100 in fringe cost to the amount that it submitted to obtain tax credits.

Malcolm Dienes found 100% of the $209,602 in fringe expenses for *The Sean Payton Show's* Season 1 to be non-qualifying. The Mock audit increased the qualifying fringe expenses from zero to $155,602, while $54,000 remained as non-qualifying. Executive Fees for *The Sean Payton Show* Season 1 increased from $356,520 in the Dienes draft audit to $445,592 in the Mock audit.

According to LED officials, LED reviews Fringe and Upcharge expenses on a case-by-case basis according to each, unique set of facts.

Labor Costs

Horizon issued an invoice to TCPS Productions, which included a "Coach's Fee" in the amount of $360,000. The invoice was stamped "PAID 11/10/2009." Mr. Sciavicco confirmed to Mr. Stelly that Horizon did not pay Sean Payton for his appearance on the show because the show was part of Coach Payton's structured deal with the Saints. He also stated through his attorneys that "all payments to the coaches were handled by LMC and its affiliates."

Even though Horizon incurred no expense for Coach Payton's appearance on the show and no tax credits were issued for the coach's fee, Horizon sought to use the amount to increase its executive producer fee.

Horizon used its own invoices to support other labor costs claimed in its tax credit applications. Many of the invoices only identify a job title, not the person who performed the service referenced. Without such information, claimed personnel costs cannot be substantiated to a reliable level of certainty.

Source of Funds

The *Saintsational* audit named Horizon Entertainment as the sole source of the $5,019,361 reportedly spent on the project. The source of funds for both seasons of *The Sean Payton Show* totaled $5,383,887. TCPS Investments, which is owned by Horizon, was listed as its sole source of funds. Both of these amounts also include non-qualifying costs which did not generate tax credits.

Horizon's supporting documentation for the payment of production expenses includes checking account statements from accounts used by each project and controlled by Horizon. The expenses for Season 2 of *The Sean Payton Show* were purportedly paid from the TCPS Productions account to Horizon on February 24, 2011 when a total of $2,195,998 was transferred from the Horizon account to *The Sean Payton Show* account in 61 separate online transfers. On the same day, a total of $2,195,998 was transferred back to the Horizon account in 202 separate online transfers.

The funds ostensibly used to pay *The Sean Payton Show* Season 2 expenditures were incrementally transferred from Horizon's checking account to the production account and back to the Horizon account on the same day in amounts no larger than $39,000. The bank statements appear to show that circular transfers were used to create the illusion that Horizon paid $2,195,998 in qualifying expenses, when that amount was reached only by repeated deposits and withdrawals of the same money.

Online transfers of funds between the Horizon and the *Saintsational* accounts and between the Horizon and *The Sean Payton Show* accounts during Season 1 appeared similar to Season 2 in that numerous deposits and withdrawals during short periods of time equaled the same amounts exactly. Horizon provided Mr. Mock with the bank statements that show the repeated deposits and withdrawals. Horizon also provided LED with general ledgers from both productions and intra-bank transfer documents from *The Sean Payton Show* which showed the dates of deposits and withdrawals prior to the issuance of tax credits on these projects.

The $180,000 that Ms. Gunter stated LA Media Productions loaned Horizon was not reported as a source of funds in either audit.

According to a former Horizon employee, Mr. Sciavicco stated at the beginning of Season 2 that he only had $220,000 to produce the entire season of *The Sean Payton Show*. That same employee also stated that two former Horizon employees initiated bank transactions to repeatedly deposit and withdraw funds multiple times to create the appearance that both productions paid Horizon's invoices.

Part of the job duties of Horizon's Director of Operations was to generate invoices to Horizon's customers. She stated that she created none of the Horizon invoices that she reviewed which were submitted to support its claims for tax credits.

Recommendations

1. LED should require that the CPAs who prepare tax credit audits directly trace wire transfers to specific expenses.

2. LED should consider allowing only the actual cost of a related party expenditure to qualify for tax credits or defining a reasonable markup on certain transactions. Any markup should be disclosed and documented. LED should definitively determine whether expenditures that contain both markups and fringe charges, in addition to the actual cost of the item, qualify for tax credits, and determine an acceptable amount that will be allowed.

3. LED should consider seeking statutory authority to:

    a) Deny an entire tax credit application when any part of the application or its supporting documentation is found to be fraudulent.
    b) Implement a lifetime ban on anyone found to have committed fraud on the program.
    c) Require that applicants retain all documentation supporting tax credit claims for at least five years and that applicants consent to provide state investigators with access to those records.
    d) Require a personal affirmation from all tax credit applicants that non-monetary transactions are not included in the audited cost report.

4. LED should consider requiring that tax credit applicants submit detailed usage logs for related party equipment rentals.

A copy of this report has been provided to the East Baton Rouge Parish District Attorney's Office.

