

SENATE BILL NO. 277

BY SENATORS DUPLESSIS, ERDEY, GRAY EVANS, KOSTELKA, LONG,
MARIONNEAUX, MICHOT, QUINN, RISER AND WALSWORTH
AND REPRESENTATIVES ABRAMSON, ARNOLD, BARRAS,
CORTEZ, DOWNS, HENRY, HOFFMANN, HONEY, LEGER, LIGI,
RITCHIE, ROBIDEAUX AND JANE SMITH

1 AN ACT

2 To amend and reenact R.S. 47:6022, relative to digital interactive media producer tax credit;
3 to provide terms and conditions; to provide relative to qualifications, administration
4 and procedures; to provide an effective date; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 47:6022 is hereby amended and reenacted to read as follows:

7 §6022. Digital interactive media producer tax credit

8 A. Short title. This Section shall be known and may be referred to as the
9 "Louisiana Digital Media Act."

10 B. Purpose. The primary objective of this Section is to encourage
11 development in Louisiana of a strong capital base for the production of digital
12 interactive media **products and platforms** in order to achieve a more independent,
13 self-supporting industry. This objective is divided into immediate and long-term
14 objectives as follows:

15 (1) Immediate objectives are to:

16 (a) Attract private investment for the production of digital interactive media
17 **products and platforms** in this state.

18 (b) Develop a tax infrastructure which encourages private investment. This
19 infrastructure will provide for state participation in the form of tax credits to
20 encourage investment in state-certified productions.

21 (c) Develop a tax infrastructure utilizing tax credits which encourage
22 investments in multiple state-certified productions.

23 (2) Long-term objectives are to:

24 (a) Encourage increased employment opportunities within this sector and

1 increased competition with other states in fully developing economic development
2 options within digital interactive media **products and platforms**.

3 (b) Encourage new education curricula in order to provide a labor force
4 trained in all aspects of digital interactive media.

5 (c) Encourage partnerships between digital interactive media developers and
6 Louisiana educational institutions.

7 C. Definitions. For the purposes of this Section:

8 (1) "Base investment" means the actual funds expended in ~~this state~~
9 **Louisiana** by a state-certified production as production-related costs **for design or**
10 **development of digital interactive media, including costs for payroll and**
11 **component parts, as defined in this Section.**

12 (2) "Component parts," with respect to digital interactive media, means all
13 elements that are integral to the functioning or development of such products **and**
14 **platforms**. Some examples of "component parts" are software, computer code,
15 image files, music files, **audio files, video files**, scripts and plays, concept mock-ups,
16 software tools, and testing procedures. **Component parts shall also include, but**
17 **not be limited to computer servers, workstations, server racks, hard drives,**
18 **optical drives, monitors, keyboards, integrated video and audio equipment,**
19 **networking routers, switches, network cabling, and any other computer-related**
20 **hardware necessary to create or operate a digital interactive media product or**
21 **platform.**

22 (3) "Department" means the Louisiana Department of ~~Revenue~~**Economic**
23 **Development.**

24 (4)~~(a)~~ "Digital interactive media" means products **or platforms** that are
25 intended for commercial **production**, use, or distribution ~~and that are (a) produced~~
26 ~~for distribution on electronic media, including file downloads over the Internet, (b)~~
27 ~~a computer-controlled virtual universe with which users may interact in order to~~
28 ~~achieve a goal or set of goals, and (c) include an appreciable quantity of three of the~~
29 ~~following five types of data: text, sound, fixed images, animated images, and 3D~~
30 ~~geometry. ;~~ **that contain at least two of the following types of data: text, sound,**

1 fixed images, animated images, video, or 3D geometry; and that have all of the
2 following three characteristics:

3 (i) "Digital" means a system that uses discrete (discontinuous) values
4 ordinarily symbolized numerically to represent information for input,
5 processing, transmission and storage. A digital system would be contrasted with
6 an "analog" system which uses a continuous range of values to represent
7 information. The term "digital" includes, but is not limited to information
8 input, processed, transmitted and stored via the Internet.

9 (ii) "Interactive" means a digital media system for inputting, processing,
10 transmitting or storing information or data in which users of the system are
11 able to respond to the digital media system by inputting, transmitting,
12 processing or storing information or data in response to the information or data
13 provided to them through the digital media system. "Digital media system"
14 means communications delivered via electronic energy where the information
15 stored, transmitted, or received is in digital form.

16 (iii) "Media" means communication tools used to store, transmit,
17 distribute and deliver information and data. The term "media" includes
18 methods and mechanisms for information distribution through, but not limited
19 to distributed networks, such as the Internet, and through compact disc, CD-
20 ROM, various types of DVD, and other removable storage drives and devices.

