

Regular Session, 2013

HOUSE BILL NO. 483

BY REPRESENTATIVE NANCY LANDRY

TAX CREDITS: Extends authority to grant tax credits for certain state-certified musical or theatrical facility infrastructure projects

1 AN ACT

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

13 Be it enacted by the Legislature of Louisiana:

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

17 §6034. Musical and theatrical production income tax credit

18 A. Purpose. It is the intention of the legislature in creating these ~~five~~
19 different types of tax credits: a credit for qualified production expenditures made
20 from investments in a state-certified musical or theatrical production; a credit for the
21 construction, repair, or renovation of facilities related to such productions and

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

B. Definitions. For the purposes of this Section:

* * *

23 (4) ~~"Limited state-certified musical or theatrical production" means a~~
24 ~~musical or theatrical production or a series of productions occurring in Louisiana by~~
25 ~~a nonprofit community theater that held a public performance before an audience~~
26 ~~within this state during the 2008 calendar year which has been certified, verified, and~~
27 ~~approved in accordance with the provisions of this Section. "Infrastructure~~

28 expenditures" means expenditures directly related to the state-certified infrastructure

29 project or state-certified higher education infrastructure projects including land and

1 ~~(9)~~ (10) "State-certified higher education musical or theatrical infrastructure
2 project" means a new proscenium or black-box theatre infrastructure project situated
3 on a parcel of land located on the campus of a higher education institution in this
4 state, which is owned by a higher education campus institution or support foundation
5 related to the campus primarily operated to benefit and support campus students and
6 the higher education facility. The primary purpose of the proposed infrastructure
7 facility must be to host live performances, and the facility must have a minimum
8 fixed seating capacity of five hundred. Expenditures attributable to areas other than
9 where live performances will take place may comprise no more than twenty-five
10 percent of total qualifying expenditures.

11 (11) "State-certified musical or theatrical facility infrastructure project" or
12 "state-certified infrastructure project" means a capital infrastructure project in the
13 state directly related to the production or performance of musical or theatrical
14 productions as defined in this Section, and movable and immovable property and
15 equipment related thereto, or any other facility which supports and is a necessary
16 component of such facility, and any expenditures in the state related to the
17 construction, repair, or renovation of such project, which are certified, verified, and
18 approved as provided for in this Section.

19 ~~(10)(a)~~ (12)(a) "State-certified musical or theatrical production" means a
20 musical or theatrical production performed in this state including, but not limited to
21 concerts, musical tours, ballet, dance, comedy revue, or live variety entertainment,
22 or a series of productions occurring over the course of a twelve-month period, and
23 the recording or filming of such production, which originate, are developed, or have
24 their initial public performance before an audience within Louisiana, or which have
25 their United States debut within Louisiana, and the production expenditures,
26 expenditures for the payroll of residents, ~~transportation expenditures,~~ and
27 expenditures for employing college and vocational-technical students related to such
28 production or productions, that are certified, verified, and approved as provided for
29 in this Section. Non-qualifying projects include, but are not limited to non-touring

1 music and cultural festivals, industry seminars, ~~and trade shows,~~ and any production
2 activity taking place outside the state.

3 (b) A "state-certified musical or theatrical production" which shall be
4 eligible for recertification and the credit provided for in this Section shall include a
5 previously certified musical or theatrical production which received a credit pursuant
6 to this Section, and which is otherwise eligible pursuant to this Section, which
7 returns for performances within the state after being performed on Broadway.

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

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

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

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

28 (a)

29 * * *

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

11 (bb) ~~If all or a portion of an infrastructure project is a facility which may be~~
12 ~~used for other purposes not directly related to the production or performance of~~
13 ~~musical or theatrical production activities, then the project shall be approved only if~~
14 ~~a determination is made that the multiple-use facility will support and will be~~
15 ~~necessary to secure musical or theatrical production activities for the musical or~~
16 ~~theatrical production or performance facility and the applicant provides sufficient~~
17 ~~contractual assurances that:~~ For state-certified higher education musical or theatrical
18 infrastructure projects which receive initial certification on or before January 1,
19 2018, a base investment credit may be earned for expenditures made in the state on
20 or before January 1, 2022, for the construction, repair, or renovation of a new state-
21 certified higher education musical or theatrical facility infrastructure project, or for
22 investments made by a company or a financier in such infrastructure project which
23 are, in turn, expended for such construction, repair, or renovation. No more than ten
24 million dollars in tax credits per project or sixty million dollars total in tax credits
25 shall be granted for state-certified higher education musical or theatrical
26 infrastructure projects. Twenty-five percent of the total base investment provided
27 for in the initial certification letter of a state-certified higher education musical or
28 theatrical infrastructure project must be expended on or before January 1, 2020, in
29 order for the project to earn credits for the remaining estimated base investment

1 certification letter, certifying the applicant and indicating the type and amount of tax
2 credits for which the applicant or other companies or financiers are eligible pursuant
3 to this Section.

4 * * *

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

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

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

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

27 G. ~~The Department of Economic Development shall prepare, with input from~~
28 ~~the Legislative Fiscal Office, a written report to be submitted to the Senate~~
29 ~~Committee on Revenue and Fiscal Affairs and the House of Representatives~~

1 ~~Committee on Ways and Means no less than sixty days prior to the start of the~~
2 ~~Regular Session of the Legislature in 2008, and every second year thereafter. The~~
3 ~~report shall include the overall impact of the tax credits, the amount of the tax credits~~
4 ~~issued, the number of net new jobs created, the amount of Louisiana payroll created,~~
5 ~~the economic impact of the tax credits and the state-certified musical and theatrical~~
6 ~~productions and infrastructure projects, the amount of new infrastructure that has~~
7 ~~been developed in the state, and any other factors that describe the impact of the~~
8 ~~program.~~ Recovery of credits by the Department of Revenue.

