

ACT No. 197

Regular Session, 2013

HOUSE BILL NO. 483

BY REPRESENTATIVE NANCY LANDRY

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AN ACT

To amend and reenact R.S. 47:6034(A), (B)(4), (8), (9), (10), and (11), (C)(1)(a)(ii)(aa) and (bb) and (3), (E)(1)(e) and (F), to enact R.S. 47:6034(B)(12) and (J), and to repeal R.S. 47:6034(C)(1)(b), (e), and (f), relative to income tax credits for state-certified musical and theatrical productions and state-certified infrastructure projects; to extend the time period for granting certain tax credits; to provide with respect to a tax credit for state-certified higher education musical or theatrical infrastructure projects; to provide relative to certain definitions; to provide for certain requirements and limitations; to provide with respect to the application for such tax credits and certification of productions and infrastructure projects; to provide for the disallowance of credits; to provide for the recovery of credits; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6034(A), (B)(4), (8), (9), (10), and (11), (C)(1)(a)(ii)(aa) and (bb) and (3), (E)(1)(e) and (F) are hereby amended and reenacted and R.S. 47:6034(B)(12) and (J) are hereby enacted to read as follows:

§6034. Musical and theatrical production income tax credit

A. Purpose. It is the intention of the legislature in creating these five different types of tax credits: a credit for qualified production expenditures made from investments in a state-certified musical or theatrical production; a credit for the construction, repair, or renovation of facilities related to such productions and performances; ~~a credit for qualified transportation costs for performance-related property~~; a credit for the payroll of Louisiana residents employed in connection with a state-certified musical or theatrical production; and a credit for employing college,

1 university, and vocational-technical students employed in connection with a state-
 2 certified musical or theatrical production, to establish and promote Louisiana as one
 3 of the primary places in the United States in which live performances, from creation
 4 to presentation, are present and thriving. The live performance industry will enhance
 5 economic development because it fits well with the state's reputation as a tourist
 6 destination, will offer numerous and varied employment opportunities, and in
 7 conjunction with the available federal and state incentives, will be an attraction for
 8 new and relocating businesses and will provide for the reinventing of countless
 9 abandoned properties as either performance or rehearsal spaces. The live
 10 performance industry will also spur educational development: Louisiana colleges,
 11 universities, and vocational-technical schools will be able to offer talented
 12 undergraduate and graduate students from this state, other states, and around the
 13 world a real-world opportunity to participate in degree programs across the state that
 14 work on the various productions in accounting, law, management, and marketing and
 15 to fill arts-related positions such as actors, writers, producers, stagehands, and
 16 directors, as well as technicians working on all aspects of the production such as
 17 lighting, sound, and actual stage production and operations.

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

19 * * *

20 (4) ~~"Limited state-certified musical or theatrical production" means a~~
 21 ~~musical or theatrical production or a series of productions occurring in Louisiana by~~
 22 ~~a nonprofit community theater that held a public performance before an audience~~
 23 ~~within this state during the 2008 calendar year which has been certified, verified, and~~
 24 ~~approved in accordance with the provisions of this Section. "Infrastructure~~
 25 ~~expenditures" means expenditures directly related to the state-certified infrastructure~~
 26 ~~project or state-certified higher education infrastructure projects including land and~~
 27 ~~land acquisition costs, construction costs, design fees, furniture, fixtures, and~~
 28 ~~equipment purchased subject to a sale agreement or capital lease. Infrastructure~~
 29 ~~expenditures shall not include indirect costs such as general administrative costs,~~
 30 ~~insurance, or any costs related to the transfer or allocation of tax credits. The~~

1 Department of Economic Development may determine whether expenditures
 2 submitted as production-related costs of capital costs related to an infrastructure
 3 facility represent legitimate expenditures for the actual costs of related goods or
 4 services that have economic substance and a business purpose related to the certified
 5 production or facility, or such costs constitute constructive dividends, self-dealing,
 6 inflated prices or similar transactions entered into for the purpose of inflating the
 7 amount of tax credits earned rather than for the benefit of the production or facility.

* * *

9 (8) "Related party transaction" means a transaction between parties deemed
 10 to be related by common ownership or control under generally accepted auditing
 11 principles. Related party transaction expenditures may be subject to limitations as
 12 provided for by rules and regulations promulgated by the department.

13 (9)(a) "Resident" or "resident of Louisiana" means a natural person and, for
 14 the purpose of determining eligibility for the tax incentives provided by this Section,
 15 a person who qualifies for any of the following reasons:

- 16 (i) The person is domiciled in the state of Louisiana.
- 17 (ii) The person maintains a permanent place of abode within the state and
 18 spends in the aggregate more than six months of each year within the state.
- 19 (iii) The person pays taxes to the state on the amount of money paid to such
 20 person for which a credit is sought pursuant to this Section.

21 (b) A company owned or controlled by such a person and which lends the
 22 services of such a person for a state-certified musical or theatrical production shall
 23 also be deemed a resident if such company is organized or authorized to do business
 24 in the state and such company pays taxes to the state on the amount of money paid
 25 to such company for such services of such person.

