

Regular Session, 2009

SENATE BILL NO. 123

BY SENATOR MICHOT

TAX/TAXATION. Changes the musical recording investor tax credits to "sound" recording credits, eliminates the January 1, 2020 termination date, and provides for payments to the investors upon certification. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:6023, relative to income tax credits; to provide for a sound
3 recording investor tax credit; to provide for certain definitions; to remove certain
4 limitations of the sound recording investor tax credit; to provide for certification and
5 payment of the tax credit; to require the display of the state brand or logo as a
6 condition of receiving the credit; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:6023 is hereby amended and reenacted to read as follows:

9 §6023. Sound recording investor tax credit

10 A. Purpose. The primary objective of this Section is to encourage
11 development in Louisiana of a strong capital and infrastructure base for ~~musical~~
12 sound recording productions in order to achieve a more independent, self-supporting
13 music and sound recording industry. This objective is divided into immediate and
14 long-term objectives as follows:

15 (1) Immediate objectives are to:

16 (a) Attract private investment for the production of musical recordings or
17 "sound recordings" in Louisiana.

1 (b) Develop a tax and capital infrastructure which encourages private
2 investment. This tax infrastructure is to provide for state participation in the form of
3 tax credits to encourage investment in state-certified ~~musical~~ **sound** recording
4 productions and infrastructure.

5 (c) Develop a tax infrastructure utilizing tax credits which encourage
6 investments in multiple state-certified production projects.

7 (2) Long-term objectives are to:

8 (a) Encourage increased employment opportunities within this sector and
9 increased global ~~competition in fully developing~~ **competitiveness by fully utilizing**
10 economic development options within the music and **sound** recording industries.

11 (b) Encourage new education curricula in order to provide a labor force
12 trained in all aspects of ~~musical~~ **sound** recording production.

13 (c) Encourage the development of a Louisiana ~~music~~ **sound** recording
14 production infrastructure with state-of-the-art facilities.

15 B. Definitions. For the purposes of this Section:

16 (1) "Base investment" shall mean the actual investment made and expended
17 **in the state** by a state-certified production ~~in the state~~ as production-related costs
18 ~~and/or in~~ **or as capital costs of** a state-certified ~~musical~~ **sound** recording
19 infrastructure project.

20 (2) "Expended in the state" **or "an expenditure in the state" shall mean an**
21 **expenditure to acquire property from a source within the state which is subject**
22 **to state sales and use tax, or an expenditure as compensation for services**
23 **performed within the state which is subject to state income tax.**

24 (3) "Sound recording" means a recording of music, poetry, or spoken-word
25 performance made in Louisiana, in whole or in part. The term "sound recording"
26 shall not include the audio portions of dialogue or words spoken and recorded as part
27 of a ~~motion picture, video, theatrical production,~~ television news coverage, ~~and~~ **or**
28 athletic events.

29 (4) "Sound recording production company" shall mean a company engaged

1 in the business of producing sound recordings as defined in this Section. Sound
2 recording production company shall not mean or include any person or company, or
3 any company owned, affiliated, or controlled, in whole or in part, by any company
4 or person, which is in default on a loan made by the state or a loan guaranteed by the
5 state, nor which has ever declared bankruptcy under which an obligation of the
6 company or person to pay or repay public funds or monies was discharged as a part
7 of such bankruptcy.

8 (5) "State-certified ~~musical~~ **sound** recording infrastructure project" means a
9 ~~musical~~ **sound** recording capital infrastructure project and ~~costs~~ **base investment**
10 related to such project that are approved by the Louisiana Department of Economic
11 Development within one hundred eighty days of the receipt by the Department of
12 Economic Development of a complete application for initial certification of an
13 infrastructure project. If the infrastructure project is not approved within one hundred
14 eighty days, the Department of Economic Development shall provide a written report
15 to the Senate Committee on Revenue and Fiscal Affairs and the House Committee
16 on Ways and Means which states the reason that the infrastructure project has not
17 been approved.

18 (6) "State-certified production" means a sound recording production, or a
19 series of productions occurring over the course of a twelve-month period, and ~~costs~~
20 **base investment** related to such production or productions that are approved by the
21 Louisiana Department of Economic Development within one hundred eighty days
22 of the receipt by the Department of Economic Development of a complete
23 application for initial certification of a production. If the production is not approved
24 within one hundred eighty days, the Department of Economic Development shall
25 provide a written report to the Senate Committee on Revenue and Fiscal Affairs and
26 the House Committee on Ways and Means which states the reason that the
27 production has not been approved.