21 (b) Some examples of digital interactive media are: computers and

22 (i) Video or interactive games.

23 (ii) Simulation software.

24 (iii) Interactive educational or training products.

25 (iv) Internet sites designed and developed as social media.

26 (v) Software applications that provide connectivity and communications
27 between mobile devices and digital interactive media web platforms.

28 (vi) Technology designed to stream live or pre-recorded video content
29 over the Internet to large simultaneous audiences.

30 (c) "Digital interactive media" shall not include; however, products that are

1 ~~essentially interpersonal communication services, such as videoconferencing and~~
2 ~~text-based channels and chat rooms, nor products~~

3 (i) Software development primarily designed and developed for
4 institutional, private, or internal purposes.

5 (ii) Largely static internet sites designed to provide information about
6 a person, business, company or firm.

7 (iii) Products regulated under the Louisiana Gaming Control Law.

8 (5) ~~"Director" means the designee of the secretary of the Department of~~
9 ~~Economic Development.~~ "Digital interactive media company" means an entity
10 organized under the laws of the state of Louisiana and engaged in the business
11 of producing digital interactive media as defined in this Section. Digital
12 interactive media company shall not mean or include any company owned,
13 affiliated, or controlled, in whole or in part, by any company or person which
14 is in default on a loan made by the state or a loan guaranteed by the state, nor
15 with any company or person who has ever declared bankruptcy under which
16 an obligation of the company or person to pay or repay public funds or monies
17 was discharged as a part of such bankruptcy.

18 (6)"Expended in Louisiana" means an expenditure to lease immovable
19 property located within the state; an expenditure as compensation for services
20 performed in the state; or an expenditure to purchase or lease tangible personal
21 property within the state where the transaction is subject to the state sales or
22 lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950. A
23 transaction that is subject to the state sales or lease tax provisions of Title 47 of
24 the Louisiana Revised Statutes of 1950 shall include transactions which are also
25 subject to a statutory exclusion or exemption.

26 (7)(a) "Production expenses" means preproduction and production
27 expenditures in the state directly relating to a state-certified production
28 including without limitation the following: testing software, source code
29 development, patches, updates, sprites, three-dimensional models, and level
30 design; costs associated with photography and sound synchronization, lighting

1 and related services; rental of Louisiana facilities and equipment; purchase of
 2 prepackaged audio files, video files, photographic, or libraries; purchase of
 3 licenses to use pre-recorded audio files, video, or photographic files;
 4 development costs associated with producing audio files and video files to be
 5 used in the production of the end product under development.

6 (b) "Production expenses" shall not include postproduction expenditures
 7 for marketing and distribution, non-production related overhead, amounts that
 8 are later reimbursed by the state or any other governmental entity, costs related
 9 to the transfer of tax credits, amounts that are paid to persons or entities as a
 10 result of their participation in profits from the exploitation of the production,
 11 the application fee, or state or local taxes.

12 (8) "Office" means the office of entertainment industry development in
 13 the Department of Economic Development as provided in R.S. 51:938.1.

14 (9) "Payroll" includes all salary, wages, and other compensation sourced
 15 or apportioned to Louisiana, including related benefits.

16 (10) "Person" means a natural person, corporation, partnership, limited
 17 partnership, limited liability company, joint venture, trust, estate, or
 18 association.

19 (11) "Resident" or "resident of Louisiana" means a natural person and,
 20 for the purpose of determining eligibility for the tax incentives provided by this
 21 Section, any person domiciled in the state of Louisiana and any other person
 22 who maintains a permanent place of abode within the state and spends in the
 23 aggregate more than six months of each year within the state.

24 ~~(6)~~(12) "Secretary" means the secretary of the Louisiana Department of
 25 Revenue: Economic Development.

26 ~~(7)~~(13) "State-certified production" shall mean a digital interactive media
 27 production or a component part thereof approved by the director office.

28 ~~(8)~~(14) "Tax credit" means the digital interactive media producer tax credit
 29 authorized by this Section.

30 D. Producer ~~t~~ Tax credit; specific projects.

1 ~~(1)~~For ~~projects certified~~ **applications for state-certified productions**
 2 **submitted to the office** prior to ~~January 1, 2010~~ **July 1, 2009 and subsequently**
 3 **approved by the office and secretary,** there is hereby authorized a tax credit against
 4 state income tax which shall be earned by producers at the time funds are expended
 5 in Louisiana on a state-certified production as follows:

6 ~~(1)~~**(a)** For each of the first and second years following certification of the
 7 project as a state-certified production, the producer shall earn tax credits at the rate
 8 of twenty percent of the base investment for that year.

9 ~~(2)~~**(b)** For each of the third and fourth years following certification of the
 10 project as a state-certified production, the producer shall earn tax credits at the rate
 11 of fifteen percent of the base investment for that year.

