

Regular Session, 2007

SENATE BILL NO. 218

BY SENATORS MURRAY, BAJOIE AND SCHEDLER AND REPRESENTATIVE  
ARNOLD

TAX/TAXATION. Grants refundable income tax credits related to musical or theatrical productions and musical or theatrical facility infrastructure projects. (gov sig)

1 AN ACT

2 To enact R.S. 47:6026, relative to income tax credits; to provide for income tax credits  
3 related to musical or theatrical productions and musical or theatrical facility  
4 infrastructure projects; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 47:6026 is hereby enacted to read as follows:

7 **§6026. Musical and theatrical production income tax credit**

8 **A. Purpose. It is the intention of the legislature in creating these five**  
9 **different types of tax credits, one for the production expenses of the producers**  
10 **of performances, a temporary one for transporting their property, one for the**  
11 **payroll of residents, one for employing college and vocational-technical**  
12 **students, and one for the construction, repair, or renovation of facilities related**  
13 **to such productions and performances, to establish and promote Louisiana as**  
14 **the Broadway of the South: that is, one of the primary places in the United**  
15 **States in which all the classic disciplines in the performing arts from creation**  
16 **to presentation are present and thriving, including touring Broadway-bound**  
17 **productions and productions of local artists. The creation of such a cultural**

1 center will enhance economic development because it fits well with the state's  
2 reputation as a tourist destination, will offer many and varied employment  
3 opportunities, and in conjunction with the available federal and state incentives,  
4 will be an attraction for new and relocating businesses and will provide for the  
5 reinventing of countless abandoned properties as either performance or  
6 rehearsal spaces, professional housing for artists, production support services  
7 and facilities, back-end production and marketing headquarters, or retail,  
8 restaurant, and entertainment spaces. Such a cultural center will also spur  
9 educational development: Louisiana colleges, universities, and vocational-  
10 technical schools will be able to offer talented undergraduate and graduate  
11 students from this state, other states, and around the world a real world  
12 opportunity to participate in degree programs across the state that work on the  
13 various productions in accounting, law, management, and marketing and to fill  
14 arts-related positions such as actors, writers, producers, stage hands, and  
15 directors, as well as technicians working on all aspects of the production such  
16 as lighting, sound, and actual stage production and operations. Careers now  
17 possible only in California and New York will keep our children here.

18 **B. Definitions. For the purposes of this Section:**

19 **(1) "Base investment" means expenditures for the following for which**  
20 **a credit is granted in this Section, or investments made by a company or**  
21 **financier which are for such expenditures:**

22 **(a) Production expenditures for a state-certified musical or theatrical**  
23 **production.**

24 **(b) Expenditures in the state for the construction, repair, or renovation**  
25 **of a state-certified musical or theatrical facility infrastructure project.**

26 **(2) "Company" or "financier" means any individual, firm, partnership,**  
27 **limited liability company, joint venture, association, corporation, estate, trust,**  
28 **or other entity, group, or combination acting as a unit, and the plural as well as**  
29 **the singular number.**

1           **(3) "Expended in the state" means expenditures for tangible property to**  
2           **be used within the state; and in the case of services, means expenditures for**  
3           **services performed within the state; and in the case of intangible property,**  
4           **means the acquisition of permits, licenses, or other rights related to state-**  
5           **certified musical or theatrical productions or state-certified musical or**  
6           **theatrical facility infrastructure projects used within the state.**

7           **(4) "Musical or theatrical production" means the producing, rehearsing,**  
8           **marketing, administration, recording, performing and/or filming of a live**  
9           **musical or theatrical performance in the state before live audiences the costs of**  
10           **which are not certified for other tax credits provided for in Louisiana law,**  
11           **whether or not there is a charge for admission. Such performances shall**  
12           **include, but not be limited to drama, comedy, comedy revue, opera, ballet, jazz,**  
13           **cabaret and variety entertainment.**

14           **(5) "Payroll" means all salary, wages, and other compensation, including**  
15           **related benefits for services performed in Louisiana.**

16           **(6)(a) "Production expenditures" means development, production, or**  
17           **operating expenditures in this state for a state-certified production, including,**  
18           **but not limited to expenditures for the following:**

19           **(i) Set construction and operation, including special and visual effects.**

20           **(ii) Costumes, wardrobes, make-up, accessories, and related services.**

21           **(iii) Costs associated with sound, lighting, staging, and related services**  
22           **and materials.**

23           **(iv) Payroll.**

24           **(v) Rental of facilities and equipment and leasing of vehicles.**

25           **(vi) Food and lodging.**

26           **(vii) Airfare for people to, from, or within the state shall be considered**  
27           **production expenditures if purchased through a Louisiana-based travel agency**  
28           **or travel company.**

29           **(viii) Music performed live in the state or recorded in the state, including**

1 the costs of sound, digital, analogue recordings or the recording of music by any  
2 other means, and the mixing of such recordings if performed or recorded by a  
3 musician who is a resident of Louisiana, a group of musicians based in  
4 Louisiana, or if contracted for through a Louisiana-based agency. Such costs  
5 incurred when a group of musicians based in Louisiana provide the musical  
6 accompaniment for non-resident performers, or the costs of music directors,  
7 conductors, or composers who are non-residents shall also be included as a  
8 production expenditure.

