
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Clifton W. Gillespie.

DIGEST

Present law relative to tax credits for musical and theatrical productions, defines "base investment" to include expenditures or investments made as production expenditures for a state-certified musical or theatrical production or expenditures in the state for the construction, repair, or renovation of a state-certified musical or theatrical facility infrastructure project.

Proposed law redefines "base investment" to mean the actual investment made and expended in this state by a state-certified musical or theatrical production as production-related costs or as capital costs of a state-certified musical or theatrical facility infrastructure project.

Present law defines "expended in the state" to mean expenditures for tangible property to be used within the state; and in the case of services, expenditures for services performed within the state; and in the case of intangible property, and the acquisition of permits, licenses, or other rights related to state-certified musical or theatrical productions or state-certified musical or theatrical facility infrastructure projects used within the state.

Proposed law redefines "expended in the state," or "expenditures in the state" to mean an expenditure to acquire or lease immovable property in the state, to acquire moveable property from a source within the state which is subject to state sales and use tax, or as compensation for services performed within the state which is subject to state income tax.

Present law defines "production expenditures" to mean development, production, or operating expenditures in this state for a state-certified production, and enumerates a number of specific items included in the definition.

Proposed law deletes the specific listing and redefines "production expenditures" to mean a contemporaneous exchange of cash or cash equivalent for goods or services related to development, production, or operating expenditures in this state for a state-certified musical or theatrical production, including, but not limited to expenditures for set construction and operation, including special and visual effects, costumes, wardrobes, make-up, accessories, costs associated with sound, lighting, staging, payroll and other related costs.

Present law states that "production expenditures" does not include any indirect costs, any expenditures later reimbursed by a third party, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production. Proposed law retains present law and provides that "production expenditures" does not include any costs related to the transfer of the tax credits.

Proposed law provides that non-qualifying projects under the definition of a state-certified musical or theatrical production include non-touring music and cultural festivals, industry

seminars, and trade shows.

Present law lists authorized income tax credits for state-certified productions and state certified musical or theatrical facility infrastructure projects. Proposed law adds that if all or a portion of an infrastructure project is a facility which may be used for purposes unrelated to live performance production or production-related activities, then requires that the proposed base investment be approved only if the secretary of the Department of Economic Development determines the following:

- (a) The multiple-use facility will support and be necessary to secure live performance production activity for the project.
- (b) The applicant provides sufficient contractual assurance that the project, including any multiple-use portion thereof, will be used as a live performance production facility, or as a support and component thereof, for the useful life of the facility.

Present law provides that the credit is allowed against individual or corporate income tax of the "companies" or "financiers" [defined as people or other entities] of the production or infrastructure project in accordance with their share of the credit as provided for in the application for "certification" for the production or infrastructure project. Authorizes the transfer of the credit on a one-time basis, and/or any refund of an overpayment, to an individual or other entity, provided that the transfer is not effective until receipt by DOR. Allows the credit for the taxable period in which expenditures eligible for a credit are expended. Any excess of the credit over the income tax constitutes an overpayment and a refund of the overpayment is made from the current collections of income taxes.

Proposed law retains present law and clarifies that the secretary of the Department of Revenue is to make a refund of the overpayment.

Present law provides that the secretary of DED, the commissioner of administration, and the office of the governor determines which productions and which infrastructure projects are to be "certified" through the adoption and promulgation of rules by DED, in consultation with the commissioner of administration and the office of the governor.

Proposed law retains these provisions but deletes references to the commissioner of administration and the office of the governor.

Present law requires that prior to adoption, the rules promulgated by DED be approved by House Committee on Ways and Means and Senate Committee on Revenue and Fiscal Affairs. Proposed law provides that this approval be in accordance with the Administrative Procedure Act.

Present law requires DED, the commissioner of administration, and the office of the governor to consider certain factors when determining certification of a project.

Proposed law removes the commissioner of administration and the office of the governor from

this process.

Present law provides for consideration as to the contribution by a project to establishing the state as a cultural center for all the classic disciplines in the performing arts from creation to presentation, for touring productions as well as local artists.

Proposed law changes this to whether the project will establish the state as a leader in the live performance industry.

Present law provides for consideration of whether a project's availability and kind of musical or theatrical facilities within the area in which it is to be located is sufficient to provide production and presentation of all the classic disciplines in the performing arts.

Proposed law retains the factor of availability and kind of musical or theatrical facilities within the area in which an infrastructure project is proposed, but deletes that it be sufficient to provide production and presentation of all the classic disciplines in the performing arts.

Present law provides that upon approval by DED, the commissioner of administration, and the office of the governor, DED "initially certifies" a production or project as a state-certified production or state-certified infrastructure project and sends notice of such certification to the applicant and to the secretary of DOR. Proposed law removes the commissioner of administration and the office of the governor from this process.

Present law provides that prior to "final certification" of a production or infrastructure project, the applicant must submit to DED a report of the final amount of qualifying expenditures, which report DED may require to be prepared by an independent CPA. DED must review the report and, upon the consent of the commissioner of administration and the office of the governor, issue a "final tax credit certification letter," certifying the applicant and indicating the type and amount of tax credits for which the applicant or other companies or financiers are eligible. An applicant is required to reimburse DED for any audits required in relation to granting the certification or tax credits. Proposed law removes the commissioner of administration and the office of the governor from this process.

Present law requires an applicant for the tax credit to submit an application for "initial certification" to DED for state-certified production and infrastructure projects that includes certain specified information.

Proposed law requires that the application also be based on the following:

- (1) 0.2 percent times the estimated total incentive tax credits.
- (2) The minimum application fee is \$200, and the maximum application fee is \$5,000.
- (3) The application fee shall be deposited upon receipt by the state treasury into a special fund, to be known as the Entertainment Promotion and Marketing Fund, after compliance

with the Bond Security and Redemption Fund.

- (4) The money in the fund shall be appropriated by the legislature solely for promotion and marketing of the states entertainment industry. The money in the fund shall be invested by the treasurer in the same manner as money in the state general fund and interest earned on the investment shall be credited to the fund. Further requires all unexpended and unencumbered money in the fund at the end of the fiscal year must remain in the fund.

Present law provides that if the office of the governor, DED, or DOR find that funds for which credits were received were not expended for "production expenditures" or were not "expended in the state" for an infrastructure project, then the taxpayer's income tax for such taxable period must be increased by the amount necessary for the recapture of the credit. The taxes may be recovered through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December thirty-first of the year in which the credit was taken. Interest is assessed at a rate of three percentage points above the legal interest rate in R.S. 9:3500(B)(1), which must be computed from the original date of the return on which the credit was taken. Proposed law deletes reference to the office of the governor.

Present law provides that the division of administration and DED are required, with input from the Legislative Fiscal Office, to prepare a written report to be submitted to the Senate Revenue and Fiscal Affairs Committee and the House Ways and Means Committee no less than 60 days prior to the start of the 2008 RS, and every second year thereafter. Proposed law deletes reference to the division of administration.

Proposed law requires that as a condition for receiving certification of tax credits that a state-certified production or infrastructure project display the state brand or logo, or both, as prescribed by the secretary of DED.

Effective August 15, 2009.

(Amends R.S. 47:6034(A), (B)(1), (3), (6), (9)(a), (C)(2)(a), (D)(1), 6034(E)(1)(a)(i)(intro para), 6034(E)(1)(a)(ii), 6034(E)(1)(c)(intro para), 6034(E)(1)(c)(i) and (v), 6034(E)(1)(d)(intro para), 6034(E)(1)(e) and (f), (2), (3), (F)(1) and (G); adds R.S. 47:6034(C)(1)(e) and (I))