

Regular Session, 2011

HOUSE BILL NO. 248

BY REPRESENTATIVE HENRY

TAX CREDITS: Changes the Digital Interactive Media Producer Tax Credit to a refundable tax credit and provides other modifications to the program

1 AN ACT

2 To amend and reenact R.S. 47:6022(A), (C)(4)(c)(i), (5), (10)(b), and (14), (D)(2), and (E)
3 through (J), to enact R.S. 47:6038 and 6039 and R.S. 51:2306, and to repeal R.S.
4 47:6022(K), relative to tax credits; to provide for the name and applicability of the
5 digital interactive media producer tax credit; to provide for a refundable tax credit;
6 to provide for rebates of tax credits under certain circumstances; to provide a tax
7 credit for small business workforce expansion; to require reports by the secretary of
8 the Department of Economic Development; to provide for definitions, limitations,
9 and program administration; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 47:6022(A), (C)(4)(c)(i), (5), (10)(b), and (14), (D)(2), and (E)
12 through (J) are hereby amended and reenacted and R.S. 47:6038 and 6039 are hereby
13 enacted to read as follows:

14 §6022. Digital interactive media ~~producer~~ and software tax credit

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

17 * * *

18 C.

19 * * *

20 (4)

21 * * *

1 (c)
2 (i) Software development ~~primarily~~ designed and developed ~~for institutional,~~
3 ~~private, or internal purposes~~ primarily for internal or operational purposes of the
4 company.

5 * * *

6 (5) "~~Digital interactive media company~~ Company" means an entity ~~organized~~
7 ~~under the laws of the state of Louisiana~~ authorized to do business in the state of
8 Louisiana and engaged in the business of producing digital interactive media as
9 defined in this Section. ~~Digital interactive media company~~ "Company" shall not
10 mean or include any company owned, affiliated, or controlled, in whole or in part,
11 by any company or person ~~which:~~

12 (a) Which has a contract or application with the Department of Economic
13 Development that is in default or noncompliance.

14 (b) Which is in default on a loan made by the state or a loan guaranteed by
15 the state ~~,nor with any company or person who,~~

16 (c) Who has ever declared bankruptcy under which an obligation of the
17 company or person to pay or repay public funds or monies was discharged as a part
18 of such bankruptcy.

19 * * *

20 (10)

21 * * *

22 (b) "Production expenses" shall not include ~~postproduction expenditures for~~
23 any of the following:

24 (i) Expenditures for or related to marketing, promotion, and distribution;
25 ~~non-production related overhead, amounts,;~~

26 (ii) Administrative, payroll, and management services which are not directly
27 related to management of the project.

28 (iii) Food, entertainment, and lodging expenses.

1 ~~(iv) Amounts~~ that are later reimbursed by the state ~~or any other~~
2 ~~governmental entity, costs.~~

3 (v) Costs related to the transfer of tax credits, ~~amounts.~~

4 (vi) Amounts that are paid to persons or entities as a result of their
5 participation in profits from the exploitation of the production, ~~the.~~

6 (vii) Any application fee, or state or local taxes.

7 * * *

8 (14) "Tax credit" means the digital interactive media ~~producer and software~~
9 development tax credit authorized by this Section.

10 D.

11 * * *

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

17 (a) ~~A digital interactive media company shall earn tax credits~~ Credits shall
18 be earned at the rate of twenty-five percent of the base investment.

19 (b) To the extent that base investment is expended on payroll for Louisiana
20 residents employed in connection with a state-certified production, ~~a digital~~
21 ~~interactive media company shall earn~~ additional tax credits shall be earned at the rate
22 of ten percent of the payroll.

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

25 E. ~~Application of the credit~~ Use of tax credits.

26 (1) ~~The credit~~ For tax credits earned for expenditures made on or before
27 December 31, 2011:

28 (a) The credit shall be allowed against the income or franchise tax due from
29 a taxpayer for the taxable period in which the credit is earned as well as the

1 immediately preceding period. If the tax credit allowed pursuant to this Section
2 exceeds the amount of such taxes due from a taxpayer, then any unused credit may
3 be carried forward by the taxpayer as a credit against subsequent tax liability for a
4 period not to exceed ten years. However, in no event shall the amount of the tax
5 credit applied by a taxpayer in a taxable period exceed the amount of such taxes due
6 from the taxpayer for that taxable period.

7 ~~(2)~~ (b) All entities taxed as corporations for Louisiana income tax purposes
8 shall claim their share of any credit ~~allowed under this Section~~ on their corporation
9 income and franchise tax return.