9 (ix) Preproduction, production, and postproduction expenditures in this  
10 state that are directly incurred in connection with filming such production  
11 which expenditures do not otherwise qualify as a production expenditure in this  
12 Paragraph, including but not limited to costs associated with the following:  
13 photography and sound synchronization, lighting, and related services and  
14 materials; editing and related services; digital or tape editing, film processing,  
15 transfer of film to tape or digital format, sound mixing, special and visual  
16 effects.

17 (x) Administration and professional services, including but not limited  
18 to management, accounting, and legal services incurred in connection with a  
19 state-certified musical or theatrical production.

20 (xi) The costs of insurance or bonding incurred in connection with a  
21 state-certified musical or theatrical production, if purchased through a  
22 Louisiana-based insurance agency.

23 (xii) Preproduction and postproduction expenditures for marketing and  
24 distribution within and without the state, if purchased through an agency which  
25 has offices in Louisiana, if the creators of materials used in such marketing are  
26 residents of Louisiana, or if the expenditures to create materials used in such  
27 marketing occur within Louisiana.

28 (xiii) The costs of acquiring permits, licenses, or other rights related to  
29 state-certified musical or theatrical productions.

1                   **(xiv) Similar production expenditures in the state as determined by rule.**

2                   **(b) "Production expenditures" shall not include any indirect costs , any**  
3                   **expenditures later reimbursed by a third party, or any amounts that are paid**  
4                   **to persons or entities as a result of their participation in profits from the**  
5                   **exploitation of the production.**

6                   **(7)(a) "Resident" or "resident of Louisiana" means a natural person**  
7                   **and, for the purpose of determining eligibility for the tax incentives provided**  
8                   **by this Section, a person who qualifies for any of the following reasons:**

9                   **(i) The person is domiciled in the state of Louisiana.**

10                   **(ii) The person maintains a permanent place of abode within the state**  
11                   **and spends in the aggregate more than six months of each year within the state.**

12                   **(iii) The person pays taxes to the state on the amount of money paid to**  
13                   **such person for which a credit is sought pursuant to this Section.**

14                   **(b) A company owned or controlled by such a person and which lends the**  
15                   **services of such a person for a state-certified musical or theatrical production**  
16                   **shall also be deemed a resident if such company is organized or authorized to**  
17                   **do business in the state and such company pays taxes to the state on the amount**  
18                   **of money paid to such company for such services of such person.**

19                   **(8) "State-certified musical or theatrical facility infrastructure project"**  
20                   **or "state-certified infrastructure project" means a capital infrastructure**  
21                   **project in the state related to the production or performance of musical or**  
22                   **theatrical productions as defined in this Section, and any expenditures in the**  
23                   **state related to the construction, repair, or renovation of such project, which are**  
24                   **certified, verified, and approved as provided for in this Section.**

25                   **(9)(a) "State-certified musical or theatrical production" means a musical**  
26                   **or theatrical production, or a series of productions occurring over the course**  
27                   **of a twelve-month period, and the recording or filming of such production,**  
28                   **which originate, are developed, or have their initial public performance before**  
29                   **a paying audience within Louisiana, or which have their United States debut**

1 within Louisiana, and the production expenditures, expenditures for the payroll  
2 of residents, transportation expenditures, and expenditures for employing  
3 college and vocational-technical students related to such production or  
4 productions, that are certified, verified, and approved as provided for in this  
5 Section.

6 (b) A "state-certified musical or theatrical production" which shall be  
7 eligible for re-certification and the credit provided for in this Section shall  
8 include a previously certified musical or theatrical production which received  
9 a credit pursuant to this Section, and which is otherwise eligible pursuant to this  
10 Section, which returns for performances within the state after being performed  
11 on Broadway.

