### Regular Session, 2013

### HOUSE BILL NO. 501

### BY REPRESENTATIVES MORENO AND WESLEY BISHOP

# TAX CREDITS: Extends the sunset of the musical and theatrical production base investment income tax credit

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	(3), (E)(1)(e), (F), and (G) and to repeal R.S. 47:6034(C)(1)(b), (e), and (f) relative
4	to tax credits; to provide with respect to the state-certified musical or theatrical
5	facility infrastructure income tax credit; to extend the sunset of the tax credit in
6	certain circumstances; to provide a deadline for certain projects to receive initial
7	certification for the tax credit; to provide relative to certain definitions; to provide
8	for certain requirements and limitations; to provide with respect to the application
9	for such tax credits and certification of productions and infrastructure projects; to
10	provide for the disallowance of credits; to provide for the recovery of credits; and to
11	provide for related matters.
12	Be it enacted by the Legislature of Louisiana:
13	Section 1. R.S. 47:6034(A),(B)(4), (8), (9), (10), and (11), (C)(1)(a)(ii)(aa) and (3),
14	(E)(1)(e), (F), and (G) are hereby amended and reenacted to read as follows:
15	§6034. Musical and theatrical production income tax credit
16	A. Purpose. It is the intention of the legislature in creating these five
17	different types of tax credits: a credit for qualified production expenditures made
18	from investments in a state-certified musical or theatrical production; a credit for the
19	construction, repair, or renovation of facilities related to such productions and
20	performances; a credit for qualified transportation costs for performance-related
21	property; a credit for the payroll of Louisiana residents employed in connection with

### Page 1 of 10

1 a state-certified musical or theatrical production; and a credit for employing college, 2 university, and vocational-technical students employed in connection with a state-3 certified musical or theatrical production, to establish and promote Louisiana as one 4 of the primary places in the United States in which live performances, from creation 5 to presentation are present and thriving. The live performance industry will enhance economic development because it fits well with the state's reputation as a tourist 6 7 destination, will offer numerous and varied employment opportunities, and in 8 conjunction with the available federal and state incentives, will be an attraction for 9 new and relocating businesses and will provide for the reinventing of countless 10 abandoned properties as either performance or rehearsal spaces. The live 11 performance industry will also spur educational development: Louisiana colleges, 12 universities, and vocational-technical schools will be able to offer talented 13 undergraduate and graduate students from this state, other states, and around the 14 world a real-world opportunity to participate in degree programs across the state that 15 work on the various productions in accounting, law, management, and marketing and 16 to fill arts-related positions such as actors, writers, producers, stagehands, and 17 directors, as well as technicians working on all aspects of the production such as 18 lighting, sound, and actual stage production and operations. 19 B. Definitions. For the purposes of this Section: 20 21 (4) "Limited state-certified musical or theatrical production" means a 22 musical or theatrical production or a series of productions occurring in Louisiana by 23 a nonprofit community theater that held a public performance before an audience 24 within this state during the 2008 calendar year which has been certified, verified, and 25 approved in accordance with the provisions of this Section. "Infrastructure 26 expenditures" means expenditures directly related to the state-certified infrastructure 27 project, including land and land acquisition costs, construction costs, design fees, 28 furniture, fixtures, and equipment purchased subject to a sale agreement or capital

29 lease. Infrastructure expenditures shall not include indirect costs such as general

### Page 2 of 10

1	administrative costs, insurance, or any costs related to the transfer or allocation of
2	tax credits. The Department of Economic Development may determine if
3	expenditures submitted as production-related costs or capital costs related to an
4	infrastructure facility, represent legitimate expenditures for the actual costs or related
5	goods or services, having economic substance and a business purpose related to the
6	certified production or facility, and not constructive dividends, self-dealing, inflated
7	prices or similar transactions entered into for the purpose of inflating the amount of
8	tax credits earned rather than for the benefit of the production or facility.
9	* * *
10	(8) <u>"Related party transaction" means a transaction between parties deemed</u>
11	to be related by common ownership or control, under generally accepted auditing
12	principles. Related party transaction expenditures may be subject to limitations, as
13	provided for by rules and regulations promulgated by the department.
14	(9)(a) "Resident" or "resident of Louisiana" means a natural person and, for
15	the purpose of determining eligibility for the tax incentives provided by this Section,
16	a person who qualifies for any of the following reasons:
17	(i) The person is domiciled in the state of Louisiana.
18	(ii) The person maintains a permanent place of abode within the state and
19	spends in the aggregate more than six months of each year within the state.
20	(iii) The person pays taxes to the state on the amount of money paid to such
21	person for which a credit is sought pursuant to this Section.
22	(b) A company owned or controlled by such a person and which lends the
23	services of such a person for a state-certified musical or theatrical production shall
24	also be deemed a resident if such company is organized or authorized to do business
25	in the state and such company pays taxes to the state on the amount of money paid
26	to such company for such services of such person.
27	(9) (10) "State-certified musical or theatrical facility infrastructure project"
28	or "state-certified infrastructure project" means a capital infrastructure project in the
29	state directly related to the production or performance of musical or theatrical

1 productions as defined in this Section, and movable and immovable property and 2 equipment related thereto, or any other facility which supports and is a necessary 3 component of such facility, a new or rehabilitated proscenium or black-box theatre 4 infrastructure project located in the state and any expenditures in the state directly 5 related to the construction, repair, or renovation of such project, which are certified, verified, and approved as provided for in this Section. The primary purpose of the 6 7 proposed facility must be to host live performances and must have a minimum 8 capacity of five hundred. Expenditures attributable to areas other than where live 9 performances will take place may comprise no more than twenty-five percent of total 10 qualifying expenditures.

