

Regular Session, 2009

SENATE BILL NO. 277

BY SENATORS DUPLESSIS, ERDEY, GRAY EVANS, KOSTELKA, LONG,
MARIONNEAUX, MICHOT, QUINN, RISER AND WALSWORTH
AND REPRESENTATIVES ABRAMSON, ARNOLD, CORTEZ,
DOWNS, LEGER, LIGI AND ROBIDEAUX

TAX/TAXATION. Provides relative to the digital interactive media tax credit. (7/1/09)

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§6022. Digital interactive media producer tax credit

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

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

(1) Immediate objectives are to:

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

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

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

6 (2) Long-term objectives are to:

7 (a) Encourage increased employment opportunities within this sector and
8 increased competition with other states in fully developing economic development
9 options within digital interactive media **products and platforms**.

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

12 (c) Encourage partnerships between digital interactive media developers and
13 Louisiana educational institutions.

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

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

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

29 (3) "Department" means the Louisiana Department of ~~Revenue~~**Economic**

1 Development.

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

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

17 (ii) "Interactive" means a digital media system for inputting, processing,
 18 transmitting or storing information or data in which users of the system are
 19 able to respond to the digital media system by inputting, transmitting,
 20 processing or storing information or data in response to the information or data
 21 provided to them through the digital media system. "Digital media system"
 22 means communications delivered via electronic energy where the information
 23 stored, transmitted, or received is in digital form.

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

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

- 1 (i) Video ~~or interactive~~ games.
- 2 (ii) Simulation software.
- 3 (iii) Interactive educational or training products.
- 4 (iv) Internet sites designed and developed as social media.
- 5 (v) Software applications that provide connectivity and communications
6 between mobile devices and digital interactive media web platforms.
- 7 (vi) Technology designed to stream live or pre-recorded video content
8 over the Internet to large simultaneous audiences.
- 9 ~~(c) "Digital interactive media" shall not include; however, products that are~~
10 ~~essentially interpersonal communication services, such as videoconferencing and~~
11 ~~text-based channels and chat rooms, nor products~~
- 12 (i) Software development primarily designed and developed for
13 institutional, private, or internal purposes.
- 14 (ii) Largely static internet sites designed to provide information about
15 a person, business, company or firm.
- 16 (iii) Products regulated under the Louisiana Gaming Control Law.
- 17 ~~(5) "Director" means the designee of the secretary of the Department of~~
18 ~~Economic Development. "Digital interactive media company" means an entity~~
19 ~~organized under the laws of the state of Louisiana and engaged in the business~~
20 ~~of producing digital interactive media as defined in this Section. Digital~~
21 ~~interactive media company shall not mean or include any company owned,~~
22 ~~affiliated, or controlled, in whole or in part, by any company or person which~~
23 ~~is in default on a loan made by the state or a loan guaranteed by the state, nor~~
24 ~~with any company or person who has ever declared bankruptcy under which~~
25 ~~an obligation of the company or person to pay or repay public funds or monies~~
26 ~~was discharged as a part of such bankruptcy.~~
- 27 (6)"Expended in Louisiana" means an expenditure to purchase or lease
28 immovable property located in the state; an expenditure to purchase or lease
29 tangible personal property from a source within the state where the transaction

1 is subject to state sales tax but for a statutory exclusion or exemption; or an
2 expenditure as compensation for services performed within the state.

3 (7)(a) "Production expenses" means preproduction and production
4 expenditures in the state directly relating to a state-certified production
5 including without limitation the following: testing software, source code
6 development, patches, updates, sprites, three-dimensional models, and level
7 design; costs associated with photography and sound synchronization, lighting
8 and related services; rental of Louisiana facilities and equipment; purchase of
9 prepackaged audio files, video files, photographic, or libraries; purchase of
10 licenses to use pre-recorded audio files, video, or photographic files;
11 development costs associated with producing audio files and video files to be
12 used in the production of the end product under development.

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

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

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

23 (10) "Person" means a natural person, corporation, partnership, limited
24 partnership, limited liability company, joint venture, trust, estate, or
25 association.

26 (11) "Resident" or "resident of Louisiana" means a natural person and,
27 for the purpose of determining eligibility for the tax incentives provided by this
28 Section, any person domiciled in the state of Louisiana and any other person

1 **who maintains a permanent place of abode within the state and spends in the**
2 **aggregate more than six months of each year within the state.**

3 ~~(6)~~**(12)**"Secretary" means the secretary of the Louisiana Department of
4 Revenue. **Economic Development.**

5 ~~(7)~~**(13)** "State-certified production" shall mean a digital interactive media
6 production or a component part thereof approved by the ~~director~~ **office**.