12 (10)(a) "Transportation expenditures" means expenditures for the  
13 packaging and crating and transportation both to the state for use in a state-  
14 certified musical or theatrical production of sets, costumes or other tangible  
15 property constructed or manufactured out of state, and/or from the state after  
16 use in a state-certified musical or theatrical production of sets, costumes, or  
17 other tangible property constructed or manufactured in this state. Such term  
18 shall include the packaging, crating, and transporting of property and  
19 equipment used for special and visual effects, sound, lighting, and staging,  
20 costumes, wardrobes, make-up and related accessories and materials, as well  
21 as any other performance or production-related property and equipment;  
22 provided that transportation services are purchased through a company which  
23 has a significant business presence in the state.

24 (b) "Transportation expenditures" shall not include any costs to  
25 transport property and equipment to be used only for filming and not in a state-  
26 certified production, any indirect costs, any expenditures that are later  
27 reimbursed by a third party, or any amounts that are paid to persons or entities  
28 as a result of their participation in profits from the exploitation of the  
29 production.

1                   **C. Income tax credits for state-certified productions and state-certified**  
2                   **musical or theatrical facility infrastructure projects:**

3                   **(1) There is hereby authorized the following types of credits against the**  
4                   **state income tax:**

5                   **(a)(i) A base investment credit may be granted for the following:**

6                   **(aa) For certified, verified, and approved production expenditures for a**  
7                   **state-certified musical or theatrical production, or for investments made by a**  
8                   **company or a financier in such production which are, in turn, expended for**  
9                   **such production expenditures.**

10                   **(bb) For certified, verified, and approved expenditures in the state for**  
11                   **the construction, repair, or renovation of a state-certified musical or theatrical**  
12                   **facility infrastructure project, or for investments made by a company or a**  
13                   **financier in such infrastructure project which are, in turn, expended for such**  
14                   **construction, repair, or renovation.**

15                   **(ii) The base investment credit shall be for the following amounts:**

16                   **(aa) If the total base investment is greater than one hundred thousand**  
17                   **dollars and less than or equal to three hundred thousand dollars, a company**  
18                   **shall be allowed a tax credit of ten percent of the base investment made by that**  
19                   **company.**

20                   **(bb) If the total base investment is greater than three hundred thousand**  
21                   **dollars and less than or equal to one million dollars, a company shall be allowed**  
22                   **a tax credit of twenty percent of the base investment made by that company.**

23                   **(cc) If the total base investment is greater than one million dollars, a**  
24                   **company shall be allowed a tax credit of twenty-five percent of the base**  
25                   **investment made by that company.**

26                   **(b) Because the legislature hereby determines that the state lacks the**  
27                   **facilities and services necessary to provide adequate resources for the**  
28                   **construction of sets, costumes and related property needed for productions and**  
29                   **performances in the state, an additional transportation expenditure tax credit**

1 shall be allowed for the following percentages of certified, verified, and  
2 approved transportation expenditures as defined in Paragraph (B)(10) of this  
3 Section; provided that transportation services are purchased through a  
4 company which has a significant business presence in the state:

5 (i) One hundred percent of such amounts incurred through calendar  
6 year 2010.

7 (ii) Fifty percent of such amounts incurred during the calendar year  
8 2011.

9 (iii) Twenty-five percent of such amounts incurred during the calendar  
10 year 2012.

11 (iv) No such transportation expenses incurred after December 31, 2012  
12 shall be eligible for such credit.

13 (c) An additional tax credit of one tenth of one percent of the amount  
14 expended to employ students enrolled in Louisiana colleges, universities, and  
15 vocational-technical schools in a state certified musical or theatrical production  
16 in arts-related positions, such as an actor, writer, producer, stage hand, or  
17 director, or as a technician working on aspects of the production such as  
18 lighting, sound, and actual stage work, or working indirectly on the production  
19 in accounting, law, management, and marketing.

20 (d) To the extent that base investment is expended on payroll for  
21 Louisiana residents employed in connection with a state-certified musical or  
22 theatrical production, except for the students provided for in Subparagraph (c)  
23 of this Paragraph, or the construction of a state-certified musical or theatrical  
24 facility infrastructure project, a company shall be allowed an additional tax  
25 credit of ten percent of such payroll. However, if the amount paid to any one  
26 person exceeds one million dollars, the additional credit shall not include any  
27 amount paid to that person that exceeds one million dollars.

28 (2)(a) The tax credits shall be earned each calendar year to the extent the  
29 Louisiana Department of Economic Development verifies in writing that



1 expenditures qualifying for a credit pursuant to this Section have been  
2 expended for the calendar year in accordance with the estimates of such  
3 expenditures for the calendar year set forth in the certification of the  
4 production or project.

5 (b) No credit shall be allowed under this Section for any expenditures for  
6 which a financier receives a credit pursuant to this Section, or for which a credit  
7 is granted under R.S. 47:6007 or 6023. In addition, a state-certified production  
8 or state-certified infrastructure project which receives tax credits pursuant to  
9 the provisions of this Chapter shall not be eligible to receive the rebates  
10 provided for in R.S. 51:2451 through 2461 in connection with the activity for  
11 which the tax credits were received.