APPENDIX A

Responses

LED | LOUISIANA ECONOMIC DEVELOPMENT

John Bel Edwards
Governor

Don Pierson
Secretary

May 25, 2016

Stephen B. Street, Jr.
Louisiana Inspector General
602 North 5th Street, Suite 621
Baton Rouge, Louisiana 70802

Re: Report of Findings Concerning Horizon Entertainment

Dear Mr. Street:

Thank you for the opportunity to respond to the recommendations concerning the above mentioned subject matter.

As you know, LED and the Inspector General have worked together closely for years to combat fraud and abuse within the Louisiana Motion Picture Production Tax Credit Program. In fact it was LED who first referred Horizon Entertainment to your office for further investigation in late 2010[1]. To the best of our knowledge, this initial referral was investigated but did not result in prosecution. Should supplemental information arise from renewed law enforcement investigations, indicating probable cause to believe fraudulent documents have been submitted, LED will review all relevant evidence to reach a definitive determination as to whether there is a case for disallowance and for obtaining a judgment for damages against the responsible parties.

<u>LED's Response to Recommendations</u>

1. Horizon's purported payments for goods and services provided to *The Sean Payton Show* and *Saintsational* were comprised of related party wire transfers. LED should require that the CPAs who prepare tax credit audits directly trace wire transfers to specific expenses.

[1] On February 27, 2015, LED & the OIG released this statement to the press:

LED has no tolerance for abuse of any state incentive program. On several occasions since 2008, LED has referred to the Office of State Inspector General (IG) film tax credit matters where LED's staff has had suspicions of fraud, which could not be confirmed solely from the evidence available to LED, even after a review by a certified fraud examiner engaged by LED. In these instances, further investigation is required by a law enforcement agency that has the authority to subpoena records from third parties. LED also has worked cooperatively with the IG and FBI on some of these cases and others. Some of these cases have resulted in federal prosecutions and convictions while others remain in progress. In the case of Horizon Entertainment, which recently was the focus of an investigative TV report by FOX 8, LED referred its concerns about Horizon (including the Saintsational and Family Gras productions) to the IG in approximately late 2010. That initial referral was investigated by the IG but did not result in prosecution. With new information revealed by FOX 8, LED has asked the IG to revisit all Horizon Entertainment productions that received film production tax credits. As the investigation has been reopened, there will be no further comment from the Inspector General.

LED agrees in part with this recommendation. LED feels that the CPA has the duty and obligation under their governing standards to ensure that expenditures are properly audited and subsequently verified before issuing a report. The CPA fully understands that the state is relying upon their opinion to issue tax credits. However, LED will consider adding additional guidelines for our CPAs to review all electronic fund transfers.

Note: As recommendations #'s1, 2, & 4 all address related party transactions (RPT), LED notes that this has been an area of concern for some time, but that many changes have been made since 2010 to provide greater scrutiny and control measures to ensure that credits are only issued on legitimate related party transactions, documented at appropriate rates. Two measures in particular are noteworthy; 1) <u>RPT restrictions</u>. The amount of credits that may be earned for certain types of RPT's are now limited by statute, and 2) <u>Improved control measures for scrutiny of RPT's</u>. LED now selects and engages with CPA's directly to review film project financial records, and has the ability to officially refer suspicious RPT activity to the Inspector General for further investigation, see La R.S. 47:6007 (D) (9).

2. LED should consider allowing only the actual cost of a related party expenditure to qualify for tax credits or defining a reasonable markup on certain transactions. Any markup should be disclosed and documented. LED should definitively determine whether expenditures that contain both markups and fringe charges, in addition to the actual cost of the item, qualify for tax credits, and determine an acceptable amount that will be allowed.

   LED agrees in part with this recommendation. Specifically, that any mark up or fringe should be disclosed by the applicant in any related party transaction, and documented by the CPA in their verification report. LED can then make a determination of whether such charges qualify for tax credits, after review of all pertinent evidence, and compliance with applicable statutory provisions and administrative rules.

3. LED should consider seeking statutory authority to:

   a) Deny an entire tax credit application when any part of the application or its supporting documentation is found to be fraudulent. ***LED agrees with this recommendation.***

   b) Implement a lifetime ban on anyone found to have committed fraud on the program. ***LED agrees with this recommendation.***

   c) Require that applicants retain all documentation supporting tax credit claims for at least five years and that applicants consent to provide state investigators with access to those records. ***LED agrees with this recommendation.***

   d) Require a personal affirmation from all tax credit applicants that non-monetary transactions are not included in the audited cost report. ***LED agrees with this recommendation. Currently state law requires an attestation statement from the production and the CPA has the obligation to disclose any and all non-monetary***

transactions. In the case of these two productions, the CPA states explicitly that there are NO NON-MONETARY TRANSACTIONS included in the report.

4. Horizon included related party equipment rental fees in its application for tax credits with no record of what equipment was used or when. LED should consider requiring that tax credit applicants submit detailed usage logs for related party equipment rentals.

   LED agrees that more detailed logs of equipment usage claimed in a related party transaction should be provided but it is not standard industry practice to maintain detailed usage logs for all types of equipment and impractical to require for all transactions.

