

Regular Session, 2011

SENATE BILL NO. 123

BY SENATORS MARTINY, MORRELL AND MURRAY

TAX/TAXATION. Changes the Digital Interactive Media Producer Tax Credit to a refundable tax credit and provides other modifications to the program. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:6022(A), (C)(4)(c)(i), (5), (10)(b), and (14), (D)(2), and (E)
3 through (J), and to repeal R.S. 47:6022(K), relative to tax credits; to provide for the
4 name and applicability of the digital interactive media producer tax credit; to provide
5 for a refundable tax credit; to provide for rebates of tax credits under certain
6 circumstances; to provide for definitions, limitations, and program administration;
7 and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:6022(A), (C)(4)(c)(i), (5), (10)(b), and (14), (D)(2), and (E)
10 through (J) are hereby amended and reenacted to read as follows:

11 §6022. Digital interactive media ~~producer~~ **and software** tax credit

12 A. Short title. This Section shall be known and may be referred to as the
13 "Louisiana Digital Media **and Software** Act".

14 * * *

15 C.

16 * * *

17 (4)

* * *

(c)

(i) Software development ~~primarily designed and developed for institutional, private, or internal purposes~~ **primarily for internal or operational purposes of the company.**

* * *

(5) ~~"Digital interactive media company~~ **Company**" means an entity organized under the laws of the state of Louisiana **authorized to do business in the state of Louisiana** and engaged in the business of producing digital interactive media as defined in this Section. ~~Digital interactive media company~~ **"Company"** shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person ~~which~~ **subject to any of the following:**

(a) Has a contract or application with the Department of Economic Development that is in default or noncompliance.

(b) is ~~Is~~ in default on a loan made by the state or a loan guaranteed by the state, ~~nor with any company or person who,~~

(c) has ~~Has~~ ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.

* * *

(10)

* * *

(b) "Production expenses" shall not include ~~postproduction expenditures for~~ **any of the following:**

(i) Expenditures for or related to marketing, **promotion** and distribution, ~~non-production related overhead, amounts,~~

(ii) Administrative, payroll, and management services which are not directly related to management of the state-certified production.

(iii) Food, entertainment, and lodging expenses.

(v) Costs related to the transfer of tax credits, ~~amounts,~~

(vi) Amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production, ~~the,~~

(vii) Any application fee, or state or local taxes.

(14) "Tax credit" means the digital interactive media ~~producer~~ **and software development** tax credit authorized by this Section.

* * *

(a) ~~A digital interactive media company shall earn tax credits~~ **Credits shall**
be earned at the rate of twenty-five percent of the base investment.

~~(c) The initial certification shall be effective for expenditures made prior to the date of initial certification and shall be valid until the production is completed.~~

(1) The credit **For tax credits earned for expenditures made on or before December 31, 2011:**

(a) The credit shall be allowed against the income or franchise tax due from a taxpayer for the taxable period in which the credit is earned as well as the

1 immediately preceding period. If the tax credit allowed pursuant to this Section
2 exceeds the amount of such taxes due from a taxpayer, then any unused credit may
3 be carried forward by the taxpayer as a credit against subsequent tax liability for a
4 period not to exceed ten years. However, in no event shall the amount of the tax
5 credit applied by a taxpayer in a taxable period exceed the amount of such taxes due
6 from the taxpayer for that taxable period.

7 ~~(2)~~ **(b)** All entities taxed as corporations for Louisiana income tax purposes
8 shall claim any credit ~~allowed under this Section~~ on their corporation income and
9 franchise tax return.

10 ~~(3)~~ **(c)** Individuals, **estates, and trusts** shall claim **their share of** any credit
11 ~~allowed under this Section~~ on their ~~individual~~ income tax return.

12 ~~(4)~~ **(d)** Entities not taxed as corporations shall claim **their share of** any credit
13 ~~allowed under this Section~~ on the returns of the partners or members as follows:

14 ~~(a)~~ **(i)** Corporate partners or members shall claim their share of ~~the~~ **any** credit
15 on their corporation income tax returns.

16 ~~(b)~~ **(ii)** Individual partners or members shall claim their share of ~~the~~ **any** credit
17 on their individual income tax returns.

18 ~~(c)~~ **(iii)** Partners or members that are estates or trusts shall claim their share
19 of ~~the~~ **any** credit on their fiduciary income tax returns.

20 ~~F. Transferability of the credit~~

21 ~~(1)~~ **(e)** Any tax credits allocated to a person and not previously claimed by any
22 taxpayer against his Louisiana state income or franchise tax may be transferred or
23 sold by such person to another person, subject to the following conditions:

24 ~~(a)~~ **(i)** A single transfer or sale may involve one or more transferees. The
25 transferee of the tax credits may transfer or sell such tax credits subject to the
26 conditions of this Section.

