

Regular Session, 2013

HOUSE BILL NO. 483

BY REPRESENTATIVE NANCY LANDRY

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) and (3), (E)(1)(e) and (F), to enact R.S. 47:6034(B)(12) and (J), and to repeal  
4 R.S. 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 and (3), (E)(1)(e) and (F) are hereby amended and reenacted and R.S. 47:6034(B)(12) and  
16 (J) are 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  
22 performances; ~~a credit for qualified transportation costs for performance-related~~  
23 ~~property~~; a credit for the payroll of Louisiana residents employed in connection with  
24 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 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 \* \* \*



