

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

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  
 6 economic development because it fits well with the state's reputation as a tourist  
 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



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,  
6        verified, and approved as provided for in this Section. The primary purpose of the  
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            ~~(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  
13        concerts, musical tours, ballet, dance, comedy revue, or live variety entertainment,  
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,  
18        expenditures for the payroll of residents, ~~transportation expenditures,~~ and  
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.

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



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.~~

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.

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#### 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)]

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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.

Present law 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.

Proposed law retains present law 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.



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

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 authorizes a tax credit for qualified transportation expenditures for performance-related property.

Proposed law repeals the tax credit for transportation expenditures.

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

Proposed law repeals the tax credit for base investment in productions for nonprofit community theater.

Present law 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.

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

Proposed law 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. 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 infrastructure project".

Proposed law retains present law 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".

Proposed law retains present law 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.

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

Proposed law 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 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.