27 ~~(b)~~ **(ii)** Transferors and transferees shall submit to the office and Department
28 of Revenue in writing, a notification of any transfer or sale of tax credits within thirty
29 days after the transfer or sale of such tax credits. The notification shall include the

1 transferor's tax credit balance prior to transfer, the state-certified production number,
2 the name of the state-certified production, the transferor's remaining tax credit balance
3 after transfer, all tax identification numbers for both transferor and transferee, the date
4 of transfer, the amount transferred, a copy of the tax credit certificate, and any other
5 information required by the office or the Department of Revenue.

6 ~~(c)~~ **(iii)** Failure to comply with this Paragraph will result in the disallowance
7 of the tax credit until the taxpayers are in full compliance.

8 ~~(d)~~ **(iv)** The transfer or sale of this credit does not extend the time in which the
9 credit can be used. The ~~carry forward~~ **carryforward** period for credit that is
10 transferred or sold begins on the date on which the credit was originally earned.

11 ~~(e)~~ **(v)** The transferee shall apply such credits in the same manner and against
12 the same taxes as the taxpayer originally awarded the credit.

13 **(2) For tax credits earned for expenditures made on or after January 1,**
14 **2012:**

15 **(a) The tax credits shall be refundable and allowed against the individual**
16 **or corporate income tax liability of the companies or financiers of the project in**
17 **accordance with their share of the credit as provided for in the application for**
18 **certification for the project. The credit shall be allowed for the taxable period in**
19 **which expenditures eligible for a credit are expended as set forth in the final tax**
20 **credit certification letter. Any excess of the credit over the income tax liability**
21 **against which the credit may be applied shall constitute an overpayment, as**
22 **defined in R.S. 47:1621(A), and the secretary of the Department of Revenue shall**
23 **make a refund of such overpayment from the current collections of the taxes**
24 **imposed by Chapter 1 of Subtitle II of this Title, as amended. The right to a**
25 **refund of any such overpayment shall not be subject to the requirements of R.S.**
26 **47:1621(B).**

27 **(b) At the time of final certification of tax credits, a company may elect,**
28 **on a one-time basis, to receive a rebate of the credits. The amount of the rebate**
29 **shall be eighty-five percent of the face value of the credits. Upon receipt of the**

1 final tax credit certification letter and any necessary additional information, the
2 secretary of the Department of Revenue shall make payment to the company, or
3 its irrevocable designee, which may include but not be limited to a bank or other
4 lender, in the amount to which he is entitled from the current collections of the
5 taxes collected pursuant to Chapter 1 of Subtitle II of this Title, as amended.

6 G. Certification and administration. (1) The office shall determine through the
7 promulgation of F. Administration. (1) The office may promulgate rules in
8 accordance with the Administrative Procedure Act to establish the policies and
9 program elements regarding project qualifications of state-certified productions
10 and any other matter necessary to carry out the intent and purposes of this
11 Section. Such rules shall be subject to oversight by the House Committee on
12 Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

13 ~~(a) what projects qualify as state-certified productions and~~

14 ~~(b) any other matter necessary to carry out the intent and purposes of this~~
15 ~~Section. These rules shall not be effective until they are approved by the House~~
16 ~~Committee on Ways and Means and the Senate Committee on Revenue and Fiscal~~
17 ~~Affairs.~~

18 (2) Application. A company seeking to participate in the tax credit
19 program shall apply to the department through an application process
20 established by the department.

21 ~~(2)(a) The~~ (3) Certification. (a) The office shall review the company's
22 application and any other information which it deems appropriate for
23 determination of the project's eligibility for initial certification. For a project
24 deemed eligible, the office shall ~~submit~~ provide an initial certification of a the
25 project as a state-certified production to ~~each digital interactive media~~ the company
26 and to the secretary of the Department of Revenue. The initial certification shall
27 be effective for expenditures made no more than six months prior to the date of
28 initial certification and shall be valid until the project is completed. The initial
29 certification shall include a unique identifying number for each state-certified

1 production.

2 (b) Prior to final certification of tax credits of a state-certified production or
3 any portion thereof, the ~~digital interactive media~~ company shall submit to the office
4 a cost report of production expenditures. The cost report of expenditures shall be
5 subject to an agreed-upon procedures engagement conducted by a certified public
6 accountant in accordance with statements on standards for attestation engagements
7 established by the American Institute of Certified Public Accountants. The accountant
8 shall issue a report in the form of procedures and findings. The accountant shall be
9 a certified public accountant licensed in the state of Louisiana and shall be an
10 independent third party unrelated to the ~~digital interactive media~~ company. The
11 agreed-upon procedures shall be established by the office and secretary, with
12 assistance from the Society of Louisiana Certified Public Accountants, ~~and shall be~~
13 ~~placed in rules promulgated in accordance with the Administrative Procedure Act.~~

14 **The department may request additional audits of the project expenditures, the**
15 **cost of which shall be borne by the company.**

16 (c) Upon completion of all or a portion of a state-certified production, the
17 office shall review the production expenses and, if approved by the office and
18 secretary, issue a final tax credit certification letter to the ~~digital interactive media~~
19 company. The certification letter shall include the identifying number assigned to that
20 state-certified production in the initial certification.