Please let me know if you have any further questions regarding this matter.

Sincerely,

Don Pierson
Secretary

CHAFFE McCALL
L. L. P.

May 25, 2016

Walter F. Becker, Jr.
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Baton Rouge, LA 70804-9095

Re: Horizon Entertainment and Productions, LLC
Our File No. 45207

Dear Mr. Street:

Attached for your review is our Response to your office's report relating to our above-captioned client. We hereby request that this Response be included as an attachment to your report.

We would like to thank you and Agent Tom Boulton for giving us the opportunity to present evidence to you about our client and for meeting with us in your office on May 23, 2016.

Sincerely,

Walter F. Becker, Jr.
Mandy M. Gagliardi

WFB/sbr
Enclosures

RESPONSE

Horizon Entertainment and Productions, LLC (Horizon) was heavily recruited by business leaders with the Louisiana Department of Economic Development (LED) to relocate its production business from Georgia to Louisiana to be part of the "Hollywood South" initiative which would bring movie jobs and revenue to Louisiana.

Horizon has cooperated fully with the Louisiana Office of State Inspector General (OIG) during its review of motion picture tax credit submissions. Horizon has voluntarily provided hundreds of documents to OIG and has arranged for OIG to interview many of its former employees.

The tax credits issued to Horizon by LED for the productions *The Sean Payton Show* and *Saintsational* were proper. In obtaining these tax credits, Horizon followed the rules set forth by the Louisiana Motion Picture Statute (La. R.S. 47:6007), consulted on an ongoing basis with LED about the two productions, and fully disclosed financial transactions related to the two productions to LED before the production expenditures were certified.

Horizon welcomes the opportunity to respond to the specific sections set forth in the OIG report and will begin by stating the following key points:

- **Several of the ex-Horizon employees who were selectively interviewed by WVUE and later interviewed by OIG are biased against Horizon because they were terminated by Horizon before there were any inquiries by the press or OIG and/or they are currently employed by WVUE or its affiliated companies.**
- **The allegations by these select ex-employees are directly refuted by documents and witnesses that Horizon has provided to OIG during its review.**
- **The financial transactions and expenditures related to the two productions were**

fully disclosed to LED before LED certified the production expenditures and all transactions were open and conspicuous.

- **LED utilized its own independent auditor to review *Saintsational* as well as the equipment owned by Horizon and rented to TSS Productions, LLC and TCPS Productions, LLC before any tax credits were certified.**

Executive Summary

WVUE television broadcasted several investigative reports about the tax credits issued to TSS Productions, LLC and TCPS Productions, LLC. These press reports were flawed and erroneous. The reports were based largely on WVUE's interviews of certain select ex-employees of Horizon. It appears that these same select ex-employees also provided information to the OIG and are referenced in its report. There are several other former employees of Horizon that WVUE chose not to interview. Fortunately, OIG did interview several other former Horizon employees. Four important things should be noted about the ex-employees that WVUE selected. First, several of them were terminated by Horizon before there were any inquiries by the press or OIG. These individuals are biased against Horizon. Second, several of these select ex-employees currently work for WVUE or its affiliated companies. Third, all of these select ex-employees are in the news or local production business not the national broadcast or movie production business and therefore are not knowledgeable about standard practices in this high level production business world. Lastly, the allegations by these select ex-employees are directly refuted by documents and witnesses that Horizon has provided to OIG during its investigation.

The OIG report contains a chart of alleged inflated or unsupported expenses. Horizon maintains that the expenses listed are not inflated or unsupported and the conclusions drawn by OIG are incorrect.

OIG states that TSS Productions, LLC, a Horizon subsidiary, obtained tax credits for the production *Saintsational*, but this production never aired. Horizon responds that the Louisiana Motion Picture Statute (La. R.S. 47:6007), which was in effect at the time of production and is currently still in effect, allows for tax credits to be issued for productions that have not aired and only have a distribution plan. Determination of validity of the distribution plan is made at the time LED accepts the pre-certification application for a project and not at the time of the expenditure certification. The fact that a project is not distributed in accordance with the original plan submitted to LED at the time of initial certification does not prohibit the certification of qualified expenditures by the production company. *Saintsational* had a distribution plan. At the time of initial certification of the project, *Saintsational* was set to air as a series.

The OIG report references that TCPS Productions, LLC hired one CPA firm to do a cost audit for the first season of *The Sean Payton Show* and then hired another CPA firm when the first firm excluded disputed amounts from the audit. Horizon responds that TCPS Productions, LLC and TSS Productions, LCC selected a new CPA firm because the first CPA firm advised the production companies that its fees would be increasing significantly on all audits and that the *Saintsational* audit and *The Sean Payton Show* audit would not be able to be completed timely as they had numerous audits in line before these could be completed. In sum, the second CPA firm was more affordable than the first CPA firm and the second CPA firm could conduct the audits in a timelier manner.

