

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), and (F), to enact R.S. 47:6034(H), and to repeal R.S.  
4 47:6034(C)(1)(b), (e), and (f), relative to tax credits; to provide with respect to the  
5 state-certified musical or theatrical facility infrastructure income tax credit; to extend  
6 the sunset of the tax credit in certain circumstances; to provide a deadline for certain  
7 projects to receive initial certification for the tax credit; to provide relative to certain  
8 definitions; to provide for certain requirements and limitations; to provide with  
9 respect to the application for such tax credits and certification of productions and  
10 infrastructure projects; to provide for the disallowance of credits; to provide for the  
11 recovery of credits; and to 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), and (F) are hereby amended and reenacted and R.S. 47:6034(H) is hereby enacted  
15 to read as follows:

16 §6034. Musical and theatrical production income tax credit

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

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

B. Definitions. For the purposes of this Section:

\* \* \*

22      (4) ~~"Limited state-certified musical or theatrical production" means a~~  
23      ~~musical or theatrical production or a series of productions occurring in Louisiana by~~  
24      ~~a nonprofit community theater that held a public performance before an audience~~  
25      ~~within this state during the 2008 calendar year which has been certified, verified, and~~  
26      ~~approved in accordance with the provisions of this Section. "Infrastructure~~  
27      ~~expenditures" means expenditures directly related to the state-certified infrastructure~~  
28      ~~project, including land and land acquisition costs, construction costs, design fees,~~  
29      ~~furniture, fixtures, and equipment purchased subject to a sale agreement or capital~~

1 lease. Infrastructure expenditures shall not include indirect costs such as general  
2 administrative costs, insurance, or any costs related to the transfer or allocation of  
3 tax credits. The Department of Economic Development may determine whether  
4 expenditures submitted as production-related costs of capital costs related to an  
5 infrastructure facility represent legitimate expenditures for the actual costs or related  
6 goods or services that have economic substance and a business purpose related to the  
7 certified production or facility, or such costs constitute constructive dividends, self-  
8 dealing, inflated prices or similar transactions entered into for the purpose of  
9 inflating the amount of tax credits earned rather than for the benefit of the production  
10 or facility.

11 \* \* \*

12 (8) "Related party transaction" means a transaction between parties deemed  
13 to be related by common ownership or control under generally accepted auditing  
14 principles. Related party transaction expenditures may be subject to limitations as  
15 provided for by rules and regulations promulgated by the department.

16 (9)(a) "Resident" or "resident of Louisiana" means a natural person and, for  
17 the purpose of determining eligibility for the tax incentives provided by this Section,  
18 a person who qualifies for any of the following reasons:

- 19 (i) The person is domiciled in the state of Louisiana.
- 20 (ii) The person maintains a permanent place of abode within the state and  
21 spends in the aggregate more than six months of each year within the state.
- 22 (iii) The person pays taxes to the state on the amount of money paid to such  
23 person for which a credit is sought pursuant to this Section.

24 (b) A company owned or controlled by such a person and which lends the  
25 services of such a person for a state-certified musical or theatrical production shall  
26 also be deemed a resident if such company is organized or authorized to do business  
27 in the state and such company pays taxes to the state on the amount of money paid  
28 to such company for such services of such person.

1           ~~(9)(10)(a)~~ "State-certified musical or theatrical facility infrastructure project"  
2           or "state-certified infrastructure project" , for any project which receives initial  
3           certification before July 1, 2013, means a capital infrastructure project in the state  
4           directly related to the production or performance of musical or theatrical productions  
5           as defined in this Section, and movable and immovable property and equipment  
6           related thereto, or any other facility which supports and is a necessary component of  
7           such facility, and any expenditures in the state related to the construction, repair, or  
8           renovation of such project, which are certified, verified, and approved as provided  
9           for in this Section.

10           (b) "State-certified musical or theatrical facility infrastructure project" or  
11           "state-certified infrastructure project", for any project which receives initial  
12           certification on or after July 1, 2013, means a new or rehabilitated proscenium or  
13           black-box theatre infrastructure project located in the state and any expenditures in  
14           the state directly related to the construction, repair, or renovation of such project,  
15           which are certified, verified, and approved as provided in this Section. The primary  
16           purpose of the proposed facility must be to host live performances and must have a  
17           minimum capacity of five hundred. Expenditures attributable to areas other than  
18           where live performances will take place may comprise no more than twenty-five  
19           percent of total qualifying expenditures.

