

2016 First Extraordinary Session

SENATE BILL NO. 11

BY SENATOR DONAHUE

TAX/TAXATION. Establishes a baseline limit on all claims against income and franchise tax for musical and theatrical production income tax credits filed during a fiscal year on a first-come, first-served basis and gives claims above the amount priority in the next fiscal year. (gov sig)

1 AN ACT

2 To amend and reenact the introductory paragraphs of R.S. 47:6034(C), (C)(1) and (E), R.S.
3 47:6034(C)(1)(a)(ii)(aa), (bb) and (4), (D)(1), and (K), to enact R.S. 47:6034(L), and
4 to repeal R.S. 47:6034(C)(1)(a)(ii)(bb) as amended by Acts 2015, No. 125, Section
5 5, relative to income tax credits; to provide a baseline amount of credits that may be
6 claimed in a fiscal year; to provide a termination date for the credit; and to provide
7 for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. The introductory paragraphs of R.S. 47:6034(C), (C)(1) and (E), R.S.
10 47:6034(C)(1)(a)(ii)(aa), (bb) and (4), (D)(1), and (K) are hereby amended and reenacted
11 and R.S. 47:6034(L) is hereby enacted to read as follows:

12 §6034. Musical and theatrical production income tax credit

13 * * *

14 C. Income tax credits for state-certified productions and state-certified
15 musical or theatrical facility infrastructure projects. **Subject to the provisions of**
16 **Subsection K of this Section:**

17 (1) There is **are** hereby authorized the following types of credits against the

1 state income tax:

2 (a) * * *

3 (ii)(aa) For state-certified infrastructure projects that receive initial
4 certification on or before January 1, 2014, a base investment credit may be earned
5 for expenditures made in the state on or before January 1, 2015, for the construction,
6 repair, or renovation of a state-certified musical or theatrical facility infrastructure
7 project or for investments made by a company or a financier in such infrastructure
8 project which are, in turn, expended for such construction, repair, or renovation, not
9 to exceed ten million dollars per state-certified infrastructure project, under
10 conditions provided for in this Item. ~~No~~ **Except as provided in Subsection K of this**
11 **Section, no** more than sixty million dollars in tax credits under this Section shall be
12 granted for infrastructure projects per year.

13 (bb)(I) For state-certified higher education musical or theatrical infrastructure
14 projects that receive initial certification before July 1, 2015, a base investment credit
15 may be earned for expenditures made in the state on or before ~~January 1, 2022~~ **June**
16 **30, 2021**, for the construction, repair, or renovation of a new state-certified higher
17 education musical or theatrical facility infrastructure project, or for investments
18 made by a company or a financier in such infrastructure project that are, in turn,
19 expended for such construction, repair, or renovation. No more than ten million
20 dollars in tax credits per project or sixty million dollars total in tax credits shall be
21 granted for state-certified higher education musical or theatrical infrastructure
22 projects for projects that receive initial certification before July 1, 2015. Twenty-five
23 percent of the total base investment provided for in the initial certification letter of
24 a state-certified higher education musical or theatrical infrastructure project must be
25 expended on or before January 1, 2020, in order for the project to earn credits for the
26 remaining estimated base investment provided for in the initial certification letter,
27 as expenditures are made in the state on or before ~~January 1, 2022~~ **June 30, 2021**.
28 No credits shall be certified until the state-certified higher education musical or
29 theatrical infrastructure project is complete. The initial certification letter shall be

1 effective for qualified expenditures made no more than six months prior to the date
2 of application. State-certified higher education musical or theatrical infrastructure
3 projects shall not be subject to the provisions of Subitem (cc) of this Item nor shall
4 such projects be subject to the provisions of Subsection H of this Section.

5 (II) For state-certified higher education musical or theatrical infrastructure
6 projects that receive initial certification on or after July 1, 2015, ~~and on or before~~
7 ~~January 1, 2018,~~ a base investment credit may be earned for expenditures made in
8 the state on or before ~~January 1, 2022~~ **June 30, 2021**, for the construction, repair, or
9 renovation of a new state-certified higher education musical or theatrical facility
10 infrastructure project, or for investments made by a company or a financier in such
11 infrastructure project that are, in turn, expended for such construction, repair, or
12 renovation. ~~No~~ **Except as provided in Subsection K of this Section, no** more than
13 seven million two hundred thousand dollars in tax credits per project or forty-three
14 million two hundred thousand dollars total in tax credits shall be granted for
15 state-certified higher education musical or theatrical infrastructure projects that
16 receive initial certification on or after July 1, 2015, ~~and on or before January 1, 2018.~~
17 Twenty-five percent of the total base investment provided for in the initial
18 certification letter of a state-certified higher education musical or theatrical
19 infrastructure project must be expended on or before January 1, 2020, in order for the
20 project to earn credits for the remaining estimated base investment provided for in
21 the initial certification letter, as expenditures are made in the state on or before
22 ~~January 1, 2022~~ **June 30, 2021**. No credits shall be certified until the state-certified
23 higher education musical or theatrical infrastructure project is complete. The initial
24 certification letter shall be effective for qualified expenditures made no more than
25 six months prior to the date of application. State-certified higher education musical
26 or theatrical infrastructure projects shall not be subject to the provisions of Subitem
27 (cc) of this Item nor shall such projects be subject to the provisions of Subsection H
28 of this Section.

