

§6023. Sound Recording Investor Tax Credit

A. Purpose. The primary objective of this Section is to encourage development in Louisiana of a strong capital and infrastructure base for musical recording productions in order to achieve a more independent, self-supporting music industry. This objective is divided into immediate and long-term objectives as follows:

(1) Immediate objectives are to:

(a) Attract private investment for the production of musical recordings or "sound recordings" in Louisiana.

(b) Develop a tax and capital infrastructure which encourages private investment. This tax infrastructure is to provide for state participation in the form of tax credits to encourage investment in state-certified musical recording productions and infrastructure.

(c) Develop a tax infrastructure utilizing tax credits which encourage investments in multiple state-certified production projects.

(2) Long-term objectives are to:

(a) Encourage increased employment opportunities within this sector and increased global competition in fully developing economic development options within the music and recording industries.

(b) Encourage new education curricula in order to provide a labor force trained in all aspects of musical recording production.

(c) Encourage the development of a Louisiana music recording production infrastructure with state-of-the-art facilities.

B. Definitions. For the purposes of this Section:

(1) "Base investment" shall mean the actual investment made and expended by a state-certified production in the state as production-related costs and/or in a state-certified musical recording infrastructure project.

(2) "Expended in the state" in the case of tangible property shall mean property which is acquired from a source within the state, and in the case of services, shall mean services procured and performed in the state.

(3) "Sound recording" means a recording of music, poetry, or spoken-word performance made in Louisiana, in whole or in part. The term "sound recording" shall not include the audio portions of dialogue or words spoken and recorded as part of a motion picture, video, theatrical production, television news coverage, and athletic events.

(4) "Sound recording production company" shall mean a company engaged in the business of producing sound recordings as defined in this Section. Sound recording production company shall not mean or include any person or company, or any company owned, affiliated, or controlled, in whole or in part, by any company or person, which is in default on a loan made by the state or a loan guaranteed by the state, nor which has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.

(5) "State-certified musical recording infrastructure project" means a musical recording capital infrastructure project and costs related to such project that are approved by the Louisiana Department of Economic Development within one hundred eighty days of the receipt by the Department of Economic Development of a complete application for initial certification of an infrastructure project. If the infrastructure project is not approved within one hundred eighty days, the Department of Economic Development shall provide a written report to the Senate

Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means which states the reason that the infrastructure project has not been approved.

(6) "State-certified production" means a sound recording production, or a series of productions occurring over the course of a twelve-month period, and costs related to such production or productions that are approved by the Louisiana Department of Economic Development within one hundred eighty days of the receipt by the Department of Economic Development of a complete application for initial certification of a production. If the production is not approved within one hundred eighty days, the Department of Economic Development shall provide a written report to the Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means which states the reason that the production has not been approved.

C. Investor tax credit; state-certified productions and infrastructure projects.

(1) Until January 1, 2010, there is hereby authorized a credit against the state income tax for investments made in state-certified productions and state-certified musical recording infrastructure projects. The tax credit shall be earned by investors at the time expenditures are certified by the Louisiana Department of Economic Development according to the total base investment certified for the sound recording production company per calendar year. However, no credit shall be allowed under this Section for any expenditures for which a credit was granted under R.S. 47:6007. However, no sound recording production company shall earn a sound recording investor tax credit in more than three years out of any five-year period.

(a) For state-certified productions and state-certified musical recording infrastructure projects certified prior to July 1, 2007, the tax credit shall be as follows:

(i) If the total base investment is greater than fifteen thousand dollars and less than or equal to one hundred fifty thousand dollars, each investor shall be allowed a tax credit of ten percent of the base investment made by that investor.

(ii) If the total base investment is greater than one hundred fifty thousand dollars and less than or equal to one million dollars, each investor shall be allowed a tax credit of fifteen percent of the base investment made by that investor.

(iii) If the total base investment is greater than one million dollars, each investor shall be allowed a tax credit of twenty percent of the base investment made by that investor.

(b) For state-certified productions and state-certified musical recording infrastructure projects certified on and after July 1, 2007, each investor shall be allowed a tax credit of twenty-five percent of the base investment made by that investor in excess of fifteen thousand dollars.

(2) Sound recording investor tax credits associated with a state-certified production shall never exceed the total base investment in that production or musical recording infrastructure project.

(3) Except as otherwise provided in this Paragraph, the aggregate amount of credits certified for all investors pursuant to this Section during any calendar year shall not exceed three million dollars.

(a) An application for initial certification of a project shall be submitted to the Louisiana Department of Economic Development prior to the granting of the credit, and the granting of credits under this Section shall be on a first-come, first-served basis. The secretary of the Louisiana Department of Economic Development shall determine through the promulgation of rules the administration of the annual aggregate maximum. Prior to adoption, these rules shall be approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

(b) If the total amount of credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess will be treated as having been applied for on the first day of the subsequent year.