There are references to a number of bank transfers between Horizon's checking account and bank accounts of the production companies "creating the false impression that it (Horizon) had spent larger sums of money on both projects." Horizon strongly denies that these bank transfers were made for any improper purpose. The bank transfers which are referenced were all fully disclosed to LED by Horizon before the production expenditures were certified. Specifically, Horizon provided bank documents to LED which showed all of these bank transfers. On December 1, 2010, Michael Daigle, who was an independent auditor for LED, sent a letter to Ms. Stephanie LeGrange, staff attorney for Office of Entertainment Industry Development, a division of LED, which advised her that Horizon had engaged in the bank transfers referenced above. After this letter was received by LED, LED requested a conference call with Horizon representatives to discuss the two projects. During this call, LED instructed Horizon about how to proceed and these instructions were later communicated by Horizon to the CPA. Audits were issued by the CPA to the production companies and submitted to LED for review. Horizon also provided additional expenditure support as requested by LED. LED certified the tax credits. The State Certification Letter from LED to TCPS Productions, LLC dated September 11, 2009 specifically states:

> "(4) The entire amount of the base investment made in connection with *The Sean Payton Show* will be invested into TCPS Productions LLC. The funds comprising the base investment are to be deposited into one or more of TCPS Productions, LLC's Louisiana bank accounts. All expenditures related to *The Sean Payton Show* and included in the base investment will be managed, administered and paid either (i) by TCPS Productions LLC out of TCPS Productions LLC's Louisiana bank account …"

In accordance with this directive in the State Certification Letter, Horizon transferred funds to the respective production companies to comply with these written requirements from LED. In sum, the bank transfers were fully disclosed to LED, were open and conspicuous transfers, and were done for the purpose of complying with LED's rules.

The audits for both *The Sean Payton Show* and *Saintsational* have extensive notes outlining the related party transactions. The notes well exceed any written guidance from LED regarding audit reports for related party transactions. The CPA has even stated that he coldcalled numerous employees of Horizon to determine what jobs they performed and what work they did on each production. This diligent work by the CPA adds additional credibility to the audits that were not only submitted to LED for full review but were blessed by LED with the issuance of tax credits.

It is also important to note that OIG interviewed a former Horizon employee who explained that Horizon was solicited to relocate to the State of Louisiana from Georgia to become a "homegrown" production company in Louisiana. She also advised OIG that she was personally aware that Horizon was in constant contact with LED regarding how to structure its projects because she participated in those communications.

Inflated Expenses and Expenses Not Incurred

OIG references audit reports of the productions which were submitted to LED, a second cost audit which was provided to LED, and certain comments made to OIG by the CPA who prepared these reports. Horizon responds that these two audits show amounts actually charged by Horizon and actually paid by the company producing each production (TCPS Productions, LLC or TSS Productions, LLC). In accordance with the Louisiana Motion Picture Statute (La. R.S. 47:6007) and the rules and regulations which were in effect at the time and are currently in effect, auditors must audit the expenditures at the production company level for all projects, including those projects that are related party productions. The CPA's audits included extremely detailed notes discussing the related party transactions. LED was made fully aware of the related party transactions and reviewed those transactions before the tax credits were certified.

It is also important to note that in *The Sean Payton Show* audit and the *Saintsational* audit, the CPA states "The results of these tests indicated that the amounts paid by TCPS Productions" (TSS) "to Horizon contained in this cost report, were below what we have seen to be fair market value based on actual transactions between Horizon and unaffiliated parties in the industry for comparable projects and comparable services."

The OIG report proceeds to list the items in the audit reports that may be inflated or did not occur. Horizon strongly denies that these expenses are inflated or that they were not incurred and addresses the specific categories in question as set forth below.

HD Edit Suite Rental

OIG states that witnesses have told OIG that WVUE charged Horizon no rent for use of WVUE's facilities. Horizon responds that it provided OIG with a confidential Memorandum of Understanding (MOU) between Horizon and Louisiana Media Company Two, LLC which provided Horizon with use of office space and a sound stage. This MOU clearly shows that Horizon paid consideration (something of substantial value) to Louisiana Media Company Two, LLC (an entity owned by WVUE's owners) in order to use the portion of the building allocated to Horizon. Horizon gave a percentage ownership of its company to Louisiana Media Company Two, LLC as consideration.[1] The MOU clearly states that the exchange of a percentage in Horizon is for lease of the office space and sound stage. However, no equipment was included in the MOU and no equipment was contributed to the partnership by Louisiana Media Company Two, LLC.

As the name of this expenditure account implies, high definition editing equipment was leased by Horizon to the production company in order to edit video and audio at the production offices. The OIG report states that ex-Horizon employees stated that Horizon's only post facility was at the Horizon offices in New Orleans. Horizon agrees with this statement. A quick Google search illustrates that the term "post facility" or "post production facility" includes not only the

[1] It should be noted that when the owners of Louisiana Media Company Two, LLC were considering whether to buy an ownership in Horizon, a representative of the owners met with two officials with the LED Office who assured them that Horizon conducted its productions in a proper manner and did things right.

space in which to perform the editing but also all of the specialized equipment to accomplish the actual editing to produce an end product.