12 (3) Tax credits associated with a state-certified musical or theatrical  
13 production or a state-certified musical or theatrical facility infrastructure  
14 project shall never exceed the total base investment in that production or  
15 infrastructure project and transportation expenditures.

16 D.(1) The credit shall be allowed against individual or corporate income  
17 tax of the companies or financiers of the production or infrastructure project  
18 in accordance with their share of the credit as provided for in the application  
19 for certification for the production or infrastructure project. A company or  
20 financier may on a one-time basis, transfer the credit, and/or any refund of an  
21 overpayment, to an individual or other entity including without limitation a  
22 bank or other lender, provided that the transfer shall not be effective until  
23 receipt by the Department of Revenue of written notice of such transfer. The  
24 credit shall be allowed for the taxable period in which expenditures eligible for  
25 a credit are expended. Any excess of the credit over the income tax liability  
26 against which the credit may be applied shall constitute an overpayment, as  
27 defined in R.S. 47:1621(A), and the secretary shall make a refund of such  
28 overpayment from the current collections of the taxes imposed by Chapter 1 of  
29 Subtitle II of this Title, as amended. The right to a refund of any such

1 overpayment shall not be subject to the requirements of R.S. 47:1621(B).

2 (2) Application of the credit.

3 (a) Individuals, estates, and trusts shall claim their share of any credit  
4 on their income tax return.

5 (b) Entities not taxed as corporations shall claim their share of any credit  
6 on the returns of the partners or members.

7 (c) Corporate partners or members shall claim their share of any credit  
8 on their corporation income tax returns.

9 (d) Individual partners or members shall claim their share of any credit  
10 on their individual income tax returns.

11 (e) Partners or members that are estates or trusts shall claim their share  
12 of any credit on their fiduciary income tax returns.

13 E. Certification and administration:

14 (1)(a)(i) The secretary of the Department of Economic Development, the  
15 commissioner of administration, and the office of the governor shall determine  
16 which musical or theatrical productions and which musical or theatrical facility  
17 infrastructure projects shall be certified pursuant to this Section through the  
18 adoption and promulgation of rules by the department, in consultation with the  
19 commissioner and the office of the governor. The rules shall also provide for the  
20 manner in which the department shall decide which expenditures for such  
21 productions or infrastructure projects will qualify for the credits provided for  
22 in this Section.

23 (ii) Prior to adoption, these rules shall be approved by the House  
24 Committee on Ways and Means and the Senate Committee on Revenue and  
25 Fiscal Affairs.

26 (b) State certification shall not be granted to a production or  
27 infrastructure project by any person or company, or financed by any person or  
28 company, or any company or financier owned, affiliated, or controlled, in whole  
29 or in part, by any company or person, which is in default on a loan made by the

1 state or a loan guaranteed by the state, or which has ever declared bankruptcy  
2 under which an obligation of the company or person to pay or repay public  
3 funds or monies was discharged as a part of such bankruptcy.

4 (c) When determining which musical or theatrical productions or  
5 musical or theatrical facility infrastructure projects qualify for certification, the  
6 Louisiana Department of Economic Development, the commissioner of  
7 administration, and the office of the governor shall take the following factors  
8 into consideration:

9 (i) The contribution of the production or infrastructure project to  
10 establishing the state as a cultural center for all the classic disciplines in the  
11 performing arts from creation to presentation, for touring productions as well  
12 as local artists.

13 (ii) The impact of the production or infrastructure project on the  
14 employment of Louisiana residents.

15 (iii) The extent to which students in Louisiana colleges, universities, and  
16 vocational-technical schools will have an opportunity to work in a production  
17 in an arts-related position, such as an actor, writer, producer, stage hand, or  
18 director, or as a technician working on aspects of the production such as  
19 lighting, sound, and actual stage work, or working indirectly on the production  
20 in accounting, law, management, and marketing.

21 (iv) The impact of the production or infrastructure project on the overall  
22 economy of the state including the manner in which available federal and state  
23 incentives will be utilized in the financing or operation of the infrastructure  
24 project.

25 (v) The availability and kind of musical or theatrical facilities within the  
26 area in which a musical or theatrical facility infrastructure project is proposed  
27 to be located sufficient to provide production and presentation of all the classic  
28 disciplines in the performing arts.