7 ~~(8)~~**(14)** "Tax credit" means the digital interactive media producer tax credit
8 authorized by this Section.

9 D. ~~Producer~~ **Tax credit**; specific projects.

10 ~~(1)~~**(1)**For ~~projects certified~~ **applications for state-certified productions**
11 **submitted to the office** prior to ~~January 1, 2010~~ **July 1, 2009 and subsequently**
12 **approved by the office and secretary**, there is hereby authorized a tax credit against
13 state income tax which shall be earned by producers at the time funds are expended
14 in Louisiana on a state-certified production as follows:

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

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

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

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

26 **(2) For applications for state-certified productions submitted to the office**
27 **on or after July 1, 2009, and subsequently approved by the office and secretary,**
28 **there are hereby authorized tax credits which shall be earned by a digital**

1 interactive media company at the time funds are expended in Louisiana on a
2 state-certified production as follows:

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

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

9 (c) The initial certification shall be effective for expenditures made prior
10 to the date of initial certification and shall be valid until the production is
11 completed.

12 E. Application of the credit

13 ~~(5)~~**(1)** The credit shall be allowed against the income **or franchise** tax due
14 from a taxpayer for the taxable period in which the credit is earned as well as the
15 immediately preceding period. If the tax credit allowed pursuant to this Section
16 exceeds the amount of such taxes due from a taxpayer, then any unused credit may
17 be carried forward by the taxpayer as a credit against subsequent tax liability for a
18 period not to exceed ten years. However, in no event shall the amount of the tax
19 credit applied by a taxpayer in a taxable period exceed the amount of such taxes due
20 from the taxpayer for that taxable period.

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

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

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

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

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

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

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

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

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

12 (a) A single transfer or sale may involve one or more transferees. The
13 transferee of the tax credits may transfer or sell such tax credits subject to the
14 conditions of this Section.

15 (b) Transferors and transferees shall submit to the ~~director office and~~
16 **Department of Revenue** in writing, a notification of any transfer or sale of tax
17 credits within thirty days after the transfer or sale of such tax credits. The notification
18 shall include the transferor's tax credit balance prior to transfer, the state-certified
19 production number, the name of the state-certified production, the transferor's
20 remaining tax credit balance after transfer, all tax identification numbers for both
21 transferor and transferee, the date of transfer, the amount transferred, a copy of the
22 **tax** credit certificate, and any other information required by the ~~director office~~ or the
23 ~~Department of Revenue~~ **Department of Revenue**.

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

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

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

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

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

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

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

15 ~~(ii)~~ Pay back to the department an amount equal to the face value of all
16 credits earned within one year of the date the producer does not continue business
17 operations in this state.

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

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

28 **(b) Prior to final certification of tax credits of a state-certified production**
29 **or any portion thereof, the digital interactive media company shall submit to the**

1 office a cost report of production expenditures audited by an independent
2 certified public accountant.

3 ~~(b)~~**(c)** Upon completion of all or a portion of a state-certified production, the
4 director office shall review the production expenses and, if approved by the office
5 and secretary, issue a final tax credit certification letter to the producer digital
6 interactive media company. The certification letter shall include the identifying
7 number assigned to that state-certified production in the initial certification. ~~Written~~
8 ~~approval of the secretary of the Department of Economic Development and the~~
9 ~~commissioner of administration shall be received prior to issuance of a credit~~
10 ~~certification letter.~~

11 **(d) As a condition for receiving certification of tax credits under this**
12 **Section, state-certified productions may display the state brand or logo, or both,**
13 **as prescribed by the secretary of the Department of Economic Development.**

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

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

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

28 (2) The only interest that may be assessed and collected on recovered credits
29 is interest at a rate of three percentage points above the rate provided in R.S.

1 9:3500(B)(1), which shall be computed from the original due date of the return on
2 which the credit was taken.

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

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

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

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

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

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

The original instrument was prepared by Angela Lockett De Jean. The following digest, which does not constitute a part of the legislative instrument, was prepared by Riley Nancy Vicknair.