26 ~~(9)~~(10) "State-certified higher education musical or theatrical infrastructure
 27 project" means a new proscenium or black-box theatre infrastructure project situated
 28 on a parcel of land located on the campus of a higher education institution in this
 29 state, that is owned by a higher education campus institution or support foundation
 30 related to the campus primarily operated to benefit and support campus students and

1 the higher education facility. The primary purpose of the proposed infrastructure
2 facility must be to host live performances, and the facility must have a minimum
3 fixed seating capacity of five hundred. Expenditures attributable to areas other than
4 where live performances will take place may comprise no more than twenty-five
5 percent of total qualifying expenditures.

6 (11)(a) "State-certified musical or theatrical facility infrastructure project"
7 or "state-certified infrastructure project", for any project which receives initial
8 certification before July 1, 2013, means a capital infrastructure project in the state
9 directly related to the production or performance of musical or theatrical productions
10 as defined in this Section, and movable and immovable property and equipment
11 related thereto, or any other facility that supports and is a necessary component of
12 such facility, and any expenditures in the state related to the construction, repair, or
13 renovation of such project, ~~which~~ that are certified, verified, and approved as
14 provided for in this Section.

15 (b) "State-certified musical or theatrical infrastructure project" or "state
16 certified infrastructure project", for any project which receives initial certification
17 on or after July 1, 2013, means a new or rehabilitated proscenium or black-box
18 theatre infrastructure project located in the state and any expenditures in the state
19 directly related to the construction, repair, or renovation of such project, which are
20 certified, verified, and approved as provided for in this Section. The primary
21 purpose of the proposed facility must be to host live performances and the facility
22 must have a minimum capacity of five hundred. Expenditures attributable to areas
23 other than where live performances will take place may comprise no more than
24 twenty-five percent of total qualifying expenditures.

25 ~~(10)(a)~~(12)(a) "State-certified musical or theatrical production" means a
26 musical or theatrical production performed in this state including but not limited to
27 concerts, musical tours, ballet, dance, comedy revue, or live variety entertainment,
28 or a series of productions occurring over the course of a twelve-month period, and
29 the recording or filming of such production, that originate, are developed, or have
30 their initial public performance before an audience within Louisiana, or that have

1 their United States debut within Louisiana, and the production expenditures,
 2 expenditures for the payroll of residents, ~~transportation expenditures,~~ and
 3 expenditures for employing college and vocational-technical students related to such
 4 production or productions, that are certified, verified, and approved as provided for
 5 in this Section. Non-qualifying projects include but are not limited to non-touring
 6 music and cultural festivals, industry seminars, ~~and trade shows,~~ and any production
 7 activity taking place outside the state.

8 (b) A "state-certified musical or theatrical production" that shall be eligible
 9 for recertification and the credit provided for in this Section shall include a
 10 previously certified musical or theatrical production that received a credit pursuant
 11 to this Section and is otherwise eligible pursuant to this Section, that returns for
 12 performances within the state after being performed on Broadway.

13 ~~(11)(a) "Transportation expenditures" means expenditures for the packaging,~~
 14 ~~crating, and transportation both to the state for use in a state-certified musical or~~
 15 ~~theatrical production of sets, costumes, or other tangible property constructed or~~
 16 ~~manufactured out of state, and/or from the state after use in a state-certified musical~~
 17 ~~or theatrical production of sets, costumes, or other tangible property constructed or~~
 18 ~~manufactured in this state. Such term shall include the packaging, crating, and~~
 19 ~~transporting of property and equipment used for special and visual effects, sound,~~
 20 ~~lighting, and staging, costumes, wardrobes, make-up and related accessories and~~
 21 ~~materials, as well as any other performance or production-related property and~~
 22 ~~equipment; provided that transportation services are purchased through a company~~
 23 ~~which has a significant business presence in the state.~~

24 ~~(b) "Transportation expenditures" shall not include any costs to transport~~
 25 ~~property and equipment to be used only for filming and not in a state-certified~~
 26 ~~production, any indirect costs, any expenditures that are later reimbursed by a third~~
 27 ~~party, or any amounts that are paid to persons or entities as a result of their~~
 28 ~~participation in profits from the exploitation of the production.~~

29 C. Income tax credits for state-certified productions and state-certified
 30 musical or theatrical facility infrastructure projects:

1 (1) There is hereby authorized the following types of credits against the state
2 income tax:

3 (a)

4 * * *

5 (ii)(aa) ~~Until~~ For state-certified infrastructure projects that receive initial
6 certification on or before January 1, 2014, a base investment credit may be ~~granted~~
7 earned for ~~certified, verified, and approved~~ expenditures made in the state on or
8 before January 1, 2015, for the construction, repair, or renovation of a state-certified
9 musical or theatrical facility infrastructure project or for investments made by a
10 company or a financier in such infrastructure project which are, in turn, expended for
11 such construction, repair, or renovation, not to exceed ten million dollars per state-
12 certified infrastructure project, under conditions provided for in this Item. No more
13 than sixty million dollars in tax credits under this Section shall be granted for
14 infrastructure projects per year.