21 (d) As a condition for receiving certification of tax credits under this Section,
22 state-certified productions may be required to display the state brand or logo, or both,
23 as prescribed by the secretary ~~of the Department of Economic Development.~~

24 ~~(3) Any taxpayer applying for the credit shall be required to reimburse the~~
25 ~~department for any audits required in relation to granting the credit.~~

26 H: **G.** Recapture of credits. If the office finds that funds for which a ~~digital~~
27 ~~interactive media~~ company received credits according to this Section are not actually
28 expended in Louisiana as a production-related cost of a state-certified production,
29 then the ~~digital interactive media~~ company's state income tax for such taxable period

1 shall be increased by such amount necessary for the recapture of credit provided by
2 this Section.

3 ~~F.~~ **H.** Recovery of credits by Department of Revenue. (1) Credits previously
4 granted to a taxpayer, but later disallowed, may be recovered by the secretary of the
5 Department of Revenue through any collection remedy authorized by R.S. 47:1561
6 and initiated within three years from December thirty-first of the year in which the
7 credits were earned.

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

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

15 ~~J.~~ **I.** The provisions of this Section shall not apply to any investments or
16 expenditures that qualify for tax credits under R.S. 47:6007.

17 **J. A taxpayer shall not receive any other state tax credit, exemption,**
18 **exclusion, rebate, or any other tax benefit for any expenditures for which the**
19 **taxpayer has earned a tax credit under this Section.**

20 Section 2. R.S. 47:6022(K) is hereby repealed in its entirety.

21 Section 3. This Act shall become effective upon signature by the governor or, if not
22 signed by the governor, upon expiration of the time for bills to become law without signature
23 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become
25 effective on the day following such approval.

The original instrument was prepared by Riley Boudreaux. The following digest, which does not constitute a part of the legislative instrument, was prepared by McHenry Lee.

DIGEST

Martiny (SB 123)

Present law provides for the digital interactive media producer tax credit which is applicable to income and corporation franchise taxes. The tax credit is transferable.

Proposed law retains present law for credits earned for expenditures made on or before Dec. 31, 2011. Proposed law changes the name of the tax credit from digital interactive media and producer tax credit to digital interactive media and software development tax credit.

Proposed law changes present law for tax credits earned for expenditures made on or after Jan. 1, 2012. The applicability of the tax credit is changed from a transferable tax credit to a refundable tax credit which may be converted to a rebate equal to 85% of the face value of the tax credit.

Proposed law authorizes a company to elect on a one-time basis, at the time of final certification of the tax credit, to receive a rebate in lieu of a tax credit. The amount of the rebate is 85% of the face value of the credit. Rebates are payable by the secretary of the Dept. of Revenue from current collections.

Present law authorizes credits to be earned at a percentage of "base investment" which is defined as actual funds expended in Louisiana by a state-certified production as production-related costs.

Proposed law specifies that "production expenses" shall not include food, entertainment and lodging expenses, and administrative, payroll, and management services which are not directly related to management of the state-certified production.

Present law requires administrative rules promulgated by the Dept. of Economic Development to be approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs before taking effect.

Proposed law retains present law and requires that oversight by those committees be conducted in accordance with the APA.

Proposed law specifies that a company seeking to participate in the tax credit program must apply to the department through an application process established by the department.

Present law provides for "initial certification" for a company seeking to participate in the tax credit program.

Proposed law retains present law and specifies that an initial certification shall be limited to expenses incurred no more than six months prior to the date of initial certification.

Present law restricts a project which earns a tax credit authorized under present law from eligibility for tax credits or rebates provided under the La. Quality Jobs Program Act.

Proposed law retains present law and broadens the restriction to include any state tax credit, exemption, exclusion, rebate, or any other tax benefit for any expenditures for which the taxpayer has earned a tax credit under proposed law.

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

(Amends R.S. 47:6022(A), (C)(4)(c)(i), (5), (10)(b), and (14), (D)(2), and (E) through (J); repeals R.S. 47:6022(K))

Summary of Amendments Adopted by Senate

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

1. Limits the tax credit to expenditures set forth in the final tax credit certification letter.
2. Removes "deduction" from the restrictions taxpayers who receive the tax credit in proposed law.

Senate Floor Amendments to reengrossed bill.

1. Makes technical changes.