

SENATE BILL NO. 123

BY SENATORS MARTINY, MORRELL AND MURRAY

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), to enact R.S. 47:6038 and R.S. 51:2306, and to repeal R.S. 47:6022(K),
4 relative to tax credits; to provide for the name and applicability of the digital
5 interactive media producer tax credit; to provide for a refundable tax credit; to
6 provide for rebates of tax credits under certain circumstances; to provide for
7 definitions, limitations, and program administration; to require reports by the
8 secretary of the Department of Economic Development; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 47:6022(A), (C)(4)(c)(i), (5), (10)(b), and (14), (D)(2), and (E)
12 through (J) are hereby amended and reenacted and R.S. 47:6038 is hereby enacted to read
13 as follows:

14 §6022. Digital interactive media ~~producer~~ **and software** tax credit

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

17 * * *

18 C.

19 * * *

20 (4)

21 * * *

22 (c)

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

1 company.

2 * * *

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

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

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

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

16 * * *

17 (10)

18 * * *

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

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

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

25 **(iii) Food, entertainment, and lodging expenses.**

26 **(iv) Amounts** that are later reimbursed by the state ~~or any other governmental~~
27 ~~entity, costs.~~

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

29 **(vi) Amounts** that are paid to persons or entities as a result of their
30 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.

D.

* * *

(2) For applications for state-certified productions submitted to the office on or after July 1, 2009, and subsequently approved by the office and secretary, there are hereby authorized tax credits which shall be earned by a ~~digital interactive media~~ company at the time funds are expended in Louisiana on a state-certified production as follows:

(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.

(b) To the extent that base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, ~~a digital interactive media company shall earn~~ additional tax credits **shall be earned** at the rate of ten percent of the payroll.

(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.~~

E. ~~Application of the credit~~ **Use of tax credits**

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

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

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

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

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

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

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

~~F. Transferability of the credit~~

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

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

(b) (ii) Transferors and transferees shall submit to the office and Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, the state-certified production number, the name of the state-certified production, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the tax credit certificate, and any other information required by the office or the Department of Revenue.

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

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

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

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

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

18 **(b) At the time of final certification of tax credits, a company may elect, on**
19 **a one-time basis, to receive a rebate of the credits. The amount of the rebate shall be**
20 **eighty-five percent of the face value of the credits. Upon receipt of the final tax credit**
21 **certification letter and any necessary additional information, the secretary of the**
22 **Department of Revenue shall make payment to the company, or its irrevocable**
23 **designee, which may include but not be limited to a bank or other lender, in the**
24 **amount to which he is entitled from the current collections of the taxes collected**
25 **pursuant to Chapter 1 of Subtitle II of this Title, as amended.**

26 ~~G. Certification and administration. (1) The office shall determine through the~~
27 ~~promulgation of~~ **F. Administration. (1) The office may promulgate** rules in accordance
28 with the Administrative Procedure Act **to establish the policies and program elements**
29 **regarding project qualifications of state-certified productions and any other matter**
30 **necessary to carry out the intent and purposes of this Section. Such rules shall be**

1 subject to oversight by the House Committee on Ways and Means and the Senate
2 Committee on Revenue and Fiscal Affairs.

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

4 ~~(b) any other matter necessary to carry out the intent and purposes of this Section.~~

5 ~~These rules shall not be effective until they are approved by the House Committee on~~
6 ~~Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.~~

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

10 ~~(2)(a) The~~ (3) Certification. (a) The office shall review the company's
11 application and any other information which it deems appropriate for determination
12 of the project's eligibility for initial certification. For a project deemed eligible, the
13 office shall ~~submit~~ provide an initial certification of a ~~the~~ project as a state-certified
14 production to ~~each digital interactive media~~ the company and to the secretary of the
15 Department of Revenue. The initial certification shall be effective for expenditures
16 made no more than six months prior to the date of initial certification and shall be
17 valid until the project is completed. The initial certification shall include a unique
18 identifying number for each state-certified production.

19 (b) Prior to final certification of tax credits of a state-certified production or any
20 portion thereof, the ~~digital interactive media~~ company shall submit to the office a cost
21 report of production expenditures. The cost report of expenditures shall be subject to an
22 agreed-upon procedures engagement conducted by a certified public accountant in
23 accordance with statements on standards for attestation engagements established by the
24 American Institute of Certified Public Accountants. The accountant shall issue a report
25 in the form of procedures and findings. The accountant shall be a certified public
26 accountant licensed in the state of Louisiana and shall be an independent third party
27 unrelated to the ~~digital interactive media~~ company. The agreed-upon procedures shall be
28 established by the office and secretary, with assistance from the Society of Louisiana
29 Certified Public Accountants, ~~and shall be placed in rules promulgated in accordance with~~
30 ~~the Administrative Procedure Act.~~ The department may request additional audits of

1 the project expenditures, the cost of which shall be borne by the company.

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

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

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

12 H. G. Recapture of credits. If the office finds that funds for which a ~~digital~~
13 ~~interactive media~~ company received credits according to this Section are not actually
14 expended in Louisiana as a production-related cost of a state-certified production, then
15 the ~~digital interactive media~~ company's state income tax for such taxable period shall be
16 increased by such amount necessary for the recapture of credit provided by this Section.

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

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

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

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

1 J. A taxpayer shall not receive any other incentive administered by the
2 Department of Economic Development for any expenditures for which the taxpayer
3 has received a tax credit or tax rebate under this Section.

4 * * *

5 §6038. Reports; tax incentives administered by the Department of Economic
6 Development

7 Notwithstanding any provision of law to the contrary, the secretary of the
8 Department of Economic Development shall report to the Joint Legislative
9 Committee on the Budget information concerning the granting and denial of tax
10 credits and rebates, hereinafter referred to as "tax incentives", administered by the
11 department authorized under this Chapter. On January 30th of each year, the
12 secretary shall transmit to the members of the committee a list of the recipients of
13 each tax incentive, as well as a list of applicants denied tax incentives, over the most
14 recently concluded calendar year. The report shall contain the name and primary
15 place of business of each applicant.

16 Section 2. R.S. 51:2306 is hereby enacted to read as follows:

17 §2306. Reports; tax incentives administered by the Department of Economic
18 Development

19 Notwithstanding any provision of law to the contrary, the secretary of the
20 Department of Economic Development shall report to the Joint Legislative
21 Committee on the Budget information concerning the granting and denial of tax
22 credits and rebates, hereinafter referred to as "tax incentives", administered by the
23 department authorized under this Title. On January 30th of each year, the secretary
24 shall transmit to the members of the committee a list of the recipients of each tax
25 incentive, as well as a list of applicants denied tax incentives, over the most recently
26 concluded calendar year. The report shall contain the name and primary place of
27 business of each applicant.

28 Section 3. R.S. 47:6022(K) is hereby repealed in its entirety.

29 Section 4. This Act shall become effective upon signature by the governor or, if not
30 signed by the governor, upon expiration of the time for bills to become law without signature by

1 the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed
2 by the governor and subsequently approved by the legislature, this Act shall become effective on
3 the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____