20           ~~(10)(a)~~(11)(a) "State-certified musical or theatrical production" means a  
21           musical or theatrical production performed in this state, including but not limited to  
22           concerts, musical tours, ballet, dance, comedy revue, or live variety entertainment,  
23           or a series of productions occurring over the course of a twelve-month period, and  
24           the recording or filming of such production, which originate, are developed, or have  
25           their initial public performance before an audience within Louisiana, or which have  
26           their United States debut within Louisiana, and the production expenditures,  
27           expenditures for the payroll of residents, ~~transportation expenditures,~~ and  
28           expenditures for employing college and vocational-technical students related to such  
29           production or productions, that are certified, verified, and approved as provided for

1 in this Section. Non-qualifying projects include, but are not limited to non-touring  
2 music and cultural festivals, industry seminars, ~~and trade shows, and any production~~  
3 activity taking place outside the state.

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

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

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

25 C. Income tax credits for state-certified productions and state-certified  
26 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 which receive initial  
6 certification before January 1, 2014, a base investment credit may be ~~granted~~ earned  
7 ~~for certified, verified, and approved~~ expenditures made in the state on or before  
8 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 \* \* \*

16 (3) Tax credits associated with a state-certified musical or theatrical  
17 production or a state-certified musical or theatrical facility infrastructure project shall  
18 never exceed the total base investment in that production or infrastructure project  
19 ~~and transportation expenditures.~~

20 \* \* \*

21 E. Certification and administration:

22 (1)

23 \* \* \*

24 (e) Prior to the final certification of a production or infrastructure project, the  
25 applicant shall submit to the Department of Economic Development ~~a report~~ an audit  
26 of the final amount of expenditures qualifying for credits pursuant to this Section,  
27 which ~~report~~ audit the Department of Economic Development may require to be  
28 prepared by an independent certified public accountant. The Department of  
29 Economic Development shall review the ~~report~~ audit and shall issue a final tax credit

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 \* \* \*

1           H. Recovery of Credits by the Department of Revenue.

2           (1) Credits previously granted to a taxpayer but later disallowed by the  
 3           Department of Economic Development may be recovered by the secretary of the  
 4           Department of Revenue through any collection remedy authorized by R.S. 47:1561  
 5           and initiated within three years from December thirty-first of the year in which the  
 6           credit was taken.

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

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

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

15          Section 3. This Act shall become effective on July 1, 2013.

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:** For the tax credit for musical and theatrical facility infrastructure projects, extends the program for one year for those projects receiving initial certification before Jan. 1, 2014, also repeals tax credits for musical and theatrical production transportation expenses and certain productions for nonprofit community theaters, and changes definitions.

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

Proposed law repeals two credits: the credit for qualified transportation costs for performance-related property, and the credit for projects for nonprofit community theaters.

One of the five credits authorized in present law is a credit for 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 sunsets the authority to grant credits on Dec. 31, 2013.

Proposed law extends the program by allowing projects which receive initial certification before Jan. 1, 2014 to continue making qualifying expenditures until Jan. 1, 2015.

Present law defines "infrastructure project" as a capital infrastructure project in La. directly related to the production or performance of musical or theatrical productions, property and equipment related thereto, any other facility which supports and is a necessary component of such facility, and any expenditures in the state related to the construction, repair, or renovation of such project.

Proposed law retains present law definition of "infrastructure project" for those projects which receive initial certification before July 1, 2013.

Proposed law revises the definition of "infrastructure project" for those projects which receive initial certification on or after July 1, 2013. Proposed law defines "infrastructure project" as a new or rehabilitated proscenium or black-box theatre infrastructure project located in La. and any expenditures in the state directly related to the construction, repair, or renovation of such project. Further, the primary purpose of the proposed facility must be to host live performances and the facility must have a minimum capacity of 500. Expenditures attributable to areas other than where live performances will take place may comprise no more than 25% of total qualifying expenditures.

Proposed law defines "infrastructure expenses" as those 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 defines "state-certified musical or theatrical production" as a musical or theatrical production or a series of productions occurring over the course of a twelve-month period, and the recording or filming of such production, which originate, are developed, or have their initial public performance before an audience within La., or which have their United States debut within La., and expenditures related thereto. Proposed law retains present law and adds to the definition by including concerts, musical tours, ballet, dance, comedy revue, or live variety entertainment.

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.

Effective July 1, 2013.

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

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original 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 present law regarding disallowance and recapture, of tax credits.
4. Adds and revises definitions.

House Floor Amendments to the engrossed bill.

1. Deletes provisions governing recapture of disallowed credits by the Dept. of Revenue.
2. Adds specific definitions of "state-certified musical or theatrical infrastructure project" for projects receiving initial certification both before and after the effective date of proposed law.
3. Adds July 1, 2013, effective date.