

Regular Session, 2005

# ACT No. 485

HOUSE BILL NO. 631

BY REPRESENTATIVES K. CARTER, HEATON, RICHMOND, FAUCHEUX, AND  
SCALISE AND SENATOR BAJIOIE

1 AN ACT

2 To enact R.S. 47:6020, relative to tax credits; to authorize a sound recording investor tax  
3 credit against individual and corporation income taxes; to provide for certain  
4 procedures and collection; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

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

7 §6020. Sound recording investor tax credit

8 A. Purpose. The primary objective of this Section is to encourage  
9 development in Louisiana of a strong capital and infrastructure base for musical  
10 recording productions in order to achieve a more independent, self-supporting music  
11 industry. This objective is divided into immediate and long-term objectives as  
12 follows:

13 (1) Immediate objectives are to:

14 (a) Attract private investment for the production of musical recordings or  
15 "sound recordings" in Louisiana.

16 (b) Develop a tax and capital infrastructure which encourages private  
17 investment. This tax infrastructure is to provide for state participation in the form  
18 of tax credits to encourage investment in state-certified musical recording  
19 productions and infrastructure.

20 (c) Develop a tax infrastructure utilizing tax credits which encourage  
21 investments in multiple state-certified production projects.

1                   (2) Long-term objectives are to:

2                   (a) Encourage increased employment opportunities within this sector and  
3 increased global competition in fully developing economic development options  
4 within the music and recording industries.

5                   (b) Encourage new education curricula in order to provide a labor force  
6 trained in all aspects of musical recording production.

7                   (c) Encourage the development of a Louisiana music recording production  
8 infrastructure with state-of-the-art facilities.

9                   B. Definitions. For the purposes of this Section:

10                  (1) "Base investment" shall mean the actual investment made and expended  
11 by a state-certified production in the state as production-related costs and/or in a  
12 state-certified musical recording infrastructure project.

13                  (2) "Expended in the state" in the case of tangible property shall mean  
14 property which is acquired from a source within the state, and in the case of services,  
15 shall mean services procured and performed in the state.

16                  (3) "Sound recording" means a recording of music, poetry, or spoken-word  
17 performance made in Louisiana, in whole or in part. The term "sound recording"  
18 shall not include the audio portions of dialogue or words spoken and recorded as part  
19 of a motion picture, video, theatrical production, television news coverage, and  
20 athletic events.

21                  (4) "Sound recording production company" shall mean a company engaged  
22 in the business of producing sound recordings as defined in this Section. Sound  
23 recording production company shall not mean or include any person or company, or  
24 any company owned, affiliated, or controlled, in whole or in part, by any company  
25 or person, which is in default on a loan made by the state or a loan guaranteed by the  
26 state, nor which has ever declared bankruptcy under which an obligation of the  
27 company or person to pay or repay public funds or monies was discharged as a part  
28 of such bankruptcy.

29                  (5) "State-certified production" means a sound recording production, or a  
30 series of productions occurring over the course of a twelve-month period, and costs

1 related to such production or productions that are approved by the Louisiana  
2 Department of Economic Development, the commissioner of administration, and the  
3 office of the governor.

4 (6) "State-certified musical recording infrastructure project" means a musical  
5 recording capital infrastructure project and costs related to such project that are  
6 approved by the Louisiana Department of Economic Development, the commissioner  
7 of administration, and the office of the governor.

8 C. Investor tax credit; state-certified productions and infrastructure projects

9 (1) Until January 1, 2008, there is hereby authorized a credit against the state  
10 income tax for investments made in state-certified productions and state-certified  
11 musical recording infrastructure projects. The tax credit shall be earned by investors  
12 at the time expenditures are certified by the Louisiana Department of Economic  
13 Development according to the total base investment certified for the sound recording  
14 production company per calendar year. However, no credit shall be allowed under  
15 this Section for any expenditures for which a credit was granted under R.S. 47:6007.  
16 However, no sound recording production company shall earn a sound recording  
17 investor tax credit in more than three years out of any five year period.

18 (a) If the total base investment is greater than fifteen thousand dollars and  
19 less than or equal to one hundred fifty thousand dollars, each investor shall be  
20 allowed a tax credit of ten percent of the base investment made by that investor.

21 (b) If the total base investment is greater than one hundred fifty thousand  
22 dollars and less than or equal to one million dollars, each investor shall be allowed  
23 a tax credit of fifteen percent of the base investment made by that investor.

24 (c) If the total base investment is greater than one million dollars, each  
25 investor shall be allowed a tax credit of twenty percent of the base investment made  
26 by that investor.

27 (2) Sound recording investor tax credits associated with a state-certified  
28 production shall never exceed the total base investment in that production or musical  
29 recording infrastructure project.

1           (3) Except as otherwise provided in this Paragraph, the aggregate amount of  
2           credits certified for all investors pursuant to this Section during any calendar year  
3           shall not exceed three million dollars.

4           (a) An application for initial certification of a project shall be submitted to  
5           the Louisiana Department of Economic Development prior to the granting of the  
6           credit, and the granting of credits under this Section shall be on a first-come, first-  
7           served basis. The secretary of the Louisiana Department of Economic Development  
8           shall determine through the promulgation of rules the administration of the annual  
9           aggregate maximum. Prior to adoption, these rules shall be approved by the House  
10           Committee on Ways and Means and the Senate Committee on Revenue and Fiscal  
11           Affairs.

12           (b) If the total amount of credits applied for in any particular year exceeds  
13           the aggregate amount of tax credits allowed for that year, the excess will be treated  
14           as having been applied for on the first day of the subsequent year.

