

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the
Secretary of Revenue
Chapter 16. Louisiana Entertainment Industry
Tax Credit Programs
Subchapter C. Louisiana Sound Recording
Investor Tax Credit Program
§1631. Purpose and Description of
Louisiana Sound Recording Investor Tax
Credit Program

A. The purpose of this program is to encourage development in Louisiana of a strong capital and infrastructure base for sound recording productions in order to achieve an independent, self-supporting sound recording industry, and to encourage investments in multiple state-certified sound recording production projects and infrastructure.

B. Approvals and certifications as to whether a project qualifies as a state-certified production as required for Sound Recording Investor Tax Credits are not to be considered as entitlements for sound recording production companies, and the Louisiana Department of Economic Development shall have the discretion to determine whether or not each particular sound recording or infrastructure project, meets the criteria for such qualification as provided herein.

C. These rules implement the Louisiana Sound Recording Investor Tax Credit pursuant to R.S. 47:6023. This credit was created by Act 485 (H.B. 631), Laws 2005 and amended by Act 368 (S.B. 70), Laws 2007 of Reg. Sess., effective July 1, 2007.

D. These provisions 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1347 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:304 (February 2010).

§1633. Definitions

A. The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Base Investment—shall mean the actual investment made and expended in the state by:

a. a state-certified production as production expenditures incurred in this state that are directly used in state-certified production or productions;

b. a person or other legal entity in the development of a state-certified infrastructure project. Infrastructure Expenditures shall include, but

are not limited to, expenditures for sound recording infrastructure project development, sound recording production spaces, sound production equipment, facilities, equipment for sound recording companies domiciled within Louisiana, sound processing and recording equipment, land acquisition and closing costs, construction costs, design and professional consulting fees associated with the state-certified infrastructure project, furniture, fixtures, percussion, pianos, keyboards, organs, musical and amplification equipment, and financing costs which shall remain permanently located within Louisiana for the useful life of the object. Infrastructure Expenditures shall not include indirect costs, any amounts that are later reimbursed by a third party, any costs related to the allocation of tax credits, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the State-certified Infrastructure Project.

Department—the Louisiana Department of Economic Development, or its successor.

Expended in the State—an expenditure to acquire property from a source within the state which is subject to state sales or use tax, or an expenditure as compensation for services performed within the state which is subject to state income tax.

Holder—the holder of a partnership interest, membership interest, or other similar ownership interest on any entity not taxed as a corporation.

Investor—any individual or entity that makes an investment in a state-certified production or infrastructure project.

Secretary—Secretary of the Louisiana Department of Economic Development.

Series—more than one state-certified production produced in a 12 month period, by or on behalf of the sound recording company or an affiliate grouped together in such a way that the group meets the minimum in-state spend of \$15,000.

Sound Recording—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 television news coverage or athletic events.

Sound Recording Production Company—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.

State-Certified Musical Recording Infrastructure Project—a sound recording capital infrastructure project and base investment related to such project that are approved by the Louisiana Department of Economic Development.

State-Certified Production—a sound recording production or a series of productions occurring over the course of a 12-month period, and costs related to such production or productions that are approved by the Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1347 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:304 (February 2010).

§1635. Rules of Application

A. The sound recording investor tax credit authorized by R.S. 47:6023(C) may be earned and claimed as follows.

1. Until January 1, 2015, there is authorized a credit against the state income tax for investments made in state-certified productions and state-certified sound recording infrastructure projects, which credit will 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. No credit shall be allowed for any expenditures for which a credit was granted under R.S. 47:6007.

2. For state-certified productions certified on and after July 1, 2007, and state-certified infrastructure projects which have applied on or before August 1, 2009, each investor shall be allowed a tax credit of twenty-five percent of the base investment made by the investor in excess of \$15,000.

a. Once the \$15,000 minimum investment threshold is met, each investor shall be allowed a tax credit for all investments made up to and in excess of \$15,000.

3. 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 the credits under this Rule shall be on a first-come, first-served basis based on when the proper cost reports as defined here under RS 47:6023, are submitted to DED for certification of tax credits, which shall be determined by the date of a signed receipt via

certified or registered mail, courier, hand or other delivery, or the date on a proof of transmission via facsimile and/or by the DED stamped and staff initialed date. The Secretary of the Department of Economic development shall determine annually the annual aggregate maximum. If the total amount of credits earned for any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess will be treated as having been earned on the first day of the subsequent year.

a. Applications for a series of productions shall provide the titles, budgets and a brief description for each production in the series. The series of productions, as a combined group, must at least achieve, and may exceed the minimum investment. If one single project may, on its own, exceed the \$15,000 minimum threshold, it must make separate application.