Horizon owned all of the specialized equipment necessary to perform editing of the productions and to completely set up the HD Edit Suites. These HD Edit Suites were even inventoried by an individual that OIG interviewed and this inventory listed 9 separate edit suites at Horizon's facility. The documentation showing the equipment included in these editing suites was provided to OIG.

It is also important to note that LED asked a specific question during the certification review process about the HD Edit Suite Rental. Mr. Christopher Stelly, Director of Film for LED, asked the production company "19. HD edit suite rental – where was this done?" Since he posed this question, it is clear that Mr. Stelly, being very knowledgeable about the post production process, understood from the name of the account that the charge was for equipment that was used in the post production edit process and not just a room. Mr. Stelly was doing his due diligence by confirming that this activity took place in Louisiana in order for the expenditure to earn tax credits. In addition, Mr. Stelly even traveled to the Horizon facility in New Orleans to see the edit suites and the Horizon offices. The amount charged by Horizon to the production companies for rental of these high-tech suites was appropriate and reasonable.

<u>On-Line Build/Frmt-Layback</u>

OIG references Horizon's charges for video and audio sweetening. Horizon responds that it has provided OIG with several documents confirming that LED allows production companies to charge market rates for their equipment and staff if the production company also provides such services to third parties. Horizon used market rates in calculating its charges.

OIG advises that former Horizon employees stated that no video and/or audio sweetening was done to either *The Sean Payton Show* or *Saintsational*. OIG advises that it interviewed a former Horizon employee who stated that he performed Sweetening work on *Saintsational* and *The Sean Payton Show* Season 1. He also stated that he personally oversaw Sweetening work performed by another individual. However, this individual when interviewed by OIG denied doing any sweetening. Horizon responds that this individual was terminated by Horizon for errors he made during the production process of Sweetening. Another former Horizon employee was interviewed by OIG and advised that audio sweetening was done but was not done in a specific dedicated room at the Horizon production offices but it was instead done in one of the multiple editing suites that Horizon had in their production offices. He also said that all editing suites contained various editing equipment and nothing was sent off to a third party for audio sweetening. He specifically advised OIG that there were "sound fixes" (i.e. audio sweetening) performed on the productions. Horizon offered LED links to *The Sean Payton Show* to establish that final video and audio sweetening was done on all episodes. However, OIG declined to review these.

Horizon further responds that it gave OIG a listing of files which shows the dates and times of editing which was done on *Saintsational*. This document clearly shows that there was editing taken place on the *Saintsational* project from at least June 2009 through September 2010. The same listing also shows that an ex-Horizon employee who stated in the WVUE reports that he only worked on *Saintsational* for two weeks actually worked on the project over a five month period.

Jib Camera Rental

OIG references the amounts that Horizon charged for jib camera expenses and ex-employees were interviewed who stated that the jib camera was "rarely used." Horizon responds that it provided documents to OIG which included a newspaper article written by Mike Scott of NOLA.com which was published on June 15, 2009. In that article, the reporter specifically references the "always moving jib camera" that he saw during the filming of *The Sean Payton Show*. Also, OIG interviewed a former Horizon employee who advised OIG that a jib was used on *Saintsational*. In addition, OIG interviewed another former Horizon employee who advised that Horizon purchased a jib during the season that the Saints won the Super Bowl and that the jib traveled to the Super Bowl in Miami. This witness advised that he operated the jib. He stated that Wron Kennedy shot *The Sean Payton Show* with the jib. He said that Horizon rented a jib to shoot additional footage including the parade for the Saints in New Orleans after the Super Bowl. He stated that freelancers were used to operate the jib for the Saints parade. Also, OIG interviewed another former Horizon employee who stated that Wron Kennedy and another named individual operated the jib. This witness stated that Horizon first rented a jib but then purchased a jib sometime around 2010. This witness stated that he saw the jib being used outside the set of *The Sean Payton Show* and remembers it being transported to the Super Bowl in Miami. In addition, Horizon recalls that the jib was in fact utilized for the Super Bowl Parade in New Orleans for the *Saintsational* production.

The OIG report also references a Horizon invoice which was submitted in support of a *Saintsational* expense which claimed a 60 week rental of a jib camera, an operator, a jib assistant, and travel days. Horizon responds that it provided OIG with several documents which establish that the jib rental expense was for 60 days, not for 60 weeks. The invoices that Horizon utilized for all projects including *Saintsational* has a generic column entitled "Qty/Wk." The budget that was submitted to LED by TSS Productions, LLC clearly states that the jib camera was budgeted to be used for a total of 60 days at a rate of $1,800 a day and not for 60 weeks.

Contrary to the statement in the report, Horizon did in fact provide OIG with documentation regarding the purchase price and the placed in service date of the jib. Horizon provided detailed depreciation and amortization schedules from calendar year 2010. This document states that the jib itself was placed into service on January 19, 2010 and it was purchased at a cost of $14,734.00. This amount only included the jib itself and not the additional components that make up the entire jib package (jib, wheels, tri-pod, operator, gimbal remote control, and monitors) that was rented to and utilized by the production companies.

