

Regular Session, 2005

HOUSE BILL NO. 604

BY REPRESENTATIVE SCALISE

TAX CREDITS: Provides for a digital interactive media employment tax credit

1 AN ACT

2 To enact R.S. 47:6020, relative to the digital interactive media employment tax credit; to
3 authorize a digital interactive media employment tax credit; to authorize a carry
4 forward of tax credits; to authorize transferability of credits; to provide for
5 administrative procedures and fees for the credit by the Governor's Office of Film
6 and Television Development, Department of Economic Development, and the
7 Department of Revenue; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:6020 is hereby enacted to read as follows:

10 §6020. Digital interactive media employment tax credit

11 A.(1) A digital interactive media production company shall be entitled to a
12 tax credit for the employment of residents of Louisiana in connection with
13 production of a digital interactive media product. The Louisiana digital interactive
14 media employment tax credit shall be equal to ten percent of the total aggregate
15 payroll for residents employed in connection with such production when total
16 production costs in Louisiana equal or exceed three hundred thousand dollars but
17 total less than one million dollars. The credit shall be equal to twenty percent of the
18 total aggregate payroll for residents employed in connection with such production
19 when total production costs in Louisiana equal or exceed one million dollars. The

1 amount of credits earned may never exceed the total expenditure of Louisiana
2 employees.

3 (2) For purposes of this Section:

4 (a) "Digital interactive media" shall mean products that are intended for
5 commercial use or distribution and that are produced on electronic media, controlled
6 by software that allows interactivity, and includes an appreciable quantity of three
7 of the following four types of data: text, sound, fixed images, and animated images.
8 Digital interactive media shall not include, however, products that are essentially
9 interpersonal communication services, such as videoconferencing and text-based
10 channels and chat rooms. In addition, film and video projects qualifying for tax
11 credits under either R.S. 47:1125.1 or 6007 shall not be included in the definition of
12 digital interactive media.

13 (b) "Digital interactive media production company" shall mean a company
14 engaged in the business of developing, financing and/or producing interactive media
15 products for commercial use. Digital interactive media production company shall
16 not mean or include any company owned, affiliated, or controlled, in whole or in
17 part, by any company or person which is in default on a loan made by the state or a
18 loan guaranteed by the state, nor with any company or person who has ever declared
19 bankruptcy under which an obligation of the company or person to pay or repay
20 public funds or monies was discharged as a part of such bankruptcy.

21 (c) "Louisiana music expenditures" shall include those costs approved by the
22 Governor's Office of Film and Television Development and the Louisiana Music
23 Commission.

24 (d) "Louisiana music" shall include music or music-related services that
25 meet one of the following criteria as determined by the Governor's Office of Film
26 and Television Development and the Louisiana Music Commission:

27 (i) Composed by a Louisiana resident.

28 (ii) Performed by a Louisiana resident.

29 (iii) Recorded in a Louisiana studio.

1 (iv) Released by a record company headquartered in Louisiana.

2 (v) Published by a publishing company headquartered in Louisiana.

3 (vi) Provided by a music consultant that is a Louisiana resident.

4 (c) "Total aggregate payroll" shall not include the salary of any employee
5 whose salary is equal to or greater than one million dollars.

6 (3) The use of Louisiana music in connection with production of a motion
7 picture or a digital interactive media. The credit shall be equal to ten percent of the
8 total music budget for the project when total Louisiana music expenditures exceed
9 thirty thousand dollars. The credit may be earned in connection with a state-certified
10 production as defined in R.S. 47:6007 or in connection with a production that is not
11 state-certified. The credit shall be equal to twenty percent of the total music budget
12 for the project when total Louisiana music expenditures exceed one hundred
13 thousand dollars. The amount of credits earned may never exceed the total Louisiana
14 music expenditure.

15 B. The credit may be applied to any income tax or corporation franchise tax
16 liability applicable to the motion picture production company.

17 C. If the motion picture production company or the digital interactive media
18 company is an entity not subject to income or franchise tax, the credit shall flow
19 through to its partners or members as follows:

20 (1) Corporate partners or members shall claim their share of the credit on
21 their corporation income or corporation franchise tax returns.

22 (2) Individual partners or members shall claim their share of the credit on
23 their individual income tax returns.

24 (3) Partners or members that are estates or trusts shall claim their share of
25 the credit on their fiduciary income tax returns.

26 D. Transferability of the credit. Any tax credits acquired by or awarded to
27 a person or entity and not previously claimed by any person or entity against its
28 income tax may be transferred or sold, subject to the following conditions:

1 (1) A single transfer or sale may involve one or more transferees. The
2 transferee of the tax credits may transfer or sell such tax credits subject to the
3 conditions of this Subsection.

4 (2) Transferors and transferees shall submit to the Governor's Office of Film
5 and Television Development, and to the Department of Revenue in writing, a
6 notification of any transfer or sale of tax credits within thirty days after the transfer
7 or sale of such tax credits. The notification shall include the transferor's tax credit
8 balance prior to transfer, the production certificate number, the name of the
9 production, the transferor's remaining tax credit balance after transfer, all tax
10 identification numbers for both transferor and transferee, the date of transfer, the
11 amount transferred, and any other information required by the Department of
12 Revenue, the Governor's Office of Film and Television Development, the
13 Department of Economic Development, or the Louisiana Music Commission.

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

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

19 (5) To the extent that the transferor did not have rights to claim or use the
20 credit at the time of the transfer, the Department of Revenue shall either disallow the
21 credit claimed by the transferee or recapture the credit from the transferee through
22 any collection method authorized by R.S. 47:1561. The transferee's recourse is
23 against the transferor.

24 E. The transferee shall apply such credits in the same manner and against the
25 same taxes as the person or entity originally awarded the credits.

26 F. Any unused credit may be carried forward no more than ten years from
27 the date the credit was earned. The credit shall be allowed against the corporation
28 income or franchise tax for the taxable period in which it is earned or the
29 immediately preceding taxable period.

1 G. The secretary of the Department of Revenue and the Department of
2 Economic Development, in consultation with the Governor's Office of Film and
3 Television Development and the Louisiana Music Commission, shall promulgate
4 such rules and regulations as may be necessary to administer this Section.

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Scalise

HB No. 604

Abstract: Provides for a digital interactive media employment tax credit.

Proposed law authorizes tax credits for the employment of residents of Louisiana in connection with the production of a digital interactive media. Provides that the credit is 10% of the total aggregate payroll when production costs in Louisiana equal or exceed \$300,000 but less than \$1,000,000 during the taxable year. Provides for a 20% credit when production costs exceed \$1,000,000 during a taxable year.

Proposed law extends the credit to digital interactive media production. Defines digital interactive media production company as a company engaged in the business of developing, financing and/or producing of digital interactive media for commercial exploitation.

Proposed law authorizes a music tax credit for the use of Louisiana music. Provides that the credit is 10% of the total music budget for the production when the Louisiana music expenditures exceed \$30,000. Provides that the credit is 20% of the total music budget when the Louisiana music expenditures exceed \$100,000. Provides that the credits earned shall never exceed total Louisiana music expenditure.

Proposed law provides that "Louisiana music" includes music or music-related services that meet one of the following criteria:

- (1) Composed by a Louisiana resident.
- (2) Performed by a Louisiana resident.
- (3) Recorded in a Louisiana studio.
- (4) Released by a record company headquartered in Louisiana.
- (5) Published by a publishing company headquartered in Louisiana.
- (6) Provided by a music consultant that is a Louisiana resident.

Proposed law provides for the transferability of the tax credits.

(Adds R.S. 47:6020)