11  $\frac{(10)(a)}{(11)(a)}$  "State-certified musical or theatrical production" means a 12 musical or theatrical production performed in this state, including but not limited to concerts, musical tours, ballet, dance, comedy revue, or live variety entertainment, 13 14 or a series of productions occurring over the course of a twelve-month period, and 15 the recording or filming of such production, which originate, are developed, or have 16 their initial public performance before an audience within Louisiana, or which have 17 their United States debut within Louisiana, and the production expenditures, expenditures for the payroll of residents, transportation expenditures, and 18 19 expenditures for employing college and vocational-technical students related to such 20 production or productions, that are certified, verified, and approved as provided for 21 in this Section. Non-qualifying projects include, but are not limited to non-touring 22 music and cultural festivals, industry seminars, and trade shows, and any production 23 activity taking place outside the state.

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

1	(11)(a) "Transportation expenditures" means expenditures for the packaging,
2	crating, and transportation both to the state for use in a state-certified musical or
3	theatrical production of sets, costumes, or other tangible property constructed or
4	manufactured out of state, and/or from the state after use in a state-certified musical
5	or theatrical production of sets, costumes, or other tangible property constructed or
6	manufactured in this state. Such term shall include the packaging, crating, and
7	transporting of property and equipment used for special and visual effects, sound,
8	lighting, and staging, costumes, wardrobes, make-up and related accessories and
9	materials, as well as any other performance or production-related property and
10	equipment; provided that transportation services are purchased through a company
11	which has a significant business presence in the state.
12	(b) "Transportation expenditures" shall not include any costs to transport
13	property and equipment to be used only for filming and not in a state-certified
14	production, any indirect costs, any expenditures that are later reimbursed by a third
15	party, or any amounts that are paid to persons or entities as a result of their
16	participation in profits from the exploitation of the production.
17	C. Income tax credits for state-certified productions and state-certified
18	musical or theatrical facility infrastructure projects:
19	(1) There is hereby authorized the following types of credits against the state
20	income tax:
21	(a)
22	* * *
23	(ii)(aa) Until For state-certified infrastructure projects which receive initial
24	certification on or after July 1, 2013, and before January 1, 2014, a base investment
25	credit may be granted earned for certified, verified, and approved expenditures made
26	in the state on or before January 1, 2015, for the construction, repair, or renovation
27	of a state-certified musical or theatrical facility infrastructure project, or for
28	investments made by a company or a financier in such infrastructure project which
29	are, in turn, expended for such construction, repair, or renovation, not to exceed ten

### Page 5 of 10

1	million dollars per state-certified infrastructure project, under conditions provided
2	for in this Item. No more than sixty million dollars in tax credits under this Section
3	shall be granted for infrastructure projects per year.
4	* * *
5	(3) Tax credits associated with a state-certified musical or theatrical
6	production or a state-certified musical or theatrical facility infrastructure project shall
7	never exceed the total base investment in that production or infrastructure project
8	and transportation expenditures.
9	* * *
10	E. Certification and administration:
11	(1)
12	* * *
13	(e) Prior to the final certification of a production or infrastructure project, the
14	applicant shall submit to the Department of Economic Development a report an audit
15	of the final amount of expenditures qualifying for credits pursuant to this Section,
16	which report the Department of Economic Development may require to be prepared
17	by an independent certified public accountant. The Department of Economic
18	Development shall review the report audit and shall issue a final tax credit
19	certification letter, certifying the applicant and indicating the type and amount of tax
20	credits for which the applicant or other companies or financiers are eligible pursuant
21	to this Section.
22	* * *
23	F.(1) Recapture of credits. If the Department of Economic Development, or
24	the Department of Revenue find that funds for which a taxpayer received credits
25	according to this Section were not expended for expenditures qualifying for a credit
26	as provided in this Section, then the taxpayer's state income tax for such taxable
27	period shall be increased by such amount necessary for the recapture of credit
28	provided by this Section.