Office Space/Trailers

The OIG report references expenses submitted by the production companies to LED for office space. It references OIG interviews of witnesses who stated that Horizon was charged no rent at WVUE. It also references the Memorandum of Understanding (MOU) between Horizon and Louisiana Media Company Two, LLC which provided that Horizon could use WVUE facilities at no charge. Horizon responds that, as outlined above in regard to the HD Editing Suites, Horizon paid Louisiana Media Company Two, LLC consideration (something of substantial value) in exchange for using the office space at WVUE. This is set forth in the MOU between Horizon and Louisiana Media Company Two, LLC. The expenses paid by the production companies to Horizon are consistent with the rates paid by third party production companies for this office space.

The OIG report states that OIG interviewed ex-Horizon employees who stated that Horizon did not own and never used trailers. Horizon responds that OIG also interviewed a former Horizon employee who advised OIG that Horizon did use trailers and trucks. Horizon strongly denies the allegation regarding an alleged request to employees for a picture of a trailer as there is no evidence of any office trailer picture being submitted to the CPAs or LED in connection with these productions.

Video Tape Purchases

The OIG report sets forth the amounts that the production companies submitted as an expense for videotapes during Seasons 1 and 2 of *The Sean Payton Show* and tapes for *Saintsational*. It states that OIG interviewed ex-Horizon employees who stated that those numbers were greatly exaggerated and there is no way that some of the videotapes were used during the production of these shows. Horizon responds that it gave OIG photographic evidence of thousands of tapes that were used in *Saintsational* and some of which were used in *The Sean Payton Show*. The tapes still have original footage on them and have not been erased. Horizon invited OIG to inspect these tapes. Further, Horizon provided OIG with pictures of the tape stock room used during the production of the show as well as tape log notes documenting specific footage on the specific tape. In addition, OIG interviewed a former Horizon employee who stated that Horizon used eight videotapes per day and "this can add up quickly." Further, another former Horizon employee was interviewed by OIG and advised that *Saintsational* was a "tape based" project. He stated that the tapes used for *Saintsational* were kept and not reused so that the footage would be available for editing and reediting. This witness stated that he still has tapes from 15 years ago for projects that he worked on.

Car/Van Rental

The OIG report states that the expense claimed by TCPS Productions, LLC for car/van rental for Season two of *The Sean Payton Show* are not adequately supported by invoices.

Horizon responds that TCPS Productions, LLC did pay Horizon for the use of the van. These charges were billed by Horizon to TCPS Productions, LLC and TCPS Productions, LLC paid the invoices. In accordance with LED rules, TCPS Productions, LLC paid Horizon for the use of the van in accordance with market rates. LED has stated on countless occasions that if a company (Horizon) can establish to the satisfaction of the auditor and LED that the company charges the same rate to third parties, the company (Horizon) may charge that same rate for an item on one of its related productions.

The OIG report states that the value of the van "was memorialized in a written agreement and valued at $23,000." What is not referenced in the OIG report is that the written agreement goes on to state that "the Vendor agrees to provide additional production vehicles upon the Producers request for special projects of a television production nature". In addition, OIG interviewed former Horizon employees who stated that there were always production vehicles available to be used to transport all of the production equipment and employees to and from the production shoots. One former Horizon employee interviewed by OIG stated that he recalled two production vehicles available at all time and that there was sometimes a third vehicle brought in as needed by the staff. The van was utilized by nonrelated productions that contracted with Horizon for its services. Because of the passage of time, Horizon was unable to retrieve all of the support relating to the Car/Van Rental expenditures.

Set Rental

The OIG report discusses the set rental expense that TCPS Productions, LLC claimed for *The Sean Payton Show*. Horizon responds that, just like the office space rental discussed above, Horizon gave consideration (something of substantial value) to Louisiana Media Company Two, LLC in return for renting two spaces on South Jefferson Davis Parkway and one space on Airline Drive. TCPS Productions, LLC also purchased several items to go into the building of the set on Airline Drive. The amount claimed by Horizon for this set rental expense was consistent with, if not below, market rates.

Originally, *The Sean Payton Show* was to be filmed on the sound stage located on South Jefferson Davis Parkway that is covered by the Confidential MOU between the two owners of Horizon, but due to Coach Payton's extremely busy schedule, the filming had to be relocated to a facility very close to the Saint's Practice Facility on Airline Drive. After this change of plans, it was the agreement between the owners of Horizon that the set space provided by Louisiana Media Company Two, LLC on Airline Drive would also be covered under the terms of the Confidential MOU.

Dubs Music

The OIG report states that ex-Horizon employees explained that costs for dubbing are incurred when a production company distributes copies of its final product but that *Saintsational* was never distributed. Horizon responds that *Saintsational* was in fact distributed. This is confirmed by paragraph 2 on page 8 of the OIG report which states that OIG interviewed an ex-Horizon editor who stated that three episodes of *Saintsational* were shipped to a network before any closed captioning was added. This shipment to a network constituted distribution. In addition, Horizon recalls that a total of six episodes were shipped to the network. Per standard procedure in the industry, Horizon would not have sent any tapes out to a customer if they had not been dubbed.