DIGEST

Duplessis (SB 277)

Proposed law provides that the primary objective of proposed law is to encourage development in Louisiana of a strong capital base for the production of digital interactive media products and platforms in order to achieve a more independent, self-supporting industry. This objective is divided into immediate and long-term objectives as follows:

- (a) Attract private investment for the production of digital interactive media products and platforms in this state.
- (b) Develop a tax infrastructure which encourages private investment. This infrastructure will provide for state participation in the form of tax credits to encourage investment in state-certified productions.

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

Proposed law provides the following definitions:

- (1) "Base investment" means the actual funds expended in Louisiana by a state-certified production as production-related costs for design or development of digital interactive media, including costs for payroll and component parts, as defined in proposed law.
- (2) "Component parts," with respect to digital interactive media, means all elements that are integral to the functioning or development of such products and platforms. Some examples of "component parts" are software, computer code, image files, music files, audio files, video files, scripts and plays, concept mock-ups, software tools, and testing procedures. Component parts shall also include, but not be limited to computer servers, workstations, server racks, hard drives, optical drives, monitors, keyboards, integrated video and audio equipment, networking routers, switches, network cabling, and any other computer-related hardware necessary to create or operate a digital interactive media product or platform.
- (3) "Department" means the Louisiana Department of Economic Development.
- (4) "Digital interactive media" means products and platforms that are intended for commercial or public use or distribution and that contain at least two of the following types of data: text, sound, fixed images, animated images, video, or 3D geometry; and that have all of the following three characteristics:
 - (i) "Digital" means a system that uses discrete (discontinuous) values ordinarily symbolized numerically to represent information for input, processing, transmission and storage. A digital system would be contrasted with an "analog" system which uses a continuous range of values to represent information. The term "digital" includes, but is not limited to information input, processed, transmitted and stored via the Internet.
 - (ii) "Interactive" means a digital media system for inputting, processing, transmitting or storing information or data in which users of the system are able to respond to the digital media system by inputting, transmitting, processing or storing information or data in response to the information or data provided to them through the digital media system. "Digital media system" means communications delivered via electronic energy where the information stored, transmitted, or received is in digital form.
 - (iii) "Media" means communication tools used to store, transmit, distribute and deliver information and data. The term "media" includes, methods and mechanisms for information distribution through, but not limited to distributed networks, such as the Internet, and through compact disc, CD-ROM, various types of DVD, and other removable storage drives and devices.

Proposed law provides that examples of digital interactive media are:

- (1) Video or interactive games.
- (2) Simulation software.
- (3) Interactive educational or training products.
- (4) Internet sites designed and developed as social media.

- (5) Software applications that provide connectivity and communications between mobile devices and digital interactive media web platforms.
- (6) Technology designed to stream live or pre-recorded video content over the Internet to large simultaneous audiences.

Proposed law provides that "Digital interactive media" shall not include:

- (1) Software development primarily designed and developed for institutional, private, or internal purposes.
- (2) Largely static internet sites designed to provide information about a person, business, company or firm.
- (3) Products regulated under the Louisiana Gaming Control Law.

Proposed law provides that "digital interactive media company" means an entity organized under the laws of Louisiana and engaged in the business of producing digital interactive media as defined in this Section. Digital interactive media company shall not mean or include 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 with any company or person who 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 provides that "expended in Louisiana" means an expenditure to purchase or lease immovable property located in the state, an expenditure to purchase or lease tangible personal property from a source within the state where the transaction is subject to state sales tax but for a statutory exclusion or exemption, or an expenditure as compensation for services performed within the state.

Proposed law provides that "production expenses" means preproduction and production expenditures in the state directly relating to a state-certified production including without limitation the following: testing software, source code development, patches, updates, sprites, three-dimensional models, and level design; costs associated with photography and sound synchronization, lighting and related services; rental of Louisiana facilities and equipment; purchase of prepackaged audio files, video files, photographic, or libraries; purchase of licenses to use pre-recorded audio files, video, or photographic files; development costs associated with producing audio files and video files to be used in the production of the end product under development.

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

Proposed law provides that "office" means the office of entertainment industry development in the Dept. of Economic Development.

Proposed law provides that "payroll" includes all salary, wages, and other compensation sourced or apportioned to Louisiana, including related benefits.

Proposed law provides that "person" means a natural person, corporation, partnership, limited partnership, limited liability company, joint venture, trust, estate, or association.

Proposed law provides that "resident" or "resident of Louisiana" means a natural person and, for the purpose of determining eligibility for the tax incentives provided by proposed law, any person domiciled in the state of Louisiana and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the state.