29 (d) Upon approval by the Louisiana Department of Economic

1        Development, the commissioner of administration, and the office of the  
2        governor, the department shall initially certify a production or project as a  
3        state-certified production or state-certified infrastructure project and send  
4        notice of such certification to the applicant and to the secretary of the  
5        Department of Revenue. The initial certification shall include the companies  
6        and/or financiers to whom the credits shall be allocated and the estimated  
7        amounts of the credits to be allocated to each and a unique identifying number  
8        for the state-certified production or state-certified infrastructure project.

9            (e) Prior to the final certification of a production or infrastructure  
10        project, the applicant shall submit to the Louisiana Department of Economic  
11        Development a report of the final amount of expenditures qualifying for credits  
12        pursuant to this Section, which report the Louisiana Department of Economic  
13        Development may require to be prepared by an independent certified public  
14        accountant. The Louisiana Department of Economic Development shall review  
15        the report and, upon the consent of the commissioner of administration and the  
16        office of the governor, shall issue a final tax credit certification letter, certifying  
17        the applicant and indicating the type and amount of tax credits for which the  
18        applicant or other companies or financiers are eligible pursuant to this Section.

19            (f) An applicant applying for the credits shall be required to reimburse  
20        the Louisiana Department of Economic Development for any audits required  
21        in relation to granting the certification or tax credits.

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

25            (i) The application for state-certified productions shall include:

26            (aa) A preliminary budget including estimated Louisiana payroll,  
27        estimated transportation expenditures, and estimated base investment,  
28        including the manner in which available federal and state incentives will be  
29        utilized in the financing or operation of the production.

1                   **(bb) A general description of the production and performance which**  
2                   **may, at the request of the department, include the book, libretto, score, or**  
3                   **concept, and plans for recording and/or filming such production.**

4                   **(cc) A list of the principal creative elements including the cast, musicians,**  
5                   **headline performers, conductor, producer, or director.**

6                   **(dd) A possibility of offering students in Louisiana colleges, universities,**  
7                   **and vocational-technical schools an opportunity to work directly in the**  
8                   **production in an arts-related position, including a description of possible job or**  
9                   **trainee positions working with professional actors, writers, producers, stage**  
10                  **hands, directors, or technicians working on all aspects of the production such**  
11                  **as lighting, sound, and actual stage work, or working indirectly on the**  
12                  **production with professionals in accounting, law, management, and marketing.**

13                  **(ee) Estimated dates for start and completion of rehearsals before paid**  
14                  **performances and the estimated dates of performances in the state.**

15                  **(ff) Plans, if any, for a national tour or for any performances in other**  
16                  **states.**

17                  **(gg) The companies and/or financiers to whom the credits shall be**  
18                  **allocated and the estimated amounts of the credits to be allocated to each.**

19                  **(hh) A discussion of any other reasons why the applicant believes the**  
20                  **production should be considered a state-certified production as defined in this**  
21                  **Section.**

22                  **(ii) The application for state-certified musical or theatrical facility**  
23                  **infrastructure projects shall include:**

24                       **(aa) A detailed description of the infrastructure project.**

25                       **(bb) A preliminary budget, including the manner in which available**  
26                       **federal and state incentives will be utilized in the financing or operation of the**  
27                       **infrastructure project.**

28                       **(cc) The companies and/or financiers to whom the credits shall be**  
29                       **allocated and the estimated amounts of the credits to be allocated to each.**

1            (dd) A discussion of why the project should be considered a  
2            state-certified infrastructure project as defined in this Section.

3            (b) Additional information may be requested if deemed necessary by the  
4            Louisiana Department of Economic Development.

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

10           F.(1) Recapture of credits. If the office of the governor, the Department  
11           of Economic Development, or the Department of Revenue find that funds for  
12           which a taxpayer received credits according to this Section were not expended  
13           for expenditures qualifying for a credit as provided in this Section, then the  
14           taxpayer's state income tax for such taxable period shall be increased by such  
15           amount necessary for the recapture of credit provided by this Section.

16           (2)(a) Recovery of credits by Department of Revenue. Credits granted  
17           to a taxpayer, but later disallowed, may be recovered by the secretary of the  
18           Department of Revenue through any collection remedy authorized by R.S.  
19           47:1561 and initiated within three years from December thirty-first of the year  
20           in which the credit was taken.

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

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

28           Section 2. The credits provided for in this Act shall be applicable to expenditures  
29           occurring on or after the effective date of this Act.

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

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

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#### DIGEST

Present law provides income tax credits for the production of motion pictures, sound recordings, and digital interactive media.

Proposed law provides five types of corporate or individual refundable income tax credits for "state-certified musical or theatrical productions" and for "state-certified musical or theatrical facility infrastructure projects."

