



Private Letter Ruling
Redacted Version
No. 09-010

Corporate Income Tax and Individual Income Tax
Musical and Theatrical Production Tax Credit
February 13, 2009

This is in reply to your request for a private letter ruling concerning whether or not the Requesting Parties and Project will qualify for the Musical and Theatrical Productions Tax Credits.

FACTS and STATEMENT OF LAW:

The Company and its parent, the Sole Shareholder, are in the midst of a comprehensive major capital expansion project, which expansion includes the construction of a live musical and theatrical performance venue located in Louisiana with an infrastructure investment in excess of \$10 million (the “Project”). The Project consists of a contiguous entertainment venue, bar, café and commercial kitchen. When configured as a dinner theatre, the Project will have a seating capacity of 144 patrons, and when configured for row seating, the Project will have a seating capacity of 192 patrons. The Project will host live performances similar to the USO performances. These performances will be produced, rehearsed, marketed, administered, recorded and performed before live audiences at the Project. A bar/café is incorporated into the Project to provide services prior to show time and dinner theater services during certain performances. The Project will also be supported by other features of the major capital expansion project, including an adjacent ticket counter, gift shop, outdoor promenade and a special exhibit space. However, for purposes of applying for the M&TP Credit for the Project, expenditures for the Ancillary Projects are not included in the Company’s application to LA DED.

The Sole Shareholder followed the passage of the M&TP Credit legislation closely in the Louisiana Legislature 2007 Regular Session because the incentives created by the M&TP Credit statute provide critical funding needed to bridge financing gaps for the construction of the Project and to secure future funding to underwrite continuing live productions. The Company tried to delay the commencement of the Project until the promulgation and adoption of rules by LA DED and the approval of such rules by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs; however, due to construction and financing commitments related to the overall major capital expansion project, the Company did commence construction on the Project on December 4, 2007, some five months following the effective date of the M&TP Credit statute.

Summary of Law:

Louisiana Revised Statute 47:6034(C)(1)(a)(ii)(aa) of the M&TP Credit statute provides that a “base investment” credit may be granted for certified, verified and approved expenditures in the state for the construction, repair or renovation of a “state certified musical or theatrical facility infrastructure project”, subject to certain per project and annual caps. A “state-certified musical or theatrical facility infrastructure project” is defined in La. R.S. 47:6034(B)(8) of the M&TP Credit statute as “a capital infrastructure project in the state directly related to the production or performance of musical or theatrical productions as defined in this Section, and movable and immovable property related thereto, or any other facility which supports and is a necessary component of such facility, and any expenditures in the state related to the construction, repair or renovation of such project, which are certified, verified and approved as provided for in this Section” (an “M&TP Infrastructure Project”). A “base investment” is defined in La. R.S. 47:6034(B)(1)(b) to include investments made for expenditures in the state for the construction, repair or renovation of an M&TP Infrastructure Project. Louisiana Revised Statute 47:6034(C)(1)(a)(ii)(bb) imposes certain conditions upon the timing and receipt of M&TP Credits for any M&TP Infrastructure Project that is deemed to be “a multiple-use facility.” Under La. R.S. 47:6034(C)(1)(a)(iii)(cc), a M&TP Infrastructure Project with a total base investment that is greater than one million dollars shall be eligible for a tax credit of twenty-five percent of the base investment made with respect to such project, subject to a maximum base investment cap of \$10,000,000 per project as set forth in Section 6034(C)(1)(a)(ii)(a) of the M&TP Credit Statute. Louisiana Revised Statute 47:6034(D)(1) provides that (i) the M&TP Credits shall be allowed against any Louisiana individual or corporate income tax liability of the company or financier of the M&TP Infrastructure Project and (ii) any excess of the M&TP Credits over the income tax liability over which the M&TP Credits may be applied shall constitute an overpayment, which shall entitle such company or financier to a refund from the Secretary of the Department of Revenue. Under La. R.S. 47:6034(D)(2)(c) of the M&TP Credit statute, corporate partners or members shall claim their share of any credit on their corporation income tax returns.

To the best of the Company’s knowledge, the Louisiana Department of Economic Development (“LA DED”) has not established an official form for the application of the M&TP Credit. Therefore, the Company has submitted to the LA DED a letter with exhibits, which is attached hereto as Exhibit D, to serve as its formal application for the allocation of M&TP Credits.