## Page 6 of 10

1	(2)(a) Recovery of credits by Department of Revenue. Credits granted to a
2	taxpayer, but later disallowed, may be recovered by the secretary of the Department
3	of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated
4	within three years from December thirty-first of the year in which the credit was
5	taken.
6	(b) The only interest that may be assessed and collected on recovered credits
7	is interest at a rate three percentage points above the rate provided in R.S.
8	9:3500(B)(1), which shall be computed from the original date of the return on which
9	the credit was taken.
10	(3) The provisions of this Subsection are in addition to and shall not limit the
11	authority of the secretary of the Department of Revenue to assess or to collect under
12	any other provision of law. Disallowance of credits by the Department of Economic
13	Development. Tax credits shall be subject to disallowance in whole or in part, if the
14	Department of Economic Development finds that a taxpayer has obtained a tax credit
15	in violation of the provisions of this Section, including but not limited to fraud or
16	misrepresentation, as further provided by rule.
17	G. The Department of Economic Development shall prepare, with input from
18	the Legislative Fiscal Office, a written report to be submitted to the Senate
19	Committee on Revenue and Fiscal Affairs and the House of Representatives
20	Committee on Ways and Means no less than sixty days prior to the start of the
21	Regular Session of the Legislature in 2008, and every second year thereafter. The
22	report shall include the overall impact of the tax credits, the amount of the tax credits
23	issued, the number of net new jobs created, the amount of Louisiana payroll created,
24	the economic impact of the tax credits and the state-certified musical and theatrical
25	productions and infrastructure projects, the amount of new infrastructure that has
26	been developed in the state, and any other factors that describe the impact of the
27	program. Recovery of credits by the Department of Revenue.
28	(1) Credits previously granted to a taxpayer but later disallowed by the
29	Department of Economic Development may be recovered by the secretary of the

1	Department of Revenue through any collection remedy authorized by R.S. 47:1561
2	and initiated within three years from December thirty-first of the year in which the
3	credit was taken. If the taxpayer that claimed the credit is an entity, the Department
4	of Revenue shall first seek recapture from the entity that claimed the credit. If the
5	entire amount of the credit subject to recapture cannot be recaptured from the entity,
6	the remaining credit shall be recaptured from owners of the entity. The amount of
7	the credit subject to recapture shall be allocated among the partners, members, or
8	shareholders in proportion to their ownership interests at the time the credit was
9	claimed.
10	(2) The only interest that may be assessed and collected on recovered credits
11	is interest at a rate three percentage points above the rate provided for in R.S.
12	9:3500(B)(1), which shall be computed from the original date of the return on which
13	the credit was taken.
14	(3) The provisions of this Subsection are in addition to and shall not limit the
15	authority of the secretary of the Department of Revenue to assess or to collect under
16	any other provision of law.
17	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)]

### Moreno

HB No. 501

**Abstract:** Extends the sunset of the base investment credit for the musical and theatrical production income tax credit for projects which receive initial certification on or after July 1, 2013 and before Jan. 1, 2014, repeals tax credits for transportation expenses and certain productions for nonprofit community theaters, and changes definitions.

<u>Present law</u> authorizes various income tax credits related to musical and theatrical production development in La. A base investment credit may be granted for certified expenditures for the construction, repair, or renovation of certain infrastructure projects, including certain investments made therein. The maximum authorized credit per project is \$10,000,000, and the annual limit on total tax credits is \$60,000,000. The tax credit sunsets Dec. 31, 2013.

<u>Proposed law</u> retains <u>present law</u> and extends the sunset date for the base investment tax credit for projects which receive initial certification on or after July 1, 2013, and before Jan.

#### Page 8 of 10

1, 2014. For such projects, the tax credit may be earned for expenditures made before Jan. 1, 2015.

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

<u>Present law</u> authorizes a tax credit for qualified transportation expenditures for performance-related property.

<u>Proposed law</u> repeals the tax credit for transportation expenditures.

<u>Present law</u> authorizes a tax credit for base investment in a certain productions for nonprofit community theater, which credit is equal to 10% of the investment.

<u>Proposed law</u> repeals the tax credit for base investment in productions for nonprofit community theater.

<u>Present law</u> provides that the secretary of the Dept. of Economic Development may, under certain circumstances, approve tax credits for an infrastructure project if all or a portion of the facility is used for purposes other than live performance.

<u>Proposed law</u> repeals <u>present law</u> regarding the approval of such projects by the secretary of the Dept. of Economic Development.

<u>Proposed law</u> defines "infrastructure expenses" to be expenditures that are directly related to a state-certified 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. <u>Proposed law</u> 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 defines "state-certified musical or theatrical infrastructure project".

<u>Proposed law</u> retains <u>present law</u> definition of "state-certified musical or theatrical infrastructure project" and adds requirements that the facility have a minimum capacity of five hundred, and that expenditures for areas other than where live performance will take place shall comprise no more than 25% of the total qualifying expenditures.

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

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

Present law provides for disallowance and recapture of credits.

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

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

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

### Summary of Amendments Adopted by House

- Committee Amendments Proposed by <u>House Committee on Ways and Means</u> to the <u>original</u> bill.
- 1. Changes program eligibility for projects which receive initial certification on or after July 1, 2013, and before Jan. 1, 2014. For such projects, the tax credit may be earned for expenditures made before Jan. 1, 2015.
- 2. Adds repeal of tax credits for transportation expenditures and for certain productions for nonprofit community theater.
- 3. Revises <u>present law</u> regarding disallowance and recapture, of tax credits.
- 4. Adds and revises definitions.