Rights/Footage

The OIG report states that ex-employees responsible for the post-production portion of *Saintsational* stated that Horizon incurred no music fees on the project but included it as a $10,000 expense to the LED. Horizon responds that OIG interviewed a former Horizon employee who advised that Horizon did use stock music libraries during the productions. These music libraries were available for use during the editing process when music was added to the footage. The six episodes referenced above that were shipped to a network included music from the stock music libraries owned by Horizon.

Lack of Supporting Documentation

The OIG report states that OIG was unable to track invoices and payments over the span of *The Sean Payton Show* because of the way the tax credit application was completed (both seasons of *The Sean Payton Show* were merged into one tax credit application) and because no usage logs were kept by Horizon. The report states that Horizon failed to maintain sufficient documentation of its expenditures. Horizon responds that at the time of these productions and currently there is no LED rule that requires any production company to keep usage records or logs of items rented by the production company. In addition, per LED's instructions, TCPS Productions, LLC amended its original tax credit application to include both seasons of *The Sean Payton Show*. The combination of the two seasons into one tax credit application was confirmed by a letter from Chris Stelly to TCPS Productions, LLC dated May 2, 2011. Further, Horizon was unable to provide some of the requested records due to the age of the requested records. Horizon's outside accountant provided a written statement to OIG confirming that numerous Horizon records were destroyed per her firm's standard record retention policy. The documents were destroyed in advance of any press reports or any other review of this matter.

Equipment Rental Claims

The OIG report states that the OIG cannot verify the legitimacy of the lighting expenses claimed by Horizon because of no usage logs. Horizon responds that it provided OIG several paid invoices from third parties for supplies to service lighting owned by Horizon to be used on both productions and provided pictures from the sets of the productions that show the lighting fixtures being used. In addition, former employees of Horizon have advised OIG that productions of this type do not keep usage logs showing when equipment is used on the production.

The OIG report states that Horizon's claims for camera, additional audio equipment rental, additional tape machines, additional storage, and computer hardware rental are not documented by equipment descriptions, usage logs, and other documents. Horizon responds that the Louisiana Motion Picture Incentive Statute and Rules do not have any provisions that equipment used on a production should be accounted for in a usage log. In addition, several Horizon employees who continue to work in the television production industry on a national level were interviewed by OIG and advised that productions similar to *Saintsational* and *The Sean Payton Show* would not use equipment logs and the national television shows that they are currently working on do not use equipment logs. These former employees also advised OIG that equipment is rented for the duration of the production and is available to be used as needed for the production. In addition, Horizon has also provided OIG with several photographs of equipment in use by both of the productions.

Personal Upcharge and Fringe

Fringe is a slang term used most often in the production industry and refers to fringe benefits or a fringe benefit rate. A fringe benefit rate is the cost of an employee's benefits divided by the wages paid to an employee for the hours working on the job. Fringes, as the term is utilized in the motion picture and television industry, relates to numerous additional expenditures that a production company incurs due to the employment of individuals. Fringe rates are composed of the employer matching portion of federal and state payroll tax (Social Security and Medicare) as well as federal and state unemployment insurance contributions and workers compensation. The rate for state unemployment fluctuates and the amount charged for workers compensation is different for each production position. The base percentage used to calculate Fringes is normally set somewhere between 15% and 20%. The fringe calculation normally also includes a component to accrue for sick leave and vacation for employees. This additional percentage would be determined by the employer. Horizon only charged the productions a flat 15% fringe rate to cover its expenditures relating to the above referenced employer costs to be paid to third parties and nothing additional to accrue for any other employee expenditures. The OIG report states that LED reviews fringe expenses "on a case by case basis." Here, LED not only reviewed these expenditures but had conference calls with Horizon to discuss the expenditures. LED specifically reviewed these items and certified the expenditures.

It should be noted that there is no line item in either the *Saintsational* audit or *The Sean Payton Show* audit referencing "Personal Upcharge" and the OIG report does not provide a clear picture as to their concerns regarding "personal upcharge" other than to say that it is not allowed. Horizon is unable to provide a response to this allegation.

<u>Labor Costs</u>

The OIG report questions an invoice that Horizon issued to TCPS Productions, LLC which included a Coach's Fee for Sean Payton in the amount of $360,000. Horizon responds that Horizon did receive payments from TCPS Productions, LLC for providing Coach Payton to be part of the production of *The Sean Payton Show*. Horizon provided this documentation to OIG. In addition, Horizon provided OIG with an "on behalf payment waiver" letter form that is currently used by LED to confirm that LED allows and certifies such expenditures for tax credits. The waiver letter states that an expenditure which is made by someone other than the production company for the benefit of the project shall be considered to have been made "on behalf of" the production company and allows the production company to obtain tax credits on a payment made by another. LED uses these letters to confirm that the party making the payment on behalf of the production company will not attempt to request tax credit certification for this same payment. It should be noted that the reverse is also true. LED grants tax credits to the production company for payments made by another party on behalf of the production company.