SPECIFIC RULINGS REQUESTED:

1. Are otherwise eligible expenditures incurred by the Company after July 19, 2007 for the construction of a theatrical facility infrastructure project located in New Orleans, Louisiana eligible for M&TP Credits? The Requesting Parties respectfully suggest that the answer is yes. The effective date of the M&TP Credit Statute is July 19, 2007. Although La R.S. 47:6034(E)(1)(a)(ii) of the M&TP Credit statute prohibits the “granting” of any M&TP Credits until the adoption of rules approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs, the Requesting Parties respectfully suggest that there is no statutory impediment to the accrual of otherwise eligible expenditures incurred

after July 19, 2007 for the construction of a to-be-certified theatrical facility infrastructure project; provided, however, that no such M&TP Credits shall be granted or claimable by the Company or its Sole Shareholder unless and until (i) the theatrical facility infrastructure project is certified by the state and (ii) such rules have been adopted by the LA DED and approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs. The Requesting Parties further suggest that this interpretation would serve public policy by (x) not delaying the construction of otherwise qualifying infrastructure projects that are vital to the economic development of the state and (y) not penalizing companies or financiers who have acted in good faith and in reliance upon this statutorily authorized incentive from being awarded M&TP Credits. The Requesting Parties further suggest that allowing companies or financiers to accrue otherwise eligible expenditures until such rules are duly adopted and approved would not thwart the to-be-promulgated rules because such otherwise qualifying infrastructure projects would nevertheless have to be certified and comply with the adopted and approved rules prior to being “granted” the M&TP Credits.

2. If the answer to Requested Ruling 1 is deemed to be no, will otherwise eligible expenditures incurred by the Company after the date of its application letter to the LA DED for the construction of a theatrical facility infrastructure project located in New Orleans, Louisiana be eligible for the M&TP Credit? Although the Requesting Parties strongly believe that a favorable response to Requested Ruling 1 is warranted, if the Louisiana Department of Revenue deems otherwise, then for the reasons described in Requested Ruling 1 above, the Requesting Parties respectfully suggest that, at a minimum, they ought to be entitled to accrue otherwise eligible expenditures incurred on or after the date of its application letter to the LA DED for the construction of a to-be-certified theatrical facility infrastructure project; provided, however, that no such M&TP Credits shall be granted or claimable by the Company or its Sole Shareholder unless and until (i) the theatrical facility infrastructure project is certified by the state and (ii) such rules have been adopted by the LA DED and approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.
3. May the Sole Shareholder, as the sole shareholder of the Company, claim the M&TP Credits certified by the state for the Project as an overpayment pursuant to Section 6034(D)(1) of the M&TP Credit statute? The Requesting Parties respectfully suggest that the answer is yes. Louisiana Revised Statute 47:6034(D)(1) provides that (i) the M&TP Credits shall be allowed against any Louisiana individual or corporate income tax liability of the company or financier of the M&TP Infrastructure Project and (ii) any excess of the M&TP Credits over the income tax liability over which the M&TP Credits may be applied shall constitute an overpayment, which shall entitle such company or financier to a refund from the Secretary of the Department of Revenue. Louisiana Revised Statute 47:6034(B)(2) broadly defines “company” or “financier” as “any individual, firm, partnership, limited liability company, joint venture, association, corporation, estate, trust or other entity, group or combination acting as a unit, and the plural as

well as the singular number.” Both the Company and its Sole Shareholder are corporations—albeit non-profit corporations. Moreover, there is nothing in the M&TP Credit statute that limits or otherwise prohibits non-profit corporations from meeting the definition of “company” or “financier,” as the case may be, or from otherwise earning M&TP Credits under the M&TP Credit statute.

4. If the answer to Requested Ruling 3 is deemed to be yes, what is the mechanism by which the Sole Shareholder may submit a claim for the overpayment? Louisiana Revised Statute 47:6034(D)(2)(c) of the M&TP Credit statute provides that “[c]orporate partners or members shall claim their share of any [M&TP Credit] on their corporate income tax returns.” However, both the Company and its Sole Shareholder anticipate that each will be exempt from the Louisiana corporate franchise tax pursuant to La. R.S. 47:608(5), which provides, in pertinent part, that “corporations . . . organized and operated exclusively for religious, charitable, scientific, literary or educational purposes . . . , no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation” are exempt from the corporate franchise tax. In addition, the Company has applied for a ruling of exemption from the Internal Revenue Service and anticipates a favorable ruling, and the Sole Shareholder has already received a favorable ruling of exemption from the Internal Revenue Service on its own behalf. Accordingly, if neither the Company nor its Sole Shareholder is subject to the corporate franchise tax, neither would be required to file a Louisiana corporation franchise return and, thus, it would not be possible for the Sole Shareholder to claim its share of the M&TP Credit on its corporate income tax return. However, the Requesting Parties suggest that its Sole Shareholder should be able to claim its share of the M&TP Credit as a refundable “overpayment” by submitting to the Department of Revenue the following: (i) a copy of favorable exemption ruling from the Internal Revenue Service, (ii) a copy of the certificate allocating the M&TP Credits by the LA DED to the Company and (iii) a completed Form R-20127-L, entitled “Claim for Refund of Taxes Paid.”
5. Will a facility that is primarily and directly related to the performance of musical or theatrical production be deemed a “multiple-use facility” under Section 6034(c)(1)(ii)(bb) of the M&TP Credit statute if it is also used to show recorded performances during non-peak times? The Requesting Parties respectfully suggest that the answer is no. Louisiana Revised Statute 47:6034(C)(1)(a)(ii)(bb) provides that “if all or a portion of an infrastructure project is a facility which may be used for other purposes *not directly related to* the production or performance of musical or theatrical production activities, then the project shall only be approved if a determination is made that *the multiple-use facility will support and will be necessary to secure musical or theatrical production activities for the musical or theatrical . . . performance facility . . .*” (Emphasis added.) Here, the Project cannot be deemed to be a multiple-use facility in support of the musical or theatrical performance facility because the Project *is* the musical and theatrical performance facility. As noted in the “Summary of Law,” a “state-certified musical