28 C. Investor tax credit; state-certified productions and infrastructure projects.

29 (1) ~~Until January 1, 2010, there~~ **There** is hereby authorized a credit against

1 the state income tax for investments made in state-certified productions and state-
2 certified ~~musical~~ **sound** recording infrastructure projects. The tax credit shall be
3 earned by investors at the time expenditures are certified by the Louisiana
4 Department of Economic Development according to the total base investment
5 certified for the sound recording production company per calendar year. However,
6 no credit shall be allowed under this Section for any expenditures for which a credit
7 was granted under R.S. 47:6007. ~~However, no sound recording production company~~
8 ~~shall earn a sound recording investor tax credit in more than three years out of any~~
9 ~~five-year period.~~

10 (a) ~~For state-certified productions and state-certified musical recording~~
11 ~~infrastructure projects certified prior to July 1, 2007, the tax credit shall be as~~
12 ~~follows:~~

13 (i) ~~If the total base investment is greater than fifteen thousand dollars and less~~
14 ~~than or equal to one hundred fifty thousand dollars, each investor shall be allowed~~
15 ~~a tax credit of ten percent of the base investment made by that investor.~~

16 (ii) ~~If the total base investment is greater than one hundred fifty thousand~~
17 ~~dollars and less than or equal to one million dollars, each investor shall be allowed~~
18 ~~a tax credit of fifteen percent of the base investment made by that investor.~~

19 (iii) ~~If the total base investment is greater than one million dollars, each investor shall~~
20 ~~be allowed a tax credit of twenty percent of the base investment made by that~~
21 ~~investor.~~

22 (b) ~~For state-certified productions and state-certified musical recording~~
23 ~~infrastructure projects certified on and after July 1, 2007, **and state-certified**~~
24 ~~**infrastructure projects which have been applied for on or before August 1,**~~
25 ~~**2009,** each investor shall be allowed a tax credit of twenty-five percent of the base~~
26 ~~investment made by that investor in excess of fifteen thousand dollars.~~

27 (2) Sound recording investor tax credits associated with a state-certified
28 production shall never exceed the total base investment in that production or ~~musical~~
29 **sound** recording infrastructure project.

1 (3) Except as otherwise provided in this Paragraph, the aggregate amount of
2 credits certified for all investors pursuant to this Section during any calendar year
3 shall not exceed three million dollars.

4 (a) An application for initial certification of a project shall be submitted to
5 the Louisiana Department of Economic Development prior to the granting of the
6 credit, and the granting of credits under this Section shall be on a first-come, first-
7 served basis. The secretary of the Louisiana Department of Economic Development
8 shall determine through the promulgation of rules the administration of the annual
9 aggregate maximum. ~~Prior to adoption~~ **In addition**, these rules shall be approved by
10 the House Committee on Ways and Means and the Senate Committee on Revenue
11 and Fiscal Affairs **in accordance with provisions of the Administrative Procedure**
12 **Act**.

13 (b) If the total amount of credits applied for in any particular year exceeds the
14 aggregate amount of tax credits allowed for that year, the excess will be treated as
15 having been applied for on the first day of the subsequent year.

16 ~~D.(1) The credit shall be allowed against the individual or corporate income~~
17 ~~tax for the taxable period in which the credit is earned. Any excess of the credit over~~
18 ~~the income tax liability against which the credit can be applied shall constitute an~~
19 ~~overpayment, as defined in R.S. 47:1621(A), and the secretary shall make a refund~~
20 ~~of such overpayment from the current collections of the taxes imposed by Chapter~~
21 ~~1 of Subtitle II of this Title, as amended. The right to a refund of any such~~
22 ~~overpayment shall not be subject to the requirements of R.S. 47:1621(B).~~

23 ~~(2) Application of the credit. Individuals, estates, and trusts shall claim any~~
24 ~~credit allowed under this Section on their income tax return.~~

25 ~~(a) Entities not taxed as corporations shall claim any credit allowed under this~~
26 ~~Section on the returns of the partners or members.~~

27 ~~(b) Corporate partners or members shall claim their share of the credit on~~
28 ~~their corporation income tax returns.~~

29 ~~(c) Individual partners or members shall claim their share of the credit on~~

1 ~~their individual income tax returns.~~

2 ~~(d) Partners or members that are estates or trusts shall claim their share of the~~
3 ~~credit on their fiduciary income tax returns.~~

4 E D. Certification and administration

5 (1) The secretary of the Department of Economic Development shall
6 determine through the adoption and promulgation of rules which projects and
7 expenditures, including amounts expended in this state on state-certified
8 infrastructure projects, qualify according to this Section. ~~Prior to adoption~~ **In**
9 **addition**, these rules shall be approved by the House Committee on Ways and Means
10 and the Senate Committee on Revenue and Fiscal Affairs **in accordance with the**
11 **provisions of the Administrative Procedure Act**. When determining which
12 projects qualify, the Louisiana Department of Economic Development shall take the
13 following factors into consideration:

14 (a) The impact of the production on the immediate and long-term objectives
15 of this Section.