29 * * *

1 (4) The granting of credits under this Section shall be on a first-come, first-
 2 served basis. If the total amount of credits applied for in any particular year exceeds
 3 the aggregate amount of tax credits allowed for that year, the excess shall be treated
 4 as having been applied for on the first day of the subsequent year. **In case of any**
 5 **conflict between this Paragraph and Subsection K of this Section, Subsection K**
 6 **shall control.**

7 D.(1) The credit shall be allowed against individual or corporate income tax
 8 of the companies or financiers of the production or infrastructure project in
 9 accordance with their share of the credit as provided for in the application for
 10 certification for the production or infrastructure project. A company or financier
 11 may, on a one-time basis, transfer the credit or any refund of an overpayment to an
 12 individual or other entity including without limitation a bank or other lender,
 13 provided that the transfer shall not be effective until receipt by the Department of
 14 Revenue of written notice of such transfer. Transferors and transferees shall submit
 15 to the Department of Revenue, in writing, a notification of any transfer of the tax
 16 credit within ten business days after the transfer. The credit shall be allowed for the
 17 taxable period in which expenditures eligible for a credit are expended. Any excess
 18 of the credit over the income tax liability against which the credit may be applied
 19 shall constitute an overpayment, as defined in R.S. 47:1621(A), and the secretary of
 20 the Department of Revenue shall, **to the extent permitted by Subsection K of this**
 21 **Section,** make a refund of such overpayment from the current collections of the taxes
 22 imposed by Chapter 1 of Subtitle II of this Title, as amended. The right to a refund
 23 of any such overpayment shall not be subject to the requirements of R.S. 47:1621(B).

24 * * *

25 E. Certification and administration. **Subject to the provisions of Subsection**
 26 **K of this Section:**

27 * * *

28 **K. Limitations; termination. (1) Notwithstanding any other provision of**
 29 **this Section, for each fiscal year beginning Fiscal Year 2016-2017, no more than**

1 four million dollars, the baseline average of the aggregate amount of claims filed
 2 for the credits provided for in this Section during the five fiscal years from fiscal
 3 year 2008-2009 to fiscal year 2013-2014, shall be allowed as a credit against
 4 income tax liability, for all such claims for the credit filed during a fiscal year.
 5 Claims for the credit shall be allowed on a first-come, first-served basis. Any
 6 taxpayer whose claim for such tax credit is disallowed may use the tax credit
 7 against income tax liability due in a return filed in the next fiscal year, and his
 8 claim shall have priority over other claims filed after the date and time of his
 9 original claim.

10 (2) The provisions of this Section shall terminate on June 30, 2021.

11 L. Commencing no later than ~~January 31~~ June 30, 2016, the House
 12 Committee on Ways and Means and the Senate Committee on Revenue and Fiscal
 13 Affairs shall review the credit authorized pursuant to the provisions of this Section
 14 to determine if the economic benefit provided by such credit outweighs the loss of
 15 revenue realized by the state as a result of awarding such credit. The House and
 16 Senate committees shall make a specific recommendation no later than March 1,
 17 2017, to either continue the credit or to terminate the credit.

18 Section 2. R.S. 47:6034(C)(1)(a)(ii)(bb) as amended by Acts 2015, No. 125, Section
 19 5 is hereby repealed.

20 Section 3. This Act shall become effective upon signature by the governor or, if not
 21 signed by the governor, upon expiration of the time for bills to become law without signature
 22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 23 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 24 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Leonore Heavey.

DIGEST

SB 11 Original

2016 First Extraordinary Session

Donahue

Present law provides for the musical and theatrical production income tax credit for expenditures on productions or infrastructure projects. Provides relative to the purpose of, definitions applicable to, applications for, and administration of the program.

Proposed law retains present law.

Present law limits the amount of the credits that may be granted in a year to \$43.2 million.

Proposed law establishes a cap of four million dollars on the total amount of credits allowed in a fiscal year beginning with FY 2016-17. The cap is the baseline average of the aggregate amount of claims filed for the credits provided for in present law during the five fiscal years from FY 2008-9 to FY 2013-14.

Proposed law provides that claims for the credit shall be allowed on a first-come, first-served basis. Provides that any taxpayer whose claim for the credit is disallowed may use the credit against income tax liability due in a return filed in the next fiscal year and his claim shall have priority over other claims filed after the date and time of his original claim.

Proposed law terminates the program on June 30, 2021.

Present law requires that commencing no later than January 31, 2016 the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs review the credits to determine if the economic benefit outweighs the loss of revenue realized by the state as a result of awarding the credit. Requires committees to make specific recommendations, no later than March 1, 2017, for continuation or termination of the credit.

Proposed law retains these provisions but requires that the committee review commence no later than June 30, 2016.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:6034(C)(intro para), (1)(intro para) and(a)(ii)(aa) and (bb) and (4), (D)(1), and (E)(intro para) and K; adds R.S. 47:6034(L); repeals R.S. 47:6034(C)(1)(a)(ii)(bb) as amended by Acts 2015, No. 125, §5)