D.(1) The credit shall be allowed against the individual or corporate income tax for the taxable period in which the credit is earned. Any excess of the credit over the income tax liability against which the credit can be applied shall constitute an overpayment, as defined in R.S. 47:1621(A), and the secretary shall make a refund of such overpayment from the current collections of the taxes imposed by Chapter 1 of Subtitle II of this Title, as amended. The right to a refund of any such overpayment shall not be subject to the requirements of R.S. 47:1621(B).

(2) Application of the credit. Individuals, estates, and trusts shall claim any credit allowed under this Section on their income tax return.

(a) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members.

(b) Corporate partners or members shall claim their share of the credit on their corporation income tax returns.

(c) Individual partners or members shall claim their share of the credit on their individual income tax returns.

(d) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

#### E. Certification and administration

(1) The secretary of the Department of Economic Development shall determine through the adoption and promulgation of rules which projects and expenditures, including amounts expended in this state on state-certified infrastructure projects, qualify according to this Section.

Prior to adoption, these rules shall be approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs. When determining which projects qualify, the Louisiana Department of Economic Development shall take the following factors into consideration:

(a) The impact of the production on the immediate and long-term objectives of this Section.

(b) The impact of the production on the employment of Louisiana residents.

(c) The impact of the production on the overall economy of the state.

(d) The availability of similar infrastructure facilities within fifty miles of the proposed infrastructure project.

(2)(a) Application. An applicant for the sound recording investor tax credit shall submit an application for initial certification to the Louisiana Department of Economic Development that includes the following information:

(i) For state-certified productions the application shall include:

(aa) The distribution plan.

(bb) A preliminary budget including estimated Louisiana payroll and estimated base investment.

(cc) A description of the type of sound to be recorded.

(dd) A list of the principal creative elements including performing artist(s) and producer.

(ee) The name and address of the recording studio or other location where the recording production will take place.

(ff) A statement that the production will qualify as a state-certified production.

(gg) Estimated start and completion dates.

(ii) For state-certified musical recording infrastructure projects the application shall include:

(aa) A detailed description of the infrastructure project.

(bb) A preliminary budget.

(cc) A statement that the project meets the definition of a state-certified infrastructure project.

(dd) Estimated start and completion dates.

(b) If the application is incomplete, additional information may be requested prior to further action by the Louisiana Department of Economic Development.

(c) The Louisiana Department of Economic Development shall submit its initial certification of a project as a state-certified production or a state-certified musical recording infrastructure project to investors and to the secretary of the Department of Revenue. The initial certification shall include a unique identifying number for each state-certified production.

(d) Prior to any certification of the state-certified production or infrastructure project, the sound recording production company shall submit to the Louisiana Department of Economic Development a cost report of production or project expenditures which the Louisiana Department of Economic Development may require to be prepared by an independent certified public accountant. The Louisiana Department of Economic Development shall review such expenditures and shall issue a tax credit certification letter to the investors indicating the amount of tax credits certified for the state-certified production or state-certified infrastructure project.

(3) The secretary of the Louisiana Department of Economic Development, in consultation with the Department of Revenue, shall adopt and promulgate such rules and regulations as are necessary to carry out the intent and purposes of this Section in accordance with the general guidelines provided herein.

(4) Any taxpayer applying for the credit shall be required to reimburse the Louisiana Department of Economic Development for any audits required in relation to granting the credit.

(5) With input from the Legislative Fiscal Office, the Louisiana Department of Economic Development shall prepare a written report to be submitted to the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs no less than sixty days prior to the start of the Regular Session of the Legislature in 2007, and every second year thereafter. The report shall include the overall impact of the tax credits, the amount of the tax credits issued, the number of new jobs created, the amount of Louisiana payroll created, the economic impact of the tax credits and music industry, the amount of new infrastructure that has been developed in the state, and any other factors that describe the impact of the program.

F. Recapture of credits. If the Louisiana Music Commission and the Department of Economic Development find that funds for which an investor received credits according to this Section are not invested in and expended with respect to a state-certified production within twenty-four months of the date that such credits are earned, then the investor's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by this Section.

G. Recovery of credits by Department of Revenue

(1) Credits previously granted to a taxpayer, but later disallowed, may be recovered by the secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December thirty-first of the year in which the twenty-four month investment period specified in Subsection F of this Section ends.

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

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

Acts 2005, No. 485, §1, eff. July 12, 2005, applicable to tax years beginning on and after Jan. 1, 2006; Acts 2007, No. 368, §1, eff. July 10, 2007.