

Regular Session, 2013

HOUSE BILL NO. 483

BY REPRESENTATIVE NANCY LANDRY

TAX CREDITS: Extends authority to grant tax credits for certain state-certified musical or theatrical facility infrastructure projects

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), (C)(3), (E)(1)(e) and (F), to enact R.S. 47:6034(B)(12) and (H), 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 (C)(3), (E)(1)(e) and (F) are hereby amended and reenacted and R.S. 47:6034(B)(12) and (H)  
16 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



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

12 \* \* \*

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

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

- 20 (i) The person is domiciled in the state of Louisiana.
- 21 (ii) The person maintains a permanent place of abode within the state and  
 22 spends in the aggregate more than six months of each year within the state.
- 23 (iii) The person pays taxes to the state on the amount of money paid to such  
 24 person for which a credit is sought pursuant to this Section.
- 25 (b) A company owned or controlled by such a person and which lends the  
 26 services of such a person for a state-certified musical or theatrical production shall  
 27 also be deemed a resident if such company is organized or authorized to do business  
 28 in the state and such company pays taxes to the state on the amount of money paid  
 29 to such company for such services of such person.

1           ~~(9)~~(10) "State-certified higher education musical or theatrical infrastructure  
2           project" means a new proscenium or black-box theatre infrastructure project situated  
3           on a parcel of land located on the campus of a higher education institution in this  
4           state, that is owned by a higher education campus institution or support foundation  
5           related to the campus primarily operated to benefit and support campus students and  
6           the higher education facility. The primary purpose of the proposed infrastructure  
7           facility must be to host live performances, and the facility must have a minimum  
8           fixed seating capacity of five hundred. Expenditures attributable to areas other than  
9           where live performances will take place may comprise no more than twenty-five  
10          percent of total qualifying expenditures.

11           (11)(a) "State-certified musical or theatrical facility infrastructure project"  
12          or "state-certified infrastructure project", for any project which receives initial  
13          certification before July 1, 2013, means a capital infrastructure project in the state  
14          directly related to the production or performance of musical or theatrical productions  
15          as defined in this Section, and movable and immovable property and equipment  
16          related thereto, or any other facility that supports and is a necessary component of  
17          such facility, and any expenditures in the state related to the construction, repair, or  
18          renovation of such project, ~~which~~ that are certified, verified, and approved as  
19          provided for in this Section.

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

1           ~~(10)(a)~~(12)(a) "State-certified musical or theatrical production" means a  
2           musical or theatrical production performed in this state including but not limited to  
3           concerts, musical tours, ballet, dance, comedy revue, or live variety entertainment,  
4           or a series of productions occurring over the course of a twelve-month period, and  
5           the recording or filming of such production, that originate, are developed, or have  
6           their initial public performance before an audience within Louisiana, or that have  
7           their United States debut within Louisiana, and the production expenditures,  
8           expenditures for the payroll of residents, ~~transportation expenditures,~~ and  
9           expenditures for employing college and vocational-technical students related to such  
10          production or productions, that are certified, verified, and approved as provided for  
11          in this Section. Non-qualifying projects include but are not limited to non-touring  
12          music and cultural festivals, industry seminars, ~~and trade shows,~~ and any production  
13          activity taking place outside the state.

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

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





1 never exceed the total base investment in that production or infrastructure project  
2 ~~and transportation expenditures.~~

3 \* \* \*

4 E. Certification and administration:

5 (1)

6 \* \* \*

7 (e) Prior to the final certification of a production or infrastructure project, the  
8 applicant shall submit to the Department of Economic Development ~~a report~~ an audit  
9 of the final amount of expenditures qualifying for credits pursuant to this Section,  
10 which report the Department of Economic Development may require to be prepared  
11 by an independent certified public accountant. The Department of Economic  
12 Development shall review the ~~report~~ audit and shall issue a final tax credit  
13 certification letter, certifying the applicant and indicating the type and amount of tax  
14 credits for which the applicant or other companies or financiers are eligible pursuant  
15 to this Section.

16 \* \* \*

17 ~~F.(1) Recapture of credits. If the Department of Economic Development, or~~  
18 ~~the Department of Revenue find that funds for which a taxpayer received credits~~  
19 ~~according to this Section were not expended for expenditures qualifying for a credit~~  
20 ~~as provided in this Section, then the taxpayer's state income tax for such taxable~~  
21 ~~period shall be increased by such amount necessary for the recapture of credit~~  
22 ~~provided by this Section.~~

23 ~~(2)(a) Recovery of credits by Department of Revenue. Credits granted to a~~  
24 ~~taxpayer, but later disallowed, may be recovered by the secretary of the Department~~  
25 ~~of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated~~  
26 ~~within three years from December thirty-first of the year in which the credit was~~  
27 ~~taken.~~

28 ~~(b) The only interest that may be assessed and collected on recovered credits~~  
29 ~~is interest at a rate three percentage points above the rate provided in R.S.~~

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.





---

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)]

---

Nancy Landry

HB No. 483

**Abstract:** Extends the time period for granting income tax credits related to the construction, repair, or renovation of facilities related to musical and theatrical productions and performances and limits credits for projects after Jan. 1, 2014, to those located on the campus of a higher education institution.

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 changes the termination date for the authority to grant tax credits from Dec. 31, 2013, to Dec. 31, 2022.

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 also defines "higher education infrastructure project" in the same manner as proposed law for projects receiving initial certification on or after July 1, 2013, except limits projects to those located on the campus of an institution of higher education.

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.

Proposed law provides that after Jan. 1, 2014, the availability for tax credits shall be limited to those infrastructure projects situated on a parcel of land located on the campus of a higher education institution, which is owned by a higher education campus institution or support foundation related to the campus primarily operated to benefit and support campus students and faculty.

Proposed law provides that for higher education musical or theatrical infrastructure projects which receive initial certification on or before Jan. 1, 2018, a base investment credit may be earned for expenditures made in La. on or before Jan. 1, 2022, for the construction, repair, or renovation of a new state-certified higher education musical or theatrical facility infrastructure project, or for investments made by a company or a financier in such infrastructure project which are, in turn, expended for such construction, repair, or renovation. One quarter of the total base investment must be expended on or before Jan. 1, 2020, in order for a project to earn credits for any remaining estimated base investment provided for in its initial certification letter, as expenditures are made on or before Jan. 1, 2022.

Proposed law requires that an infrastructure project be complete before any credits are certified.

Present law requires that 50% of the total amount of tax credits granted annually shall be reserved for projects located outside of Jefferson and Orleans parishes. Proposed law excludes higher education musical or theatrical infrastructure projects from this requirement.

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 (bb), (C)(3), (E)(1)(e), and (F); Adds R.S. 47:6034(B)(12) and (H); Repeals R.S. 47:6034(C)(1)(b), (e), and (f))

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Changes program eligibility after Jan. 1, 2014, from a project located anywhere in the state to a project on the campus of a higher education institution.

2. Adds requirements for the timing of expenditures for qualification for tax credits.
4. Revises present law regarding disallowance, recapture and recovery of tax credits.
5. Deletes provisions of present law requiring the Dept. of Economic Development to report to the legislature with regard to the tax credit program.
6. Deletes the tax credit authorized under present law for certain investments in nonprofit community theaters.
7. Deletes present law regarding the allowance of transportation costs as certified expenditures.
8. Adds and revises definitions.

House Floor Amendments to the engrossed bill.

1. Deletes provisions governing recapture of disallowed tax 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.