10 ~~(3)~~ (c) Individuals, estates, and trusts shall claim their share of any credit
11 ~~allowed under this Section~~ on their ~~individual~~ income tax return.

12 ~~(4)~~ (d) Entities not taxed as corporations shall claim their share of any credit
13 ~~allowed under this Section~~ on the returns of the partners or members as follows:

14 ~~(a)~~ (i) Corporate partners or members shall claim their share of ~~the~~ any credit
15 on their corporation income tax returns.

16 ~~(b)~~ (ii) Individual partners or members shall claim their share of ~~the~~ any
17 credit on their individual income tax returns.

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

20 ~~F. Transferability of the credit.~~

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

24 ~~(a)~~ (i) A single transfer or sale may involve one or more transferees. The
25 transferee of the tax credits may transfer or sell such tax credits subject to the
26 conditions of this Section.

27 ~~(b)~~ (ii) Transferors and transferees shall submit to the office and Department
28 of Revenue in writing, a notification of any transfer or sale of tax credits within
29 thirty days after the transfer or sale of such tax credits. The notification shall include

1 the transferor's tax credit balance prior to transfer, the state-certified production
2 number, the name of the state-certified production, the transferor's remaining tax
3 credit balance after transfer, all tax identification numbers for both transferor and
4 transferee, the date of transfer, the amount transferred, a copy of the tax credit
5 certificate, and any other information required by the office or the Department of
6 Revenue.

7 ~~(e)~~ (iii) Failure to comply with this Subparagraph will result in the
8 disallowance of the tax credit until the taxpayers are in full compliance.

9 ~~(d)~~ (iv) The transfer or sale of this credit does not extend the time in which
10 the credit can be used. The ~~carry forward~~ carryforward period for credit that is
11 transferred or sold begins on the date on which the credit was originally earned.

12 ~~(e)~~ (v) The transferee shall apply such credits in the same manner and against
13 the same taxes as the taxpayer originally awarded the credit.

14 (2) For tax credits earned for expenditures made on or after January 1, 2012:

15 (a) The tax credits shall be refundable and allowed against the individual or
16 corporate income tax liability of the companies or financiers of the project in
17 accordance with their share of the credit as provided for in the application for
18 certification for the project. The credit shall be allowed for the taxable period in
19 which expenditures eligible for a credit are expended as set forth in the final tax
20 credit certification letter. Any excess of the credit over the income tax liability
21 against which the credit may be applied shall constitute an overpayment, as defined
22 in R.S. 47:1621(A), and the secretary of the Department of Revenue shall make a
23 refund of such overpayment from the current collections of the taxes imposed by
24 Chapter 1 of Subtitle II of this Title, as amended. The right to a refund of any such
25 overpayment shall not be subject to the requirements of R.S. 47:1621(B).

26 (b) At the time of final certification of tax credits, a company may elect, on
27 a one-time basis, to receive a rebate of the credits. The amount of the rebate shall
28 be eighty-five percent of the face value of the credits. Upon receipt of the final tax
29 credit certification letter and any necessary additional information, the secretary of

1 the Department of Revenue shall make payment to the company, or its irrevocable
2 designee, which may include but not be limited to a bank or other lender, in the
3 amount to which he is entitled from the current collections of the taxes collected
4 pursuant to Chapter 1 of Subtitle II of this Title, as amended.

5 ~~G. Certification and administration. (1) The office shall determine through~~
6 ~~the promulgation of F. Administration. (1) The office may promulgate~~ rules in
7 accordance with the Administrative Procedure Act to establish the policies and
8 program elements regarding project qualifications for state-certified productions and
9 any other matter necessary to carry out the intent and purposes of this Section. Such
10 rules shall be subject to oversight by the House Committee on Ways and Means and
11 the Senate Committee on Revenue and Fiscal Affairs.

12 ~~(a) what projects qualify as state-certified productions, and~~

13 ~~(b) any Any other matter necessary to carry out the intent and purposes of this~~
14 ~~Section. These rules shall not be effective until they are approved by the House~~
15 ~~Committee on Ways and Means and the Senate Committee on Revenue and Fiscal~~
16 ~~Affairs.~~

17 (2) Application. A company seeking to participate in the tax credit program
18 shall apply to the department through an application process established by the
19 department.

20 ~~(2)(a) The~~ (3) Certification. (a) The office shall review the company's
21 application and any other information which it deems appropriate for determination
22 of the project's eligibility for initial certification. For a project deemed eligible, the
23 office shall ~~submit~~ provide an initial certification of a the project as a state-certified
24 production to ~~each digital interactive media~~ the company and to the secretary of the
25 Department of Revenue. The initial certification shall be effective for expenditures
26 made no more than six months prior to the date of initial certification and shall be
27 valid until the project is completed. The initial certification shall include a unique
28 identifying number for each state-certified production.