#### "BASE INVESTMENT CREDITS" FOR PRODUCTIONS AND INFRASTRUCTURE

- (1) A "base investment credit" is authorized for "production expenditures" for a "state-certified musical or theatrical production," or for investments made by a person in such production which are, in turn, expended for such production expenditures.

"Musical or theatrical production" is defined as producing, rehearsing, marketing, administration, recording, performing and/or filming of a live musical or theatrical performance in the state before live audiences the costs of which are not certified for other tax credits provided for in Louisiana law, whether or not there is a charge for admission. Such performances include, but are not limited to drama, comedy, comedy revue, opera, ballet, jazz, cabaret and variety entertainment.

A "state-certified musical or theatrical production" is defined as such a production, or a series of productions occurring over the course of a twelve-month period, and the recording or filming of such production, which originate, are developed, or have their initial public performance before a paying audience within Louisiana, or which have their United States debut within Louisiana. The "production expenditures," expenditures for the payroll of residents, "transportation expenditures," and expenditures for employing college and vo-tech students related to such production or productions, that are "certified, verified, and approved" as provided for in the proposed law are included for the credit.

In addition, a "state-certified musical or theatrical production" is eligible for re-certification and the credit if it is a previously certified musical or theatrical production which received a credit and which is otherwise eligible and which returns for performances within the state after being performed on Broadway.

- (2) A "base investment credit" for "expenditures in the state" for the construction, repair, or renovation of a "state-certified musical or theatrical facility infrastructure project," or for investments made by a financier in such infrastructure project which are, in turn, expended for such construction, repair, or renovation.

"State-certified musical or theatrical facility infrastructure project" is defined as a

capital infrastructure project in the state related to the production or performance of musical or theatrical productions as defined in the proposed law, and any "expenditures in the state" related to the construction, repair, or renovation of such project, which are certified, verified, and approved as provided for in the proposed law.

"Expended in the state" for both productions and infrastructure projects is defined as expenditures for tangible property to be used within the state; and in the case of services, expenditures for services performed within the state; and in the case of "intangible property," means the acquisition of permits, licenses, or other rights related to such productions or infrastructure projects used within the state.

The "base investment credit" provides the following amounts of income tax credits:

- (a) If the total "base investment" for a production or an infrastructure project is between \$100,000 and \$300,000, ten percent of the "base investment."
- (b) If the total "base investment" is between \$300,000 and \$1 million, twenty percent of the base investment.
- (c) If the total base investment is greater than \$1 million, twenty-five percent of the "base investment."

"Base investment" is defined for infrastructure projects as "expenditures in the state" for the construction, repair, or renovation of a state-certified musical or theatrical facility infrastructure project.

"Base investment" is defined for productions as expenditures or investments made by a person for "production expenditures" for a state-certified musical or theatrical production.

Such "production expenditures" are defined as development, production, or operating "expenditures in this state" for a state-certified production, including, but not limited to expenditures for the following:

- (a) Set construction and operation, including special and visual effects.
- (b) Costumes, wardrobes, make-up, accessories, and related services.
- (c) Costs associated with sound, lighting, staging, and related services and materials.
- (d) Payroll, which is defined as all salary, wages, and other compensation, including related benefits for services performed in Louisiana.
- (e) Rental of facilities and equipment and leasing of vehicles.
- (f) Food and lodging.
- (g) Airfare for people to, from, or within the state, which are considered "production expenditures" if purchased through a Louisiana-based travel agency or travel company.
- (h) Music performed live in the state or recorded in the state, including the costs of sound, digital, analogue recordings or the recording of music by any other means, and the mixing of such recordings if performed or recorded by a musician who is a resident of Louisiana, a group of musicians based in Louisiana, or if contracted for through a Louisiana-based agency. Such costs incurred when a group of musicians based in Louisiana provide the musical accompaniment for non-resident performers, or the costs of music directors, conductors, or composers who are non-residents are



also included as a "production expenditure."

- (i) Preproduction, production, and postproduction expenditures in this state that are directly incurred in connection with filming such production which expenditures do not otherwise qualify as a "production expenditure," including but not limited to costs associated with the following: photography and sound synchronization, lighting, and related services and materials; editing and related services; digital or tape editing, film processing, transfer of film to tape or digital format, sound mixing, special and visual effects.
- (j) Administration and professional services, including but not limited to management, accounting, and legal services incurred in connection with a state-certified musical or theatrical production.
- (k) The costs of insurance or bonding incurred in connection with a state-certified musical or theatrical production, if purchased through a Louisiana-based insurance agency.
- (l) Preproduction and postproduction expenditures for marketing and distribution within and without the state, if purchased through an agency which has offices in Louisiana, if the creators of materials used in such marketing are "residents of Louisiana" (see definition below), or if the expenditures to create materials used in such marketing occur within Louisiana.
- (m) The costs of acquiring permits, licenses, or other rights related to state-certified musical or theatrical productions.
- (n) Similar production expenditures in the state as determined by rule.