12 ~~(3)~~**(c)** For each of the fifth and sixth years following certification of the
 13 project as a state-certified production, the producer shall earn tax credits at the rate
 14 of ten percent of the base investment for that year.

15 ~~(4)~~**(d)** No tax credits may be earned under this Section after the sixth year
 16 following the certification of the project as a state-certified production.

17 **(2) For applications for state-certified productions submitted to the office**
 18 **on or after July 1, 2009, and subsequently approved by the office and secretary,**
 19 **there are hereby authorized tax credits which shall be earned by a digital**
 20 **interactive media company at the time funds are expended in Louisiana on a**
 21 **state-certified production as follows:**

22 **(a) A digital interactive media company shall earn tax credits at the rate**
 23 **of twenty-five percent of the base investment.**

24 **(b) To the extent that base investment is expended on payroll for**
 25 **Louisiana residents employed in connection with a state-certified production,**
 26 **a digital interactive media company shall earn additional tax credits at the rate**
 27 **of ten percent of the payroll.**

28 **(c) The initial certification shall be effective for expenditures made prior**
 29 **to the date of initial certification and shall be valid until the production is**
 30 **completed.**

1 **E. Application of the credit**

2 ~~(5)~~**(1)** The credit shall be allowed against the income **or franchise** tax due
 3 from a taxpayer for the taxable period in which the credit is earned as well as the
 4 immediately preceding period. If the tax credit allowed pursuant to this Section
 5 exceeds the amount of such taxes due from a taxpayer, then any unused credit may
 6 be carried forward by the taxpayer as a credit against subsequent tax liability for a
 7 period not to exceed ten years. However, in no event shall the amount of the tax
 8 credit applied by a taxpayer in a taxable period exceed the amount of such taxes due
 9 from the taxpayer for that taxable period.

10 ~~(6)~~ ~~Application of the credit.~~

11 ~~(a)~~**(2)** All entities taxed as corporations for Louisiana income tax purposes
 12 shall claim any credit allowed under this Section on their corporation income **and**
 13 **franchise** tax return.

14 ~~(b)~~**(3)** Individuals shall claim any credit allowed under this Section on their
 15 individual income tax return.

16 ~~(c)~~**(4)** Entities not taxed as corporations shall claim any credit allowed under
 17 this Section on the returns of the partners or members as follows:

18 ~~(i)~~**(a)** Corporate partners or members shall claim their share of the credit on
 19 their corporation income tax returns.

20 ~~(ii)~~**(b)** Individual partners or members shall claim their share of the credit on
 21 their individual income tax returns.

22 ~~(iii)~~**(c)** Partners or members that are estates or trusts shall claim their share
 23 of the credit on their fiduciary income tax returns.

24 ~~(7)~~ **F.** Transferability of the credit.

25 **(1)** Any tax credits allocated to a person and not previously claimed by any
 26 taxpayer against his **Louisiana state** income **or franchise** tax may be transferred or
 27 sold by such person to another ~~Louisiana taxpayer~~ **person**, subject to the following
 28 conditions:

29 (a) A single transfer or sale may involve one or more transferees. The
 30 transferee of the tax credits may transfer or sell such tax credits subject to the

1 conditions of this Section.

2 (b) Transferors and transferees shall submit to the ~~director~~ **office and**
 3 **Department of Revenue** in writing, a notification of any transfer or sale of tax
 4 credits within thirty days after the transfer or sale of such tax credits. The notification
 5 shall include the transferor's tax credit balance prior to transfer, the state-certified
 6 production number, the name of the state-certified production, the transferor's
 7 remaining tax credit balance after transfer, all tax identification numbers for both
 8 transferor and transferee, the date of transfer, the amount transferred, a copy of the
 9 **tax** credit certificate, and any other information required by the ~~director~~ **office** or the
 10 **d**~~Department of Revenue~~.

11 (c) Failure to comply with this Paragraph will result in the disallowance of
 12 the tax credit until the taxpayers are in full compliance.

13 (d) The transfer or sale of this credit does not extend the time in which the
 14 credit can be used. The carry forward period for credit that is transferred or sold
 15 begins on the date on which the credit was originally earned.

16 ~~(8)~~**(e)** The transferee shall apply such credits in the same manner and against
 17 the same taxes as the taxpayer originally awarded the credit.

