

RS 47:6022

§6022. Digital interactive media and software tax credit

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

(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.

(2) Long-term objectives are to:

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

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

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

C. Definitions. For the purposes of this Section:

(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 this Section.

(2) "Company" means an entity authorized to do business in the state of Louisiana and engaged in the business of producing digital interactive media as defined in this Section. "Company" shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person subject to any of the following:

(a) Has a contract or application with the Department of Economic Development that is in default or noncompliance.

(b) Is in default on a loan made by the state or a loan guaranteed by the state.

(c) 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.

(3) "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.

(4) "Department" means the Louisiana Department of Economic Development.

(5)(a) "Digital interactive media" means products or platforms that are intended for commercial production, use, or distribution; 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.

(b) Some examples of digital interactive media are:

(i) Video or interactive games.

(ii) Simulation software.

(iii) Interactive educational or training products.

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

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

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

(c) "Digital interactive media" shall not include:

(i) Software development designed and developed primarily for internal or operational purposes of the company.

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

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

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

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

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

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

(10)(a) "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.

(b) "Production expenses" shall not include any of the following:

(i) Expenditures for or related to marketing, promotion and distribution.

(ii) Administrative, payroll, and management services which are not directly related to management of the state-certified production.

(iii) Food, entertainment, and lodging expenses.

(iv) Amounts that are later reimbursed by the state.

(v) Costs related to the transfer of tax credits.

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

(vii) Any application fee, expense verification report fee, or state or local taxes.

(11) "Resident" or "resident of Louisiana" means a natural person and, for the purpose of determining eligibility for the tax incentives provided by this Section, 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.

(12) "Secretary" means the secretary of the Louisiana Department of Economic Development.

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

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

D. Tax credit; specific projects.

(1) For applications for state-certified productions submitted to the office prior to July 1, 2009, and subsequently approved by the office and secretary, 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 twenty percent 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 fifteen percent 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 ten percent of the base investment for that year.

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

(2) For applications for state-certified productions submitted to the office on or after July 1, 2009, and before July 1, 2015, and subsequently approved by the office and secretary, there are hereby authorized tax credits which shall be earned by a company at the time funds are expended in Louisiana on a state-certified production as follows:

(a) Credits shall be earned at the rate of twenty-five 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, additional tax credits shall be earned at the rate of ten percent of the payroll.

(3) For applications for state-certified productions submitted to the office on or after July 1, 2015, and before July 1, 2017, and subsequently approved by the office and secretary, there are hereby authorized tax credits that shall be earned by a company at the time funds are expended in Louisiana on a state-certified production as follows:

(a) Credits shall be earned at the rate of eighteen 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, additional tax credits shall be earned at the rate of seven and two tenths of one percent of the payroll.

(4) For applications for state-certified productions submitted to the office on or after July 1, 2017, and subsequently approved by the office and secretary, there are hereby authorized tax credits that shall be earned by a company at the time funds are expended in Louisiana on a state-certified production as follows:

(a) Credits shall be earned at the rate of eighteen 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, additional tax credits shall be earned at the rate of seven percent of the payroll.

E. Use of tax credits. (1) For tax credits earned for expenditures made on or before December 31, 2011:

(a) The credit shall be allowed against the income or franchise tax due from a taxpayer for the taxable period in which the credit is earned as well as the immediately preceding period. If the tax credit allowed pursuant to this Section exceeds the amount of such taxes due from a taxpayer, then any unused credit may be

carried forward by the taxpayer as a credit against subsequent tax liability for a period not to exceed ten years. However, in no event shall the amount of the tax credit applied by a taxpayer in a taxable period exceed the amount of such taxes due from the taxpayer for that taxable period.

(b) All entities taxed as corporations for Louisiana income tax purposes shall claim any credit on their corporation income and franchise tax return.

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

(d) Entities not taxed as corporations shall claim their share of any credit on the returns of the partners or members as follows:

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

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

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

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

(i) 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 this Section.