16 (b) The impact of the production on the employment of Louisiana residents.

17 (c) The impact of the production on the overall economy of the state.

18 (d) The availability of similar infrastructure facilities within fifty miles of the
19 proposed infrastructure project.

20 (2)(a) Application. An applicant for the sound recording investor tax credit
21 shall submit an application for initial certification to the Louisiana Department of
22 Economic Development that includes the following information:

23 (i) For state-certified productions the application shall include:

24 (aa) The distribution plan.

25 (bb) A preliminary budget including estimated Louisiana payroll and
26 estimated base investment.

27 (cc) A description of the type of sound to be recorded.

28 (dd) A list of the principal creative elements including performing artist(s)
29 and producer.

1 (ee) The name and address of the recording studio or other location where the
2 recording production will take place.

3 (ff) A statement that the production will qualify as a state-certified
4 production.

5 (gg) Estimated start and completion dates.

6 (ii) For state-certified ~~musical~~ **sound** recording infrastructure projects the
7 application shall include:

8 (aa) A detailed description of the infrastructure project.

9 (bb) A preliminary budget.

10 (cc) A statement that the project meets the definition of a state-certified
11 infrastructure project.

12 (dd) Estimated start and completion dates.

13 (b) If the application is incomplete, additional information may be requested
14 prior to further action by the Louisiana Department of Economic Development.

15 (c) The Louisiana Department of Economic Development shall submit its
16 initial certification of a project as a state-certified production or a state-certified
17 ~~musical~~ **sound** recording infrastructure project to investors and to the secretary of
18 the Department of Revenue. The initial certification shall include a unique
19 identifying number for each state-certified production.

20 (d) Prior to any certification of the state-certified production or infrastructure
21 project, the sound recording production company shall submit to the Louisiana
22 Department of Economic Development a cost report of production or project
23 expenditures which the Louisiana Department of Economic Development may
24 require to be prepared by an independent certified public accountant. The Louisiana
25 Department of Economic Development shall review such expenditures and shall
26 issue a tax credit certification letter to the investors indicating the amount of tax
27 credits certified for the state-certified production or state-certified infrastructure
28 project.

29 (3) The secretary of the Louisiana Department of Economic Development,

1 in consultation with the Department of Revenue, shall adopt and promulgate such
2 rules and regulations as are necessary to carry out the intent and purposes of this
3 Section in accordance with the general guidelines provided herein.

4 (4) Any taxpayer applying for the credit shall be required to reimburse the
5 Louisiana Department of Economic Development for any audits required in relation
6 to granting the credit.

7 (5) With input from the Legislative Fiscal Office, the Louisiana Department
8 of Economic Development shall prepare a written report to be submitted to the
9 House Committee on Ways and Means and the Senate Committee on Revenue and
10 Fiscal Affairs no less than sixty days prior to the start of the Regular Session of the
11 Legislature in 2007, and every second year thereafter. The report shall include the
12 overall impact of the tax credits, the amount of the tax credits issued, the number of
13 new jobs created, the amount of Louisiana payroll created, the economic impact of
14 the tax credits and ~~music~~ **sound recording** industry, the amount of new
15 infrastructure that has been developed in the state, and any other factors that describe
16 the impact of the program.

17 **E. After final certification, the Louisiana Department of Economic**
18 **Development shall submit the tax credit certification letter to the Department**
19 **of Revenue on behalf of the investor who earned the sound recording tax**
20 **credits. The Department of Revenue may require the investor to submit**
21 **additional information as may be necessary to administer the provisions of this**
22 **Section. Upon receipt of the tax certification letter and any necessary additional**
23 **information, the secretary of the Department of Revenue shall make payment**
24 **to the investor in the amount to which he is entitled from the current collections**
25 **of the taxes collected pursuant to Chapter 1 of Subtitle II of this Title, as**
26 **amended.**

27 F. Recapture of credits. If ~~the Louisiana Music Commission~~ and the
28 Department of Economic Development find that funds for which an investor
29 received credits according to this Section are not invested in and expended with

1 respect to a state-certified production within twenty-four months of the date that such
2 credits are earned, then the investor's state income tax for such taxable period shall
3 be increased by such amount necessary for the recapture of credit provided by this
4 Section.

5 G. Recovery of credits by Department of Revenue

6 (1) Credits previously granted to a taxpayer, but later disallowed, may be
7 recovered by the secretary of the Department of Revenue through any collection
8 remedy authorized by R.S. 47:1561 and initiated within three years from December
9 thirty-first of the year in which the twenty-four month investment period specified
10 in Subsection F of this Section ends.

