

PUBLICATION

Spotlight on Louisiana Incentives: A Digitally Enhanced Incentive

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A company that produces a digital interactive media product in Louisiana may earn tax credits equal to as much as 35 percent of its in-state production expenditures. The Louisiana Digital Interactive Media and Software Tax Credit (LDTC) follows in the footsteps of the Louisiana Motion Picture Investor Tax Credit to successfully incentivize the growth of an entertainment industry in Louisiana, the production of video games, as well as other digital interactive media products and platforms.

Benefit of the Credit

This past summer the Louisiana legislature enacted numerous amendments to the LDTC law, Louisiana Revised Statutes 47:6022, that will significantly change how companies and their owners benefit from the LDTC. Under the amended LDTC law, the credit is still earned at the rate of 25 percent of qualifying in-state production expenditures plus an additional 10 percent if the expenditures are for the payroll of Louisiana residents employed in connection with the digital interactive media project. Additionally, taxpayers may still claim the LDTC on their Louisiana tax returns and offset tax liability dollar for dollar by the amount of the LDTCs claimed. However, under these recent amendments, starting with LDTCs earned on expenditures made after December 31, 2011, the LDTCs can no longer be (i) used to offset franchise tax; (ii) carried back or forward if there is insufficient income tax to absorb all of the credits in the tax year in which the credits are earned; or (iii) transferred by sale to third-party purchasers. These limitations are somewhat counterbalanced by the following amendment provisions that enhance the value of the LDTCs earned after December 31, 2011: (i) they are refundable, meaning that the State will refund to the taxpayer in cash any LDTCs that the taxpayer claims in excess of its tax liability; and (ii) the company earning the LDTCs can elect at the time the credits are issued by the State to have the State buy them back at 85 cents per credit. The buyback provision allows the company that earns the LDTCs to receive cash at a close-to-market price of 85 cents per credit without having to hunt for one or more private buyers; and it generally takes only one to two months to receive a check from the State. Even though the refund option offers the taxpayer 100 cents per credit, the taxpayer must wait until it files its Louisiana income tax return for the year in which the credits are earned plus the time it takes the State to issue the refund. Yet another possibility available to companies as a result of these recent amendments is the option to monetize the tax refund with a willing lender at a price somewhere between 85 and 100 cents per credit.

Requirements

Companies engaged in Louisiana in the business of producing digital interactive media for commercial production, use or distribution may qualify for the LDTC. Digital interactive media is any product or platform that is a communication tool used to store, transmit, distribute and deliver information and data that is digital and interactive and that contains at least two of the following types of data: text, sound, fixed images, animated images, video, or 3D geometry. While a video game would generally qualify, neither software primarily designed and developed for institutional, private or internal purposes nor static internet sites would qualify.

Such companies are eligible to earn LDTCs on the amounts that they spend in Louisiana directly on preproduction and production of qualifying digital interactive media products and platforms. The LDTC law requires that a company seeking to earn LDTCs with respect to a project obtain an initial certification of the

project from the Louisiana Department of Economic Development (LED) by submitting an application on a form supplied by the LED. The LED form requires an in-depth description of the proposed project. If the company's project qualifies, the LED will issue an initial certification letter indicating the company's eligibility. Effective as of July 11, 2011, the LDTTC law provides that the initial certification shall be effective for expenditures made no more than six months prior to the date of the initial certification and shall be valid until the project is completed. Following the company's submission of a cost report detailing the in-state expenditures made with respect to a certified project that is prepared by an independent certified public accountant licensed in Louisiana, the LED will issue a final certification letter indicating the amount of LDTTCs earned by the company with respect to the project.

Special Rules and Limitations to Consider

Some companies may find it more cost effective and/or efficient to aggregate multiple qualifying projects into one application treating them as a single qualifying project rather than submitting a separate application for each project. However, the LED has stated that there are only a couple of specific circumstances under which it will allow companies to aggregate projects into a single application.

Companies seeking to qualify expenditures made within the six month period immediately preceding a project's initial certification should be aware that the LED's current position appears to be that the statute requires the State to count back from the date that the LED issues the initial certification letter rather than the date the company submitted its application. In this author's opinion, providing a certification effective date in the initial certification letter that is a date no later than the date the application for certification was submitted should satisfy the provision of the LDTTC law which provides that the "initial certification shall be effective for expenditures made no more than six months prior to the date of the initial certification." In this way, the applicant will not be penalized for the time taken by the LED to process the application.

Regarding the company's right to elect to sell its LDTTCs back to the State, the language of the amended LDTTC law is curious in that it states a company may elect only "on a one-time basis" at the time of final certification. Does this mean that a company may elect to sell only one project's credits to the State or may a company sell LDTTCs earned on multiple projects? Does it mean that there is only one moment in time, at final certification, when a company may elect to sell the LDTTCs earned on a particular project? What if a company reserves some LDTTCs for its owners but the owners later determine that they wish to sell the credits to the State? Can there be a second sale to the State of the remaining LDTTCs on a given project?

Finally, how does a company pass LDTTCs on to its owners under the recently amended LDTTC law? Whereas the LDTTC law prior to the most recent amendments provided that an entity not taxed as a corporation would claim the LDTTCs on the returns of its partners or members, the LDTTC law now simply provides that the LDTTCs will be allowed against the tax liability of the companies or financiers of the digital interactive media project in accordance with their share of the LDTTCs as indicated in the application for initial certification.

Conclusion

Like the Louisiana Motion Picture Investor Tax Credit, the LDTTC provides a strong incentive for the development in Louisiana of an entertainment industry – in this case, the development of a digital interactive media industry. However, as with other State credits, there are some twists and turns on the road to maximizing the benefit of the LDTTC as evidenced by the issues highlighted above.

This Alert is part of a series of Tax Alerts designed to highlight many of the tax and economic incentives available in Louisiana. For previously issued Alerts included in this series, see our [5/11/11](#), [6/30/11](#), and [9/21/11](#) Alerts.

If you would like to discuss strategies for earning and maximizing your benefit from or have questions about the Louisiana Digital Interactive Media and Software Tax Credit, or questions regarding any other Louisiana tax issues, please contact any of the attorneys from either the Firm's Tax Department or Emerging Companies Team.