or theatrical facility infrastructure project” is defined in the disjunctive in La. R.S. 47:6034(B)(8) of the M&TP Credit statute as “a capital infrastructure project in the state directly related to the production or performance of musical or theatrical productions as defined in this Section, and movable and immoveable property related thereto, or any other facility which supports and is a necessary component of such facility, and any expenditures in the state related to the construction, repair or renovation of such project, which are certified, verified and approved as provided for in this Section.” (Emphasis added.) There is no doubt that the construction of the Project should be deemed “directly related to the production or performance of musical or theatrical productions” rather than merely a supporting facility, as the Project venue will host live musical and/or theatrical performances on a year-round basis. Specifically, it is anticipated that live musical and/or theatrical performances will be held at the Project nightly on Thursday through Saturday with weekend matinees and possible additional evening performances to be scheduled based upon demand. However, in order to make the Project economically viable, it is anticipated that the venue will be used to show recorded performances during times that would not make live performances financially feasible (*i.e.*, weekdays, weeknights or perhaps Saturday or Sunday afternoons in the off season for tourism). The Requesting Parties respectfully suggest that the “multiple-use facility” described in La. R.S. 47:6034(C)(1)(a)(ii)(bb) of the M&TP Credit statute was only intended to reference facilities that are not “directly related to the production or performance of musical or theatrical production” but that, rather, are facilities that primarily act in support of such directly-related performance venues, such as back-end production or marketing headquarters or facilities used to store costumes, lightning, props and/or other equipment. To conclude otherwise could lead to absurd results. For example, prior to Hurricane Katrina, no one would argue that the Saenger Theater located on Canal Street was not “directly related to the production or performance of musical or theatrical productions” even though the theater was sometimes used for other purposes, such as an anniversary screening of “Gone With the Wind” or private parties and receptions. However, if La. R.S. 6034(c)(1)(ii)(bb) of the M&TP Credit statute were strictly construed to deem any facility that is ever used for purposes other than live performances as a “multiple-use facility,” then even the Saenger Theater would be deemed a supporting “multiple-use facility.” Surely, the legislature did not intend such a result. Like the Saenger Theater, the Project’s primary purpose is to serve as a live venue for musical and theatrical productions. As such, it should not be deemed to be merely a supporting “multiple-use facility” under La. R.S. 6034(C)(1)(a)(ii)(bb).

RULINGS

1., 2., and 5. These ruling requests are not within the purview of the Department of Revenue. The Louisiana Department of Economic Development is the proper authority to answer these ruling requests.

3. We agree with your analysis and so rule.

4. The Sole Shareholder may submit a claim for the overpayment as suggested by the taxpayer in the ruling request so long as the Department of Revenue has not provided a form for non-profit or non-tax filers to claim credits. Before the Sole Shareholder submits the claim for overpayment, the taxpayer should contact Deborah Underwood in the Office Audit Division of LDR to find out if such a form exists. She can be reached at (225) 219-2270.

If you have any questions or need additional information, please call Leonore Heavey, Senior Policy Consultant or Danielle B. Clapinski, Attorney, Policy Services Division, at 219-2780.

Sincerely,

Cynthia Bridges
Secretary

By:
Danielle B. Clapinski
Attorney
Policy Services

This correspondence constitutes a private letter ruling (PLR) by the Louisiana Department of Revenue, as provided for by section 61:III.101 of the Louisiana Administrative Code. A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement that applies principles of law to a specific set of facts or a particular tax situation. A PLR does not have the force and effect of law, and is not binding on the person who requested it or on any other taxpayer. This PLR is binding on the department only as to the taxpayer to whom it is addressed, and only if the facts presented were truthful and complete and the transaction was carried out as proposed. It continues as authority for the department's position unless a subsequent declaratory ruling, rule, court case, or statute supersedes it.