4. Individuals or entities may earn sound recording investor tax credits pursuant to R.S. 47:6023(C).

5. Any individual or entity shall be allowed to claim the sound recording investor tax credit authorized by R.S. 47:6023:

a. whether or not any such individual is a Louisiana resident; and

b. whether or not any such entity is domiciled in Louisiana, organized under Louisiana law, or headquartered in Louisiana.

6. Any applicant applying for the credit shall be required to reimburse the department for any audits required in relation to granting the credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1348 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:305 (February 2010).

§1637. Certification

A. Initial Certification of State-Certified Productions

1. To obtain the approval of the department for a "state-certified production" as required by R.S. 47:6023(B)(5) and (6), the sound recording production company that will produce the sound recording production must submit a written request to the department for approval of the production as a "state-certified musical recording infrastructure project" or as a "state-certified production" and setting forth the following facts, when applicable:

a. working title of the sound recording production for which approval is requested;

b. name of the requesting production company;

c. telephone number of requesting production company;

d. name and telephone number of the requesting production company's contact person;

e. approximate beginning and ending date of production in Louisiana;

f. Louisiana office address of requesting production company (if available);

g. telephone number of requesting production company's Louisiana office address (if available);

h. estimated total production-related costs of the sound recording production for which approval is requested;

i. estimated total amount of production-related costs to be expended in Louisiana in connection with the sound recording production for which approval is requested;

k. estimated total payroll to be paid by the requesting production company to Louisiana residents employed by the requesting production company in connection with the production for which approval is requested.;

l. facts sufficient to determine each of the following:

i. that the requesting production company is a sound recording production company as defined by R.S. 47:6023(B)(4);

m. for "state-certified productions" the application shall also include:

i. the distribution plan;

ii. a preliminary budget including estimated Louisiana payroll and estimated baseinvestment;

iii. a description of the type of sound to be recorded;

iv. a list of the principal creative elements including performing artist(s) and producer;

v. the name and address of the recording studio or other location where the recording production will take place;

vi. a statement that the production will qualify as a state-certified production; and

vii. estimated start and completion dates;

n. for "state-certified sound recording infrastructure projects" the application shall also include:

i. a detailed description of the infrastructure project;

ii. a preliminary budget;

iii. a statement that the project meets the definition of a state-certified infrastructure project; and

iv. estimated start and completion dates;

v. a business plan for startup sound recording infrastructure companies.

2. The department shall submit its initial certification of a project as an "initial state-certified production" or an "initial state-certified musical recording infrastructure project" to investors and to the Secretary of the Department of Revenue, containing a unique identifying number. The department shall issue their written approval of a project as a "state-certified musical recording infrastructure project" or of a sound recording production as a "state-certified production" within 90 business days after receiving a request with respect to such production that complies with Paragraph 1 of this Section. In the alternative, if the department determines that a request for approval of a project as a "state-certified musical recording infrastructure project" or of a sound recording production as an "initial state-certified production" received from a production company is not in compliance with Paragraph 1 of this Section, then within 45 business days after receiving such request, the department shall request in writing from the requesting production company any information necessary in their determination for such request to comply with Paragraph 1 of this Section. Upon receiving all of the requested additional information in writing from the production company, and if the department determine that the request for approval with respect to such project or production complies with Paragraph 1 of this Section, the department shall issue to the requesting production company their written approval of the project as a "state-certified musical recording infrastructure project" or of a sound recording production as a "state-certified production."

3. The approval of a project as an "initial state-certified musical recording infrastructure project" or of a sound recording production as an "initial state-certified production" issued by the

department pursuant to the above Paragraph 2 of this Section will include the following, as appropriate.

a. For initial state-certified musical recording infrastructure projects:

"Based solely on our examination of the factual representations set forth in your request for state certification of ["Name of Project"] dated [Date of Request] attached hereto as Exhibit A, the Department of Economic Development does hereby certify that ["Name of the Project"] qualifies as of [Date] as a initial state-certified musical recording infrastructure project as such term is defined in Louisiana Revised Statutes 47:6023 B(6).