Present law provides that projects certified prior to 1/1/2010, there is hereby authorized a tax credit against state income tax which shall be earned by producers at the time funds are expended in Louisiana on a state-certified production as follows:

- (a) For each of the first and second years following certification of the project as a state-certified production, the producer shall earn tax credits at the rate of 20% of the base investment for that year.
- (b) For each of the third and fourth years following certification of the project as a state-certified production, the producer shall earn tax credits at the rate of 15% of the base investment for that year.
- (c) For each of the fifth and sixth years following certification of the project as a state-certified production, the producer shall earn tax credits at the rate of 10% of the base investment for that year.
- (d) No tax credits may be earned after the sixth year following the certification of the project as a state-certified production.

Proposed law retains present law and provides that applications for state-certified productions submitted to the office prior to 7/1/09 and subsequently approved by the office and secretary, a tax credit is authorized against state income tax which shall be earned by producers at the time funds are expended in La. on a state-certified production as provided for in present law.

Proposed law provides that for applications for state-certified productions submitted to the office on or after 7/1/09, and subsequently approved by the office and secretary, there are hereby authorized tax credits which shall be earned by a digital interactive media company at the time funds are expended in Louisiana on a state-certified production as follows:

- (a) A DIMC shall earn tax credits at the rate of 25% percent of the base investment.
- (b) To the extent that base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, a digital interactive media company shall earn additional tax credits at the rate of 10% of the payroll.
- (c) The initial certification shall be effective for expenditures made prior to the date of initial certification and shall be valid until the production is completed.

Present law provides that with regard to the application of the credit, the credit shall be allowed against the income tax due from a taxpayer for the taxable period in which the credit is earned as well as the immediately preceding period.

Proposed law retains present law and includes the franchise tax due from a taxpayer.

Present law provides that all entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed on their corporation income tax return.

Proposed law retains present law and includes the franchise tax return of corporations.

Present law provides that any tax credits allocated to a person and not previously claimed by any taxpayer against his income tax may be transferred or sold by such person to another Louisiana taxpayer, subject to the following conditions:

- (a) A single transfer or sale may involve one or more transferees. The transferee of the tax credits may transfer or sell such tax credits subject to the conditions of present law.
- (b) Transferors and transferees shall submit to the director in writing, a notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, the state-certified production number, the name of the state-certified production, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate, and any other information required by the director or the department.
- (c) Failure to comply will result in the disallowance of the tax credit until the taxpayers are in full compliance.
- (d) The transfer or sale of this credit does not extend the time in which the credit can be used. The carry forward period for credit that is transferred or sold begins on the date on which the credit was originally earned.

Proposed law retains present law, and provides that any tax credits allocated to a person and not previously claimed by any taxpayer against his La. state income or franchise tax may be transferred or sold to another person.

Proposed law requires transferors and transferees to submit, in writing to the office and Dept. of Revenue, notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. Further requires a copy of the tax credit certificate and any other information required by the office or the Dept. of Revenue.

Proposed law requires the transferee to apply such credits in the same manner and against the same taxes as the taxpayer originally awarded the credit.

Present law provides that transferors and transferees shall submit to the office and Dept. of Revenue in writing, a notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, the state-certified number, the name of the state-certified, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the tax credit certificate, and any other information required by the office or the Dept. of Revenue.

Present law provides that any producer who has received the tax credit shall commit to continue business operations in this state for at least one year after the certification of any tax credit pursuant to present law. Proposed law deletes this provision of present law.

Present law provides that "continue business operations in this state" means that a producer's base investment in the year following certification of any tax credit is at least 25% of the amount of the previous year's base investment. Proposed law deletes this provision of present law.

Present law provides that if a producer who has received the tax credit should not continue business operations in this state for one year after certification of any tax credit pursuant to present law, the producer shall either:

- (a) Surrender all credits earned within one year of the date the producer does not continue business operations in this state.
- (b) Pay back to the department an amount equal to the face value of all credits earned within one year of the date the producer does not continue business operations in this state.

Proposed law deletes these provisions of present law.

Present law requires the director to determine through the promulgation of rules what productions qualify for state-certified productions and any other matter necessary to carry out the intent and purposes of present law. Further requires that the rules not be adopted until they are approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Proposed law retains present law and requires the office to determine, through the promulgation of rules in accordance with the APA, what projects qualify as state-certified productions and any other matter necessary to carry out the intent and purposes of present law. Further requires that the rules not be effective until approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Present law requires the director to submit his initial certification of a project as a state-certified production to each producer and to the secretary.