1 (b) Prior to final certification of tax credits of a state-certified production or
2 any portion thereof, the ~~digital interactive media~~ company shall submit to the office
3 a cost report of production expenditures. The cost report of expenditures shall be
4 subject to an agreed-upon procedures engagement conducted by a certified public
5 accountant in accordance with statements on standards for attestation engagements
6 established by the American Institute of Certified Public Accountants. The
7 accountant shall issue a the cost report in the form of procedures and findings. The
8 accountant shall be a certified public accountant licensed in the state of Louisiana
9 and shall be an independent third party unrelated to the ~~digital interactive media~~
10 company. The agreed-upon procedures shall be established by the office and
11 secretary, with assistance from the Society of Louisiana Certified Public
12 Accountants, ~~and shall be placed in rules promulgated in accordance with the~~
13 ~~Administrative Procedure Act.~~ The department may request additional audits of the
14 project expenditures, the cost of which shall be borne by the company.

15 (c) Upon completion of all or a portion of a state-certified production, the
16 office shall review the production expenses and, if approved by the office and
17 secretary, issue a final tax credit certification letter to the ~~digital interactive media~~
18 company. The certification letter shall include the identifying number assigned to
19 that state-certified production in the initial certification.

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

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

25 H. G. Recapture of credits. If the office finds that funds for which a ~~digital~~
26 ~~interactive media~~ company received credits according to this Section are not actually
27 expended in Louisiana as a production-related cost of a state-certified production,
28 then the ~~digital interactive media~~ company's state income tax for such taxable period

1 shall be increased by such amount necessary for the recapture of credit provided by
2 this Section.

3 F. H. Recovery of credits by Department of Revenue. (1) Credits previously
4 granted to a taxpayer, but later disallowed, may be recovered by the secretary of the
5 Department of Revenue through any collection remedy authorized by R.S. 47:1561
6 and initiated within three years from December thirty-first of the year in which the
7 credits were earned.

8 (2) The only interest that may be assessed and collected on recovered credits
9 is interest at a rate of three percentage points above the rate provided in R.S.
10 9:3500(B)(1), which shall be computed from the original due date of the return on
11 which the credit was taken.

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

15 F. I. The provisions of this Section shall not apply to any investments or
16 expenditures that qualify for tax credits under R.S. 47:6007.

17 J. A taxpayer shall not receive any other incentive administered by the
18 Department of Economic Development for any expenditures for which the taxpayer
19 has received a tax credit or rebate under this Section.

20 * * *

21 §6038. Reports; tax incentives administered by the Department of Economic
22 Development

23 Notwithstanding any provision of law to the contrary, the secretary of the
24 Department of Economic Development shall report to the Joint Legislative
25 Committee on the Budget information concerning the granting and denial of tax
26 credits and rebates, hereinafter referred to as "tax incentives", administered by the
27 department authorized under this Chapter. On January thirtieth of each year, the
28 secretary shall transmit to the members of the committee a list of the recipients of
29 each tax incentive, as well as a list of applicants denied tax incentives, over the most

1 recently concluded calendar year. The report shall contain the name and primary
2 place of business of each applicant.

3 §6039. Tax credit for small business workforce expansion

4 A. There shall be a credit against Louisiana income tax for small businesses
5 which create new jobs for Louisiana residents.

6 B. For purposes of this Section, the following terms and phrases shall have
7 the following meanings:

8 (1) "Small business" means a business which employees fifty or less persons
9 for the duration of the fiscal year in which the job was created and for which the tax
10 credit is claimed.

11 (2) "Job" means employment in this state of an employee working at least
12 an average of forty hours per week, who was not previously employed on an
13 employer's payroll in Louisiana, and who is domiciled in Louisiana.

14 C. The amount of the credit shall be equal to ten percent of the annual wage
15 or salary paid to the employee in a new job which is eligible for the tax credit. The
16 total amount of tax credit claimed pursuant to this Section in any one taxable year
17 shall not exceed two hundred fifty thousand dollars per small business.

18 D. The provisions of this Section shall be applicable for all taxable periods
19 beginning on and after January 1, 2012.