15           D.(1) The credit shall be allowed against the individual or corporate income  
16           tax for the taxable period in which the credit is earned. Any excess of the credit over  
17           the income tax liability against which the credit can be applied shall constitute an  
18           overpayment, as defined in R.S. 47:1621(A), and the secretary shall make a refund  
19           of such overpayment from the current collections of the taxes imposed by Chapter  
20           1 of Subtitle II of this Title, as amended. The right to a refund of any such  
21           overpayment shall not be subject to the requirements of R.S. 47:1621(B).

22           (2) Application of the credit. Individuals, estates, and trusts shall claim any  
23           credit allowed under this Section on their income tax return.

24           (a) Entities not taxed as corporations shall claim any credit allowed under  
25           this Section on the returns of the partners or members.

26           (b) Corporate partners or members shall claim their share of the credit on  
27           their corporation income tax returns.

28           (c) Individual partners or members shall claim their share of the credit on  
29           their individual income tax returns.

1                    (d) Partners or members that are estates or trusts shall claim their share of  
 2                    the credit on their fiduciary income tax returns.

3                    E. Certification and administration

4                    (1) The secretary of the Department of Economic Development shall  
 5                    determine through the adoption and promulgation of rules which projects and  
 6                    expenditures, including amounts expended in this state on state-certified  
 7                    infrastructure projects, qualify according to this Section. Prior to adoption, these  
 8                    rules shall be approved by the House Committee on Ways and Means and the Senate  
 9                    Committee on Revenue and Fiscal Affairs. When determining which projects  
 10                   qualify, the Louisiana Department of Economic Development shall take the  
 11                   following factors into consideration:

12                   (a) The impact of the production on the immediate and long-term objectives  
 13                   of this Section.

14                   (b) The impact of the production on the employment of Louisiana residents.

15                   (c) The impact of the production on the overall economy of the state.

16                   (d) The availability of similar infrastructure facilities within fifty miles of  
 17                   the proposed infrastructure project.

18                   (2)(a) Application. An applicant for the sound recording investor tax credit  
 19                   shall submit an application for initial certification to the Louisiana Department of  
 20                   Economic Development that includes the following information:

21                   (i) For state-certified productions the application shall include:

22                   (aa) The distribution plan.

23                   (bb) A preliminary budget including estimated Louisiana payroll and  
 24                   estimated base investment.

25                   (cc) A description of the type of sound to be recorded.

26                   (dd) A list of the principal creative elements including performing artist(s)  
 27                   and producer.

28                   (ee) The name and address of the recording studio or other location where  
 29                   the recording production will take place.

1                    (ff) A statement that the production will qualify as a state-certified  
 2                    production.

3                    (gg) Estimated start and completion dates.

4                    (ii) For state-certified musical recording infrastructure projects the  
 5                    application shall include:

6                    (aa) A detailed description of the infrastructure project.

7                    (bb) A preliminary budget.

8                    (cc) A statement that the project meets the definition of a state-certified  
 9                    infrastructure project.

10                   (dd) Estimated start and completion dates.

11                   (b) If the application is incomplete, additional information may be requested  
 12                   prior to further action by the Louisiana Department of Economic Development.

13                   (c) The Louisiana Department of Economic Development shall submit its  
 14                   initial certification of a project as a state-certified production or a state-certified  
 15                   musical recording infrastructure project to investors and to the secretary of the  
 16                   Department of Revenue. The initial certification shall include a unique identifying  
 17                   number for each state-certified production.

18                   (d) Prior to any certification of the state-certified production or infrastructure  
 19                   project, the sound recording production company shall submit to the Louisiana  
 20                   Department of Economic Development a cost report of production or project  
 21                   expenditures which the Louisiana Department of Economic Development may  
 22                   require to be prepared by an independent certified public accountant. The Louisiana  
 23                   Department of Economic Development shall review such expenditures and shall  
 24                   issue a tax credit certification letter to the investors indicating the amount of tax  
 25                   credits certified for the state-certified production or state-certified infrastructure  
 26                   project.

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

1           (4) Any taxpayer applying for the credit shall be required to reimburse the  
2           Louisiana Department of Economic Development for any audits required in relation  
3           to granting the credit.

4           (5) With input from the Legislative Fiscal Office, the Louisiana Department  
5           of Economic Development shall prepare a written report to be submitted to the  
6           House Committee on Ways and Means and the Senate Committee on Revenue and  
7           Fiscal Affairs no less than sixty days prior to the start of the Regular Session of the  
8           Legislature in 2007, and every second year thereafter. The report shall include the  
9           overall impact of the tax credits, the amount of the tax credits issued, the number of  
10           new jobs created, the amount of Louisiana payroll created, the economic impact of  
11           the tax credits and music industry, the amount of new infrastructure that has been  
12           developed in the state, and any other factors that describe the impact of the program.

13           F. Recapture of credits. If the Louisiana Music Commission and the  
14           Department of Economic Development find that funds for which an investor  
15           received credits according to this Section are not invested in and expended with  
16           respect to a state-certified production within twenty-four months of the date that such  
17           credits are earned, then the investor's state income tax for such taxable period shall  
18           be increased by such amount necessary for the recapture of credit provided by this  
19           Section.

20           G. Recovery of credits by Department of Revenue

21           (1) Credits previously granted to a taxpayer, but later disallowed, may be  
22           recovered by the secretary of the Department of Revenue through any collection  
23           remedy authorized by R.S. 47:1561 and initiated within three years from December  
24           thirty-first of the year in which the twenty-four month investment period specified  
25           in Subsection F of this Section ends.

26           (2) The only interest that may be assessed and collected on recovered credits  
27           is interest at a rate three percentage points above the rate provided in Civil Code  
28           Article 2924(B)(1), which shall be computed from the original date of the return on  
29           which the credit was taken.

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

4                   Section 2. This Act shall be applicable to tax years beginning on and after January  
 5                   1, 2006.

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_