Due to the confidential nature of Coach Payton's employment contract, the CPA was unable to review his contract. Therefore, TCPS Productions, LLC chose to remove the Coach's Fee from the qualified expenditures listed in the audit report. No tax credits were ever issued on the $360,000 payment made by TCPS Productions, LLC to Horizon for the lengthy access to Coach Payton to do a weekly show. It should also be noted that there is no Coach's Fee included in the audit for Season 2 relating to Coach Payton. Once TCPS Productions, LLC became aware that it would be unable to provide the CPA with the necessary contracts, it excluded all costs associated with Coach Payton's performance for Season 2.

The OIG report alleges that the Coach's Fee was included to increase the Executive Producer Fee charged by Horizon to TCPS Productions, LLC. This allegation is not true and is unsupported. No party questions that Coach Payton's services were properly valued at $360,000. A total of 18 episodes were originally budgeted for Season 1. Due to the success of the Saints during the 2009 season, five additional episodes were added for a total of 23 episodes filmed and produced during Season 1. Horizon only charged TCPS Productions, LLC the Coach's Fee for the original 18 budgeted shows and not the additional five episodes. This is yet another indication of Horizon's good faith.

<u>Source of Funds</u>

The OIG report states that the *Saintsational* audit named Horizon Entertainment as the sole source of funds for the project. *The Sean Payton Show* audit named TCPS Investments, LLC as the sole source of funds. Horizon responds that documents which Horizon provided to LED shows Horizon as the source of funds for both TCPS Productions, LLC and TSS Productions, LLC.

The OIG questions certain bank transfers that were made between the Horizon bank account, the TCPS production account, and the TSS production account. Horizon denies that these bank transfers were made for that purpose. Bank records depicting all of these bank transfers were provided to LED before the production expenditures were certified. The bank transfers were done for a legitimate purpose based on guidance from LED representatives as well as the clear language of the State Certification Letter from LED. All these bank transfers between the entities were presented in an open and conspicuous manner to LED. A former Horizon employee advised OIG that she personally knows that Horizon was in constant contact with Chris Stelly and other representatives of LED regarding questions about the tax incentives and how to properly account for transactions for both *Saintsational* and *The Sean Payton Show*.

It should also be noted that Horizon provided OIG with email correspondence between Mr. Chris Stelly, three unknown parties and the CPA regarding related party expenditures. The date of the email is March 16, 2011. This email correspondence shows that other production companies were following the same guidance given to Horizon by LED. In particular, "If a company is separate and apart from a related entity and can verify that fact to the CPA (and our office) and happens to provide goods or services to a related project, then that company would be treated as an arms-length transaction." Here, the two production companies were separate and apart from Horizon and produced productions in the State of Louisiana.

As referenced above, LED requested a conference call with Horizon and Horizon's counsel. Horizon has provided OIG with email correspondence documenting the call. LED representatives on the January 11, 2011 call were Chris Stelly, Stephanie LeGrange, and Sherri McConnell, executive director of Office of Entertainment Industry Development, a division of LED. During this call, LED representatives explained what modifications needed to be made to the audit for it to be accepted and the expenditures certified by LED. They confirmed that the production expenditures would be certified based on rules and guidance in place at the time these two projects were initially certified by LED and based on the current structure set up for these productions as outlined in the report by LED's independent auditor Mr. Daigle. LED stated that the audit notes should be detailed and that they would ask for all of the supporting documentation including bank records. Horizon communicated these instructions to the CPA conducting the audits and he completed his audit process and produced the audit reports. LED used these audit reports to issue tax credits to TCPS Productions, LLC and TSS Productions, LLC.

Recommendations

Horizon supports most of the recommendations listed by OIG with regard to revising the current tax credit rules which are administered by LED. However, Horizon submits that Recommendation #4 with regard to usage logs is not consistent with industry practice.

The evidence clearly shows that Horizon, TSS Productions, LLC and TCPS Productions, LLC complied with the Louisiana Motion Picture Statute (LA. R.S. 47:6007) and Rules which were in effect at the time that the productions were initially certified and which are still in effect. Because OIG relied heavily on ex-employees that have been discredited by their bias and the evidence, the transactions related to the two productions were fully disclosed to LED before LED certified the production expenditures, all financial transactions were open and conspicuous, and LED utilized its own independent auditor to review expenditures and Horizon's equipment before certifying the tax credits, OIG's conclusions are incorrect.

Due to the amount of communication between Horizon and LED, it is clear that LED was not deceived by any of these expenditures and that LED had full and complete knowledge and understanding of the transactions. The relationship between Horizon and LED was a close and good relationship and Horizon believed then and continues to believe now that LED properly certified the tax credits for *The Sean Payton Show* and *Saintsational*.

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