"Production expenditures" may not include any indirect costs, any expenditures later reimbursed by a third party, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production.

#### "TRANSPORTATION EXPENDITURES" CREDIT FOR PRODUCTIONS

Proposed law grants an additional transportation expenditure credit for the following percentages of certified, verified, and approved "transportation expenditures"; provided that transportation services are purchased through a company which has a significant business presence in the state:

- (1) 100% of such amounts incurred through calendar year 2010.
- (2) 50% incurred during the calendar year 2011.
- (3) 25% incurred during the calendar year 2012.
- (4) No credit for transportation expenses incurred after December 31, 2012.

"Transportation to the state expenditures" is defined as expenditures for the packaging and crating and transportation both to the state for use in a state-certified musical or theatrical production of sets, costumes, or other tangible property constructed or manufactured out of state, and/or transportation from the state after use in such a production of such property constructed or manufactured in the state. Such term also includes packaging, crating, and transporting property and equipment used for special and visual effects, sound, lighting, and staging, and to transport costumes, wardrobes, make-up and related accessories and materials, as well as any other performance or production-related property and equipment; provided that transportation services are purchased through a company which has a significant business presence in the state.

Excluded from "transportation expenditures" are any costs to transport property and equipment to be used only for filming and not in a state-certified production, any indirect costs, any expenditures that are later reimbursed by a third party, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production.

#### EMPLOYMENT OF STUDENTS TAX CREDIT FOR PRODUCTIONS

Proposed law grants an additional tax credit of one tenth of one percent of the amount expended to employ students enrolled in Louisiana colleges, universities, and vo-tech schools in a state-certified production in arts-related positions, such as actor, writer, producer, stage hand, or director, or as a technician working on aspects of the production such as lighting, sound, and actual stage work, or working indirectly on the production in accounting, law, management, and marketing.

#### "PAYROLL OF RESIDENTS" CREDIT FOR PRODUCTIONS AND INFRASTRUCTURE PROJECTS

Proposed law grants an additional tax credit of 10% of base investment that is expended on payroll for Louisiana residents employed in connection with a state-certified musical or theatrical production, except for the students, or the construction of a state-certified musical or theatrical facility infrastructure project. However, if the amount paid to any one person exceeds \$1 million, the additional credit may not include any amount paid to that person that exceeds \$1 million.

"Resident of Louisiana" is defined as a person who qualifies for any of the following reasons:

- (1) The person is domiciled in the state of Louisiana.
- (2) The person maintains a permanent place of abode within the state and spends in the aggregate more than 6 months of each year within the state.
- (3) The person pays taxes to the state on the amount of money paid to such person for which a credit is sought.

A "resident" is also defined as a company owned or controlled by such a person and which lends the services of such a person for a state-certified production, if;

- (1) The company is organized or authorized to do business in the state.
- (2) The company also pays taxes to the state on the amount of money paid to such company for such services of such person.

#### DETERMINING THE TAX CREDIT AMOUNT AND REFUNDS

Proposed law provides that the tax credits are earned each calendar year to the extent DED verifies in writing that base qualifying expenditures have been expended for the calendar year in accordance with the estimates of base investment and transportation to the state expenditures for the calendar year set forth in the "certification" of the production or project.

No credit is allowed for any expenditures for which a financier receives a credit pursuant to the proposed law, or for which a credit is granted under R.S. 47:6007 [movie credits] or 6023 [sound recording credits]. In addition, a state-certified production or state-certified infrastructure project which receives tax credits pursuant to the provisions of this Chapter shall not be eligible to receive the quality jobs rebates provided for in R.S. 51:2451 through 2461 in connection with the activity for which the tax credits were received.

Tax credits associated with a state-certified production or a state-certified infrastructure project can never exceed the total base investment in that production or infrastructure project and transportation to the state expenditures.

Proposed law provides that the credit is allowed against individual or corporate income tax of the "companies" or "financiers" [defined as people or other entities] of the production or infrastructure project in accordance with their share of the credit as provided for in the application for "certification" for the production or infrastructure project. Proposed law authorizes the transfer of the credit on a one-time basis, and/or any refund of an overpayment, to an individual or other entity, provided that the transfer is not effective until receipt by DOR. Proposed law allows the credit for the taxable period in which expenditures eligible for a credit are expended. Any excess of the credit over the income tax constitutes an overpayment and a refund of the overpayment is made from the current collections of income taxes.

Proposed law delineates the way in which various taxpayers may take the credit.

