

SENATE BILL NO. 135

BY SENATOR CLAITOR

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AN ACT

To amend and reenact R.S. 47:6015 and to enact R.S. 47:6038 and R.S. 51:2306, relative to tax credits; to make changes in the calculation and administration of the research and development tax credit; to provide for a limitation on the receipt of other tax benefits and incentives; to require reports by the secretary of the Department of Economic Development; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6015 is hereby amended and reenacted and R.S. 47:6038 is hereby enacted to read as follows:

§6015. Research and development tax credit

A. The Legislature of Louisiana hereby finds and declares that the health, safety, and welfare of the people of this state are dependent upon the continued encouragement, development, growth, and expansion of the private sector within the state. Therefore, it is declared to be the purpose of this Section to encourage new and continuing efforts to conduct research and development activities within this state.

B.(1) Any taxpayer who employs more than fifty ~~Louisiana residents~~ **persons** and claims for the taxable year a federal income tax credit under 26 U.S.C. §41(a) for increasing research activities shall be allowed a refundable tax credit to be applied against income and corporation franchise taxes due.

(2) Any taxpayer who employs up to fifty ~~Louisiana residents~~ **persons** and incurs qualified research expenses as defined in 26 U.S.C. §41(b), for the taxable year, shall be allowed a refundable tax credit to be applied against income and corporation franchise taxes due.

(3) Each taxpayer seeking the credits authorized in this Section shall apply

1 to the Department of Economic Development for the credits .The taxpayer shall
2 remit an application fee of two hundred fifty dollars with the application. The
3 application shall include all of the following:

4 (a) In cases where the taxpayer employs more than fifty ~~Louisiana residents~~
5 **persons**, a federal income tax return and supporting documentation that shows the
6 amount of the federal research credit for the same taxable year. The supporting
7 documentation for a taxpayer who employs up to fifty ~~Louisiana residents~~ **persons**
8 shall show the amount of the qualified research expenses for the same taxable year.
9 If claiming the credit under Subsection D of this Section, the taxpayer shall also
10 remit supporting documentation for the federal Small Business Innovation Research
11 Grant.

12 (b) The total amount of qualified research expenses and the qualified research
13 expenses in this state.

14 (c) The total number of ~~Louisiana residents employed~~ **persons employed in**
15 **Louisiana** by the taxpayer and the number of those ~~Louisiana residents~~ **persons**
16 **employed in Louisiana** directly engaged in research and development.

17 (d) The average wages of the ~~Louisiana resident employees~~ **persons**
18 **employed in Louisiana** not directly engaged in research and development and the
19 average wages of the ~~Louisiana resident employees~~ **persons employed in Louisiana**
20 directly engaged in research and development.

21 (e) The average value of benefits received by all ~~Louisiana resident~~
22 ~~employees~~ **persons employed in Louisiana.**

23 (f) The cost of health insurance coverage offered to all ~~Louisiana resident~~
24 ~~employees~~ **persons employed in Louisiana.**

25 (g) Any other information required by the Department of Economic
26 Development.

27 (4) The Department of Economic Development shall approve or disapprove
28 each application. No credits shall be granted to a taxpayer under this Section unless
29 the credit is approved by the Department of Economic Development.

30 C.(1) **For purposes of determining the amount of the credit earned, an**

1 "entity" shall be determined by the total number of employees based on the
 2 aggregate of all affiliated companies.

3 (2) The amount of the credit authorized in this Section shall be equal to
 4 either:

5 (a) Eight percent of the ~~state's apportioned share of the taxpayer's~~
 6 ~~expenditures for increasing research activities~~ **difference, if any, of the Louisiana**
 7 **qualified research expenses for the taxable year minus the base amount**, if the
 8 taxpayer is an entity that employs one hundred or more ~~Louisiana residents~~ **persons**.

9 (b) Twenty percent of the ~~state's apportioned share of the taxpayer's~~
 10 ~~expenditures for increasing research activities~~ **difference, if any, of the Louisiana**
 11 **