9 (1) Credits previously granted to a taxpayer but later disallowed by the
10 Department of Economic Development may be recovered by the secretary of the
11 Department of Revenue through any collection remedy authorized by R.S. 47:1561
12 and initiated within three years from December thirty-first of the year in which the
13 credit was taken. If the taxpayer that claimed the credit is an entity, the Department
14 of Revenue shall first seek recapture from the entity that claimed the credit. If the
15 entire amount of the credit subject to recapture cannot be recaptured from the entity,
16 the remaining credit shall be recaptured from owners of the entity. The amount of
17 the credit subject to recapture shall be allocated among the partners, members, or
18 shareholders in proportion to their ownership interests at the time the credit was
19 claimed.

20 (2) The only interest that may be assessed and collected on recovered credits
21 is interest at a rate three percentage points above the rate provided for in R.S.
22 9:3500(B)(1), which shall be computed from the original date of the return on which
23 the credit was taken.

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

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Nancy Landry

HB No. 483

Abstract: Extends the time period for granting income tax credits related to the construction, repair, or renovation of facilities related to musical and theatrical productions and performances and limits credits for projects after Jan. 1, 2014, to those located on the campus of a higher education institution.

Present law establishes five different types of tax credits related to musical and theatrical productions.

Proposed law removes the credit for qualified transportation costs for performance-related property.

One of the five credits authorized in present law is a credit related to the construction, repair, or renovation of a state-certified musical or theatrical facility infrastructure project. Present law further provides that the amount of the base investment credit given for investment in such projects cannot exceed \$10,000,000 per project. Further provides that no more than \$60,000,000 in tax credits under present law may be granted for these projects per year.

Proposed law retains present law with respect to the limitations on the amount of credits per project as well as the annual overall program limit.

Present law provides that such credits must be granted by Dec. 31, 2013.

Proposed law changes the termination date for the authority to grant tax credits from Dec. 31, 2013, to Dec. 31, 2022.

Present law authorizes tax credits for projects without regard to location.

Proposed law retains present law regarding eligibility for tax credits to those state-certified infrastructure projects which receive initial certification on or before Jan. 1, 2014.

Proposed law provides that after Jan. 1, 2014, the availability for tax credits shall be limited to those infrastructure projects situated on a parcel of land located on the campus of a higher education institution, which is owned by a higher education campus institution or support foundation related to the campus primarily operated to benefit and support campus students and faculty.

Proposed law defines "infrastructure expenses" to be expenditures that are directly related to a state-certified infrastructure project or state-certified higher education infrastructure project including land and land acquisition costs, construction costs, design fees, furniture, fixtures, and equipment purchased subject to a sale agreement or capital lease. Proposed law excludes from the definition of "infrastructure expenditures" indirect costs such as general administrative costs, insurance, or any costs related to the transfer or allocation of tax credits.

Present law permits transportation expenses to be included in production expenses eligible for tax credits.

Proposed law deletes transportation expenses as eligible expenses.

Present law defines "state-certified musical or theatrical production".

Proposed law retains present law definition of "state-certified musical or theatrical production" and adds a requirement that the production be performed in La.

Proposed law provides that for higher education musical or theatrical infrastructure projects which receive initial certification on or before Jan. 1, 2018, a base investment credit may be earned for expenditures made in the state on or before Jan. 1, 2022, for the construction, repair, or renovation of a new state-certified higher education musical or theatrical facility infrastructure project, or for investments made by a company or a financier in such infrastructure project which are, in turn, expended for such construction, repair, or renovation. 25% percent of the total base investment must be expended on or before Jan. 1, 2020, in order for a project to earn credits for any remaining estimated base investment provided for in its initial certification letter, as expenditures are made on or before Jan. 1, 2022.

Proposed law requires that an infrastructure project be complete before any credits are certified.

Present law requires that 50% of the total amount of tax credits granted annually shall be reserved for projects located outside of Jefferson and Orleans parishes.

Proposed law excludes higher education musical or theatrical infrastructure projects from the requirements of present law regarding amounts of credits to be allocated outside of Jefferson and Orleans parishes.

Present law provides for disallowance and recapture of credits.

Proposed law rewords provisions of present law regarding disallowance and recapture, but retains the substance of present law.

Proposed law repeals the requirement for the Dept. of Economic Development to report biannually to the legislature regarding the status of the program.

Proposed law repeals present law providing a tax credit for projects for nonprofit community theaters, which credit is equal to 10% of the investment.

(Amends R.S. 47:6034(A), (B)(4), (8), (9), (10), and (11), (C)(1)(a)(ii)(aa) and (bb), (C)(3), (E)(1)(e), (F), and (G); Adds R.S. 47:6034(B)(12); Repeals R.S. 47:6034(C)(1)(b), (e), and (f))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Changes program eligibility after Jan. 1, 2014, from a project located anywhere in the state to a project on the campus of a higher education institution.
2. Adds requirements for the timing of expenditures for qualification for tax credits.
4. Revises present law regarding disallowance, recapture and recovery of tax credits.
5. Deletes provisions of present law requiring the Dept. of Economic Development to report to the legislature with regard to the tax credit program.

6. Deletes the tax credit authorized under present law for certain investments in nonprofit community theaters.
7. Deletes present law regarding the allowance of transportation costs as certified expenditures.
8. Adds and revises definitions.