20 Section 2. R.S. 51:2306 is hereby enacted to read as follows:

21 §2306. Reports; tax incentives administered by the Department of Economic
22 Development

23 Notwithstanding any provision of law to the contrary, the secretary of the
24 Department of Economic Development shall report to the Joint Legislative
25 Committee on the Budget information concerning the granting and denial of tax
26 credits and rebates, hereinafter referred to as "tax incentives", administered by the
27 department authorized under this Title. On January thirtieth of each year, the
28 secretary shall transmit to the members of the committee a list of the recipients of
29 each tax incentive, as well as a list of applicants denied tax incentives, over the most

- 1 recently concluded calendar year. The report shall contain the name and primary
 2 place of business of each applicant.
 3 Section 3. R.S. 47:6022(K) is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Henry

HB No. 248

Abstract: Changes the Digital Interactive Media Producer Tax Credit from a transferrable tax credit to a refundable credit which may be converted to a rebate and provides for other program modifications, establishes an income tax credit for small business workforce expansion and requires certain reporting by the Dept. of Economic Development.

Present law provides for the Digital Interactive Media Producer Tax Credit which is applicable to income and corporation franchise taxes. The tax credit is transferrable.

Proposed law retains present law for credits earned for expenditures made on or before Dec. 31, 2011. Proposed law changes the name of the tax credit from digital interactive media and producer tax credit to digital interactive media and software development tax credit.

Proposed law changes present law for tax credits earned for expenditures made on or after Jan. 1, 2012. The applicability of the tax credit is changed from a transferable tax credit to a refundable tax credit which may be converted to a rebate equal to 85% of the face value of the tax credit.

Proposed law authorizes a company to elect on a one-time basis, at the time of final certification of the tax credit, to receive a rebate in lieu of a tax credit. The amount of the rebate is 85% of the face value of the credit. Rebates are payable by the secretary of the Dept. of Revenue from current collections.

Present law provides for definitions, including "production expenses".

Proposed law retains present law and specifies that "production expenses" shall not include food, entertainment and lodging expenses, and administrative, payroll, and management services which are not directly related to management of the project.

Present law requires administrative rules promulgated by the Dept. of Economic Development to be approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs before taking effect.

Proposed law retains present law and requires that oversight by those committees be conducted in accordance with the Administrative Procedure Act.

Proposed law specifies that a company seeking to participate in the tax credit program must apply to the department through an application process established by the department.

Present law provides for "initial certification" for a company seeking to participate in the tax credit program.

Proposed law retains present law and specifies that an initial certification shall be limited to expenses incurred no more than six months prior to the date of initial certification.

Present law restricts a project which earns a tax credit authorized under present law from eligibility for tax credits or rebates provided under the La. Quality Jobs Program Act.

Proposed law repeals present law but adds a restriction prohibiting a project which receives a digital interactive media producer tax credit from receiving any other tax incentive administered by the Dept. of Economic Development.

Proposed law requires the secretary of the Dept. of Economic Development to report on Jan. 30 of each year to the Joint Legislative Committee on the Budget concerning the granting and denial of tax credits and rebates (hereinafter tax incentives) administered by the department. The report shall provide the name and primary place of business of recipients of tax incentives, as well as that of applicants denied tax incentives during the most recently concluded calendar year.

Proposed law establishes an income tax credit for small businesses which create new jobs for La. residents for tax years beginning on and after Jan. 1, 2012. The amount of the credit shall be equal to 10% of the annual wage or salary paid to the employee in a new job which is eligible for the tax credit. The total amount of tax credit claimed pursuant to proposed law in any one taxable year shall not exceed \$250,000 per small business. For purposes of proposed law, the following terms and phrases shall have the following meanings:

- (1) "Small business" means a business which employs 50 or fewer persons for the duration of the fiscal year in which the job was created and for which the tax credit is claimed.
- (2) "Job" means employment in this state of an employee working at least an average of 40 hours per week, who was not previously employed on an employer's payroll in La., and who is domiciled in La.

(Amends R.S. 47:6022(A), (C)(4)(c)(i), (5), (10)(b), and (14), (D)(2), and (E)-(J); Adds R.S. 47:6038 and 6039 and R.S. 51:2306; Repeals R.S. 47:6022(K))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Changed the restriction on projects receiving a digital interactive media tax credit from receiving other tax incentives from a prohibition of receiving any other state tax incentive to a prohibition of receiving any other tax incentive administered by the Dept. of Economic Development.

House Floor Amendments to the engrossed bill.

1. Added requirement that the secretary of the Dept. of Economic Development report on Jan. 30 of each year to the Joint Legislative Committee on the Budget concerning the granting and denial of applications for tax incentives administered by the department in the most recently concluded calendar year.
2. Added an income tax credit for small businesses which create new jobs for La. residents. The credit is equal to 10% of the wages of the new employee, with an annual maximum per business of \$250,000.