#### CERTIFICATION AND ADMINISTRATION

Proposed law provides that the secretary of the DED, the commissioner of administration, and the office of the governor determines which productions and which infrastructure projects are to be "certified" through the adoption and promulgation of rules by DED, in consultation with the commissioner and the office of the governor. The rules must also provide for the manner in which DED will decide which expenditures for such productions or infrastructure projects will qualify for the credits. Prior to adoption, the rules must be approved by House Ways and Means and Senate Revenue and Fiscal Affairs.

Proposed law prohibits granting certification to a production or infrastructure project by any person or company, or financed by any person or company, or any company or financier 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, or 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.

Proposed law requires DED, the commissioner, and the office of the governor to take the following factors into consideration when determining whether to certify:

- (1) The contribution of the production or infrastructure project to establishing the state as a cultural center for all the classic disciplines in the performing arts from creation to presentation, for touring productions as well as local artists.
- (2) The impact of the production or infrastructure project on the employment of Louisiana residents.
- (3) The extent to which students in Louisiana colleges, universities, and vo-tech schools will have an opportunity to work directly or indirectly in a production.
- (4) The impact of the production or infrastructure project on the overall economy of the state including the manner in which available federal and state incentives will be utilized in the financing or operation of the infrastructure project.
- (5) The availability and kind of musical or theatrical facilities within the area in which an infrastructure project is proposed to be located sufficient to provide production and presentation of all the classic disciplines in the performing arts.

Upon approval by DED, the commissioner, and the office of the governor, DED "initially certifies" a production or project as a state-certified production or state-certified infrastructure project and sends notice of such certification to the applicant and to the

secretary of DOR. The "initial certification" must include the companies and/or financiers to whom the credits are to be allocated and the estimated amounts of the credits to be allocated to each and a unique identifying number for the state-certified production or state-certified infrastructure project.

Prior to "final certification" of a production or infrastructure project, the applicant must submit to DED a report of the final amount of qualifying expenditures, which report DED may require to be prepared by an independent CPA. DED must review the report and, upon the consent of the commissioner and the office of the governor, issue a "final tax credit certification letter," certifying the applicant and indicating the type and amount of tax credits for which the applicant or other companies or financiers are eligible. An applicant is required to reimburse DED for any audits required in relation to granting the certification or tax credits.

#### APPLICATION

Proposed law requires an applicant for the tax credit to submit an application for "initial certification" to DED that includes the following information:

For state-certified productions:

- (1) A preliminary budget including estimated Louisiana payroll, estimated transportation expenses, and estimated base investment, including the manner in which available federal and state incentives will be utilized in the financing or operation of the production.
- (2) A general description of the production and performance which may, at the request of the department, include the book, libretto, score, or concept, and plans for recording and/or filming such production.
- (3) A list of the principal creative elements including the cast, musicians, headline performers, conductor, producer, or director.
- (4) A "possibility of offering" students in Louisiana colleges, universities, and vocational-technical schools will have an opportunity to work directly in the production, or indirectly on the production with professionals in accounting, law, management, and marketing.
- (5) Estimated dates for start and completion of rehearsals before paid performances and the estimated dates of performances in the state.
- (6) Plans, if any, for a national tour or for any performances in other states.
- (7) The companies and/or financiers to whom the credits shall be allocated and the estimated amounts of the credits to be allocated to each.
- (8) A discussion of any other reasons why the production should be considered a state-certified production.

For infrastructure projects:

- (1) A detailed description of the infrastructure project.
- (2) A preliminary budget, including the manner in which available federal and state incentives will be utilized in the financing or operation of the infrastructure project.
- (3) The companies and/or financiers to whom the credits shall be allocated and the estimated amounts of the credits to be allocated to each.

- (4) A discussion of why the project should be considered a state-certified infrastructure project as defined in this Section.

Proposed law provides that additional information may be requested if deemed necessary by DED.

Proposed law requires the secretary of DED, in consultation with DOR, to promulgate such rules and regulations as are necessary to carry out the intent and purposes of the proposed law.

#### RECAPTURE OF TAX CREDITS

Proposed law provides that if funds for which credits were received were not expended for "production expenditures" or were not "expended in the state" for an infrastructure project, then the taxpayer's income tax for such taxable period must be increased by the amount necessary for the recapture of the credit. They may be recovered 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 credit was taken. Interest is assessed at a rate of three percentage points above the legal interest rate in R.S. 9:3500(B)(1), which must be computed from the original date of the return on which the credit was taken.

The credits are applicable to expenditures occurring on or after the effective date of the proposed law.

Effective upon signature of the governor or lapse of time for gubernatorial action and applicable to expenditures incurred after that date.

(Adds R.S. 47:6026)