11 (2) The only interest that may be assessed and collected on recovered credits
12 is interest at a rate three percentage points above the rate provided in R.S.
13 9:3500(B)(1), which shall be computed from the original date of the return on which
14 the credit was taken.

15 (3) The provisions of this Subsection are in addition to and shall not limit the
16 authority of the secretary of the Department of Revenue to assess or to collect under
17 any other provision of law.

18 **H. Brand. As a condition for receiving certification of tax credits under**
19 **this Section, state-certified productions may be required to display the state**
20 **brand or logo, or both, as prescribed by the secretary of the Department of**
21 **Economic Development.**

22 Section 2. This Act shall become effective upon signature by the governor or, if not
23 signed by the governor, upon expiration of the time for bills to become law without signature
24 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
25 vetoed by the governor and subsequently approved by the legislature, this Act shall become
26 effective on the day following such approval.

The original instrument was prepared by Christopher D. Adams. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Broussard-Johnson.

DIGEST

Michot (SB 123)

Present law authorizes a state income tax credit for investments in state-certified productions and state-certified musical recording infrastructure projects. Provides that the credit is available until January 1, 2010. Proposed law changes the credit to a "sound recording" credit and removes the January 1, 2010 termination date.

Present law prohibits a sound recording production company from earning a sound recording investor tax credit in more than three years out of a five year period. Provides that the tax credit for productions and infrastructure projects certified prior to July 1, 2007 equal the following amounts:

- (1) Ten percent of the base investment made by the investor, if the total base investment is greater than \$15,000 but less than or equal to \$150,000.
- (2) Fifteen percent of the base investment made by the investor, if the total base investment is greater than \$150,000 but less than or equal to \$1,000,000.
- (3) Twenty percent of the base investment made by the investor, if the total base investment is greater than \$1,000,000.

Proposed law deletes these provisions.

Present law provides that the credit for production and infrastructure projects certified on and after July 1, 2007 equal 25% of the "base investment" made by the investor. Proposed law retains these provisions but limits the credit for infrastructure projects to those which have been have been applied for on or before August 1, 2009.

Proposed law re-defines "base investment" upon which the credit is based to mean investments made and "expended in the state" and specifies that the costs eligible for infrastructure projects are "capital costs." Changes the definition of "expended in the state" to specify that an expenditure for tangible property must be acquired from a source within the state which is subject to state sales tax and an expenditure for services performed in the state must be subject to state income tax.

Present law requires the secretary of the Department of Economic Development (DED) to promulgate rules for determining who qualifies for the tax credit and that such rules sales be approved "prior to adoption" by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Proposed law retains present law but removes the requirement for approval "prior to adoption" and specifies that the approval of the rules by the legislative committees shall be in accordance with the Administrative Procedure Act.

Proposed law deletes provisions that the credit be allowed against the individual or corporate income tax for the taxable period in which the credit is earned. Deletes provisions that any excess of the credit over the income tax liability constitutes an overpayment and that a refund be made of this overpayment to the investor claiming the credit.

Proposed law requires that after final certification, DED submit the tax credit certification letter to the Department of Revenue (DOR) on behalf of the investor who earned the tax credits. Requires that upon receipt of the tax credit certification letter, DOR is to make

payments to the investor in the amount to which he is entitled from the current collections of the taxes collected pursuant to present law. Authorizes the secretary of DOR to require additional information from the investor prior to making payment.

Present law provides that if the Louisiana Music Commission and the DED determine that funds for which an investor has received tax credits are not being invested in and expended with respect to a certified production within 24 months from the date the credits are earned, then requires that the investor's state income tax for the taxable period be increased in an amount necessary to recapture the amount of the credit. Proposed law retains these provisions but removes the Louisiana Music Commission from the process involving recapture of the credit.

Proposed law requires that as a condition for receiving certification of tax credits, state-certified productions may be required to display the state brand or logo, or both, as prescribed by DED.

Effective upon signature by the governor or upon lapse of time for gubernatorial action.

(Amends R.S. 47:6023)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill.

1. Limits the credit for infrastructure projects to those which have been applied for on or before August 1, 2009.
2. Changes the definition of a cost "expended in the state" required to earn the credit to specify that an expenditure for tangible property must be acquired from a source within the state which is subject to state sales tax and an expenditure for services performed in the state must be subject to state income tax.
3. Makes the requirement for display of a decal or brand on a production receiving a credit discretionary on the part of the secretary of DED.

Senate Floor Amendments to engrossed bill.

1. Technical correction made.
2. Clarifies after "final" certification, the DED shall submit the tax credit certification letter to DOR on behalf of the investor who earned the sound recording tax credits.