Proposed law requires the office to submit an initial certification of a production as a state-certified production to each digital interactive media company and to the secretary.

Proposed law provides that prior to final certification of a state-certified production or any portion thereof, the digital interactive media company shall submit to the office a cost report of production expenditures audited by an independent certified public accountant.

Present law provides that upon completion of all or a portion of a state-certified production, the director shall review the production expenses and, if approved, issue a credit certification letter to the producer. Requires the certification letter to include the identifying number assigned to such production in the initial certification.

Proposed law retains present law and provides that the office review the production expenses and, if approved by the office and secretary, requires the issuance of a final tax credit certification letter to the digital interactive media company.

Present law requires written approval from the secretary of the Dept. of Economic Development and the commissioner of administration prior to issuance of a credit certification letter. Proposed law deletes this provision of present law.

Proposed law authorizes state-certified productions, as a condition for receiving certification of tax credits under present law, to display the state brand or logo, or both, as prescribed by the secretary of Dept. of Economic Development.

Present law, relative to recapture of credits, provides that if the director finds that funds for which a producer received credits according to present law are not actually expended in this state as a production-related cost of a state-certified production, then the producer's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by present law.

Proposed law provides that if the office finds that funds for which a digital interactive media company received credits, according to the provisions of present law, are not actually expended in La. as a production-related cost of a state-certified production, then the digital

interactive media company's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by proposed law.

Proposed law provides that credits previously granted to a taxpayer, but later disallowed, may be recovered by the secretary of the Dept. of Revenue through any collection remedy authorized by R.S. 47:1561 (alternative remedies for the collection of taxes) and initiated within 3 years from December 31st of the year in which the credits were earned.

Proposed law clarifies that the provisions of present law are in addition to and shall not limit the authority of the secretary of the Dept. of Revenue to assess or to collect under any other provision of law.

Proposed law provides that the provisions of proposed law shall not apply to any investments or expenditures that qualify for motion picture investor tax credits under R.S. 47:6007 (motion picture investor tax credit).

Proposed law prohibits a production which receives tax credits from receiving the rebates provided for in the Quality Jobs program in connection with the activity for which the tax credits were received.

Present law provides that any producer who earns tax credits pursuant to present law shall pledge to continue business operations in this state until such time as such producer can demonstrate to the director that the net positive fiscal impact to the state resulting from such producer's operations in connection with the state-certified production has met or exceeded the value of any tax credits issued under present law. Proposed law deletes this provision from present law.

Effective July 1, 2009.

(Amends R.S. 47:6022)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill.

1. Provides requirements "digital interactive media" which are eligible for a tax credit:
 - (i) Requires such media to contain at least two of the following types of data: text, sound, fixed images, animated images, video, or 3D geometry.
 - (ii) Specifically includes platforms and products or platforms intended for commercial production.
 - a. Defines as "media" methods and mechanisms for information distribution through, but not limited to, distributed networks, such as the Internet, and through compact disc, CD-ROM, various types of DVD, and other removable storage drives and devices.
 - b. Deletes the prohibition on tax credits for a website primarily used for institutional, private, industrial, retail, or wholesale marketing or promotional purposes and instead allows credits for software primarily designed and developed for institutional, private, or internal purposes.

- c. Changes the prohibition on such media eligible for a tax credit from production which contains obscenity or pornography to a production for which records are required to be maintained pursuant to 18 U.S.C. § 2257.
 - d. Deletes as specific examples of such media Internet sites conducting business as social media or cloud computing services and Internet-based interactive platforms, Internet based software applications, and general interactive software applications; instead providing as an example, Internet sites designed and developed as social media.
2. Requires approval of the secretary of DED in addition to the office of entertainment industry in DED (and excludes approval by the division of administration) for issuance of a final tax credit certification letter.
 3. Prohibits a production which receives tax credits from receiving the rebates provided for in the Quality Jobs program in connection with the activity for which the tax credits were received.
 4. Imposes as a condition for receiving certification a requirement that a production "may display" the state brand or logo, or both, as prescribed by the secretary of DED.
 5. Specifically requires the promulgation of rules by the office in accordance with the APA.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Revises the definition of "expended in Louisiana."
2. Provides a definition for "production expenses."
3. Lists those items not included in "production expenses."
4. Removes Proposed law provision that digital interactive media shall not include a production for which records are required to be maintained pursuant to federal criminal law.