["Identifying Number"] is hereby assigned to ["Name of Project"] and such number shall constitute such project's identifying number as contemplated by R.S. 47: 6023 E(2)(c)."

b. For initial state-certified sound recording productions:

"Based solely on our examination of the factual representations set forth in your request for state certification of ["Name of Production"] dated [Date of Request] attached hereto as Exhibit A, the undersigned does hereby certify that ["Name of the Production"] qualifies as of [Date] as a initial sound recording state-certified production as such term is defined in Louisiana Revised Statutes 47:6023 B(5).

["Identifying Number"] is hereby assigned to ["Name of Production"] and such number shall constitute such production's identifying number as contemplated by R.S. 47: 6023 E(2)(c)."

B. Any funds expended prior to the department's receipt of the official sound recording application for initial credit, shall not qualify as part of the base investment and will not be certified for tax credits. The Sound Recording application must be in writing on the official form to the department.

C. Certification of Sound Recording Investor Tax Credits

1. Prior to any certification of the state-certified production or infrastructure project, the sound recording production company, in the case of an infrastructure project, shall submit to the department a cost report of production or project expenditures to be prepared and audited by an independent Louisiana certified public accountant. The department shall review such expenditures and shall issue a tax credit certification letter to the investors and the Louisiana Department of Revenue indicating the amount of tax credits certified for the state-certified production or state-certified infrastructure project. The certified public accountant must follow the standards as set out in the CPA Auditing Instructions, which are provided by the Department of Economic Development. This must also be accompanied by the CPA Certification Form,

which is provided by the Department of Economic Development.

2. After receiving a written request from an investor and after the meeting of all criteria, the department shall issue a letter of certification to such investor signed by the secretary reflecting the investor's name, the dollar amount of sound recording investor tax credits earned by the investor pursuant to R.S. 47:6023(C) through the date of such request, the calendar year in which the sound recording investor tax credits were earned by the investor, the state-certified sound recording infrastructure project or the state-certified production with respect to which the investor earned the sound recording investor tax credits, and the identifying number assigned to such state-certified sound recording infrastructure project or state-certified production.

3. The tax credits when issued and upon receipt shall not be transferred to any third party and will be held valid only to the party which was certified by the Department of Economic Development. After certification, the Louisiana Department of Economic Development shall submit the tax credit certification letter to the Department of Revenue on behalf of the investor who earned the sound recording tax credits. The Department of Revenue may require the investor to submit additional information as may be necessary to administer the provisions of this Section. Upon receipt of the tax credit certification letter and any necessary additional information, the secretary of the Department of Revenue shall make payment to the investor in the amount to which he is entitled from the current collections of the taxes collected pursuant to Chapter 1 of Subtitle II of this Title, as amended.

4. Once certification of a project has been granted under the criteria established within this provision and pursuant to 47:6023, the granting of such credit will be based upon a first come, first serve basis of the approved cost report or audit and shall be set for a maximum aggregate amount not to exceed \$3 million. For purposes of this Section the applicant will be considered the investor

5. If the total amount of qualifying credits in any particular year exceeds the aggregate amount of tax credits allowed for that year the excess credits will be treated as having been certified for the first day of the subsequent year.

6. The failure of the department to issue a letter of certification in accordance with this Subpart shall not:

a. void or otherwise affect, in any way, the legality or validity of any allocation of sound recording investor tax credits;

b. prohibit any Louisiana taxpayer from claiming sound recording investor tax credits against its Louisiana income tax liability if the sound recording investor tax credits are otherwise allocated or claimed in accordance with R.S. 47:6023(C) and this Subpart; or

c. result in any recapture, forfeiture or other disallowance of sound recording investor tax credits under R.S. 47:6023(G) or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1348 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:305 (February 2010).

§1639. Credits

A. Application of the Sound Recording Investor Tax Credits

1. The sound recording investor tax credit can be used to offset taxes, penalties and interest.

B. Recapture of Credits

1. If the Department of Economic Development and the Department of Revenue find that funds for which an investor received credits according to this program are not invested in and expended with respect to a state-certified production within 24 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 program.

2. 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 31 of the year in which the 24 month investment period specified in the above Paragraph ends.

3. 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 Civil Code Article 2924(B)(1), which shall be computed from the original date of the return on which the credit was taken.

C. Brand

1. As a condition for receiving certification of tax credits under this Section, state-certified productions may be required to display the state

brand or logo, or both, as prescribed by the secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1350 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:307 (February 2010).

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