18 ~~(9)(a) Any producer who has received the tax credit shall commit to continue~~
 19 ~~business operations in this state for at least one year after the certification of any tax~~
 20 ~~credit pursuant to this Section.~~

21 ~~(b) For purposes of this Paragraph, "continue business operations in this~~
 22 ~~state" means that a producer's base investment in the year following certification of~~
 23 ~~any tax credit is at least twenty-five percent of the amount of the previous year's base~~
 24 ~~investment.~~

25 ~~(c) If a producer who has received the tax credit should not continue business~~
 26 ~~operations in this state for one year after certification of any tax credit pursuant to~~
 27 ~~this Section, the producer shall either:~~

28 ~~(i) Surrender all credits earned within one year of the date the producer does~~
 29 ~~not continue business operations in this state.~~

30 ~~(ii) Pay back to the department an amount equal to the face value of all~~

1 credits earned within one year of the date the producer does not continue business
2 operations in this state.

3 E. G. Certification and administration. (1) The ~~director~~ office shall determine
4 through the promulgation of rules in accordance with the Administrative
5 Procedure Act (a) what projects qualify for as state-certified productions and (b)
6 any other matter necessary to carry out the intent and purposes of this Section. These
7 rules shall not be ~~adopted~~ effective until they are approved by the House Committee
8 on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

9 (2)(a) The ~~director~~ office shall submit his an initial certification of a project
10 as a state-certified production to each ~~producer~~ digital interactive media company
11 and to the secretary. The initial certification shall include a unique identifying
12 number for each state-certified production.

13 (b) Prior to final certification of tax credits of a state-certified production
14 or any portion thereof, the digital interactive media company shall submit to the
15 office a cost report of production expenditures. The cost report of expenditures
16 shall be subject to an agreed-upon procedures engagement conducted by a
17 certified public accountant in accordance with statements on standards for
18 attestation engagements established by the American Institute of Certified
19 Public Accountants. The accountant shall issue a report in the form of
20 procedures and findings. The accountant shall be a certified public accountant
21 licensed in the state of Louisiana and shall be an independent third party
22 unrelated to the digital interactive media company. The agreed-upon
23 procedures shall be established by the office and secretary, with assistance from
24 the Society of Louisiana Certified Public Accountants, and shall be placed in
25 rules promulgated in accordance with the Administrative Procedure Act.

26 ~~(b)(c)~~ Upon completion of all or a portion of a state-certified production, the
27 ~~director~~ office shall review the production expenses and, if approved by the office
28 and secretary, issue a final tax credit certification letter to the ~~producer~~ digital
29 interactive media company. The certification letter shall include the identifying
30 number assigned to that state-certified production in the initial certification. ~~Written~~

1 approval of the secretary of the Department of Economic Development and the
 2 commissioner of administration shall be received prior to issuance of a credit
 3 certification letter.

4 (d) As a condition for receiving certification of tax credits under this
 5 Section, state-certified productions may be required to display the state brand
 6 or logo, or both, as prescribed by the secretary of the Department of Economic
 7 Development.

8 (3) Any taxpayer applying for the credit shall be required to reimburse the
 9 department for any audits required in relation to granting the credit.

10 F.H. Recapture of credits. If the ~~director~~ office finds that funds for which a
 11 ~~producer~~ digital interactive media company received credits according to this
 12 Section are not actually expended in this state Louisiana as a ~~production~~
 13 production-related cost of a state-certified production, then the ~~producer's~~ digital
 14 interactive media company's state income tax for such taxable period shall be
 15 increased by such amount necessary for the recapture of credit provided by this
 16 Section.

17 G.I. Recovery of credits by ~~department~~ Department of Revenue. (1) Credits
 18 previously granted to a taxpayer, but later disallowed, may be recovered by the
 19 secretary of the Department of Revenue through any collection remedy authorized
 20 by R.S. 47:1561 and initiated within three years from December thirty-first of the
 21 year in which the credits were earned.

22 (2) The only interest that may be assessed and collected on recovered credits
 23 is interest at a rate of three percentage points above the rate provided in R.S.
 24 9:3500(B)(1), which shall be computed from the original due date of the return on
 25 which the credit was taken.

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

29 H.J. The provisions of this Section shall not apply to any investments or
 30 expenditures that qualify for tax credits under ~~either R.S. 47:1125.1 or~~ R.S. 47:6007.

1 **K. A state-certified production which receives tax credits pursuant to**
 2 **the provisions of this Section shall not be eligible to receive the rebates provided**
 3 **for in R.S. 51:2451 through 2461 in connection with the activity for which the**
 4 **tax credits were received.**

5 ~~I. The provisions of this Section shall be effective until January 1, 2010.~~

6 ~~J. Any producer who earns tax credits under this Section shall pledge to~~
 7 ~~continue business operations in the state of Louisiana until such time as such~~
 8 ~~producer can demonstrate to the director that the net positive fiscal impact to the~~
 9 ~~state resulting from such producer's operations in connection with the state-certified~~
 10 ~~production has met or exceeded the value of any tax credits issued under this~~
 11 ~~Section.~~

12 Section 2. This Act shall become effective on July 1, 2009.

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____