(ii) Transferors and transferees shall submit to the Department of Revenue, in writing, a notification of any transfer or sale of tax credits within ten business 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 tax credit certificate, and any other information required by the office or the Department of Revenue.

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

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

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

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

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

(b) At the time of final certification of tax credits, a company may elect, on a one-time basis, to receive a rebate of the credits. The amount of the rebate shall be eighty-five percent of the face value of the credits. Upon receipt of the final tax credit certification letter and any necessary additional information, the secretary of the Department of Revenue shall make payment to the company, or its irrevocable designee, which may include but not be limited to a bank or other lender, in the amount to which he is entitled from the current collections of the taxes collected pursuant to Chapter 1 of Subtitle II of this Title, as amended.

F. Administration. (1) The office may promulgate rules in accordance with the Administrative Procedure Act to establish the policies and program elements regarding project qualifications of state-certified productions and any other matter necessary to carry out the intent and purposes of this Section. Such rules

shall be subject to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

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

(i) The office shall directly engage and assign a certified public accountant to perform an expense verification report on an applicant's cost report of production expenses. The applicant shall be responsible for payment of the expense verification report fee in accordance with R.S. 36:104.1, and shall make all records related to the tax credit application available to the accountant.

(ii) The applicant will be assessed the office's actual cost for the expense verification report fee. The maximum fee for the report shall be fifteen thousand dollars for verification of a cost report reflecting production expenses of up to one million dollars, and the maximum fee shall be twenty-five thousand dollars for verification of a cost report reflecting production expenses in excess of one million dollars.

(iii) At the time of application, the applicant shall submit to the office a deposit of the expenditure verification report fee of seven thousand five hundred dollars for a production with qualified production expenses projected to be no more than one million dollars, and a deposit of fifteen thousand dollars for those projected to be in excess of one million dollars.

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

(b) Upon project completion or no more than once annually, the applicant shall make a request to the office to proceed to final certification by submitting to the office a cost report of production expenses to be formatted in accordance with instructions of the office. The applicant shall make all records related to the cost report available for inspection by the office and the certified public accountant selected by the office to prepare the expense verification report on the cost report of production expenses. After review and investigation of the cost report, the accountant shall submit to the office an expense verification report. The office may request additional expense verification reports for any additional cost reports for production expenses, the cost of which shall be borne by the company.

(c) Digital interactive media and software tax credits shall be certified only upon the receipt and approval by the office of an expense verification report submitted by a certified public accountant in accordance with the provisions of Subparagraph (b) of this Paragraph. The office shall review the expense verification report, and for those expenses found to be qualified by the department shall issue a final tax credit certification letter to the company. The certification letter shall include the identifying number assigned to that state-certified production in the initial certification.

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

G. Recapture of credits . If the office finds that funds for which a company received credits according to this Section are not actually expended in Louisiana as a production-related cost of a state-certified production, then the company's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by this Section.

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

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

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

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

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

K. Repealed by Acts 2011, No. 415, §3, eff. July 11, 2011.

L. Commencing no later than January 31, 2016, the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs shall review the credit authorized pursuant to the provisions of this Section to determine if the economic benefit provided by such credit outweigh the loss of revenue realized by the state as a result of awarding such credit. The House and Senate committees shall make a specific recommendation no later than March 1, 2017, to either continue the credit or to terminate the credit.

Acts 2005, No. 346, §1, eff. June 30, 2005; Acts 2009, No. 454, §1, eff. July 1, 2009; Acts 2011, No. 415, §§1, 3, eff. July 11, 2011; Acts 2013, No. 418, §1, eff. June 21, 2013; Acts 2015, No. 125, §2, eff. July 1, 2015; Acts 2015, No. 357, §1, eff. June 29, 2015; Acts 2015, No. 412, §2, special eff. date, See Act; Acts 2016, 1st Ex. Sess., No. 29, §2; Acts 2017, No. 400, §§1, 2, and 4, eff. June 26, 2017.

NOTE: See Acts 2016, 1st Ex. Sess., No. 29, §2, regarding effectiveness.