15 (bb) ~~If all or a portion of an infrastructure project is a facility which may be~~
16 ~~used for other purposes not directly related to the production or performance of~~
17 ~~musical or theatrical production activities, then the project shall be approved only if~~
18 ~~a determination is made that the multiple-use facility will support and will be~~
19 ~~necessary to secure musical or theatrical production activities for the musical or~~
20 ~~theatrical production or performance facility and the applicant provides sufficient~~
21 ~~contractual assurances that:~~ For state-certified higher education musical or theatrical
22 infrastructure projects that receive initial certification on or before January 1, 2018,
23 a base investment credit may be earned for expenditures made in the state on or
24 before January 1, 2022, for the construction, repair, or renovation of a new state-
25 certified higher education musical or theatrical facility infrastructure project, or for
26 investments made by a company or a financier in such infrastructure project that are,
27 in turn, expended for such construction, repair, or renovation. No more than ten
28 million dollars in tax credits per project or sixty million dollars total in tax credits
29 shall be granted for state-certified higher education musical or theatrical
30 infrastructure projects. Twenty-five percent of the total base investment provided

1 for in the initial certification letter of a state-certified higher education musical or
 2 theatrical infrastructure project must be expended on or before January 1, 2020, in
 3 order for the project to earn credits for the remaining estimated base investment
 4 provided for in the initial certification letter, as expenditures are made in the state on
 5 or before January 1, 2022. No credits shall be certified until the state-certified higher
 6 education musical or theatrical infrastructure project is complete. The initial
 7 certification letter shall be effective for qualified expenditures made no more than
 8 six months prior to the date of application. State-certified higher education musical
 9 or theatrical infrastructure projects shall not be subject to the provisions of Subitem
 10 (cc) of this Item nor shall such projects be subject to the provisions of Subsection H
 11 of this Section.

12 ~~(F) The facility will be used for the production or performance of musical or~~
 13 ~~theatrical production activities, or as a support and component thereof, for the useful~~
 14 ~~life of the facility.~~

15 ~~(H) No tax credits shall be earned on such multiple-use facilities until the~~
 16 ~~facility directly used in musical or theatrical productions or performances is~~
 17 ~~complete.~~

18 * * *

19 (3) Tax credits associated with a state-certified musical or theatrical
 20 production or a state-certified musical or theatrical facility infrastructure project shall
 21 never exceed the total base investment in that production or infrastructure project
 22 and transportation expenditures.

23 * * *

24 E. Certification and administration:

25 (1)

26 * * *

27 (e) Prior to the final certification of a production or infrastructure project, the
 28 applicant shall submit to the Department of Economic Development ~~a report~~ an audit
 29 of the final amount of expenditures qualifying for credits pursuant to this Section,
 30 which report the Department of Economic Development may require to be prepared

1 by an independent certified public accountant. The Department of Economic
2 Development shall review the ~~report~~ audit and shall issue a final tax credit
3 certification letter, certifying the applicant and indicating the type and amount of tax
4 credits for which the applicant or other companies or financiers are eligible pursuant
5 to this Section.

6 * * *

7 ~~F.(1) Recapture of credits. If the Department of Economic Development, or~~
8 ~~the Department of Revenue find that funds for which a taxpayer received credits~~
9 ~~according to this Section were not expended for expenditures qualifying for a credit~~
10 ~~as provided in this Section, then the taxpayer's state income tax for such taxable~~
11 ~~period shall be increased by such amount necessary for the recapture of credit~~
12 ~~provided by this Section.~~

13 ~~(2)(a) Recovery of credits by Department of Revenue. Credits granted to a~~
14 ~~taxpayer, but later disallowed, may be recovered by the secretary of the Department~~
15 ~~of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated~~
16 ~~within three years from December thirty-first of the year in which the credit was~~
17 ~~taken.~~

18 ~~(b) The only interest that may be assessed and collected on recovered credits~~
19 ~~is interest at a rate three percentage points above the rate provided in R.S.~~
20 ~~9:3500(B)(1), which shall be computed from the original date of the return on which~~
21 ~~the credit was taken.~~

22 ~~(3) The provisions of this Subsection are in addition to and shall not limit the~~
23 ~~authority of the secretary of the Department of Revenue to assess or to collect under~~
24 ~~any other provision of law. Disallowance of credits by the Department of Economic~~
25 ~~Development. Tax credits shall be subject to disallowance in whole or in part, if the~~
26 ~~Department of Economic Development finds that a taxpayer has obtained a tax credit~~
27 ~~in violation of the provisions of this Section, including but not limited to fraud or~~
28 ~~misrepresentation, as further provided by rule.~~

29 * * *

1 J. Recovery of credits by the Department of Revenue:

2 (1) Credits previously granted to a taxpayer but later disallowed by the
 3 Department of Economic Development may be recovered by the secretary of the
 4 Department of Revenue through any collection remedy authorized by R.S. 47:1561
 5 and initiated within three years from December thirty-first of the year in which the
 6 credit was taken.

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

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

14 * * *

15 Section 2. R.S. 47:6034(C)(1)(b), (e), and (f) are hereby repealed in their entirety.

16 Section 3. This Act shall become effective July 1, 2013.

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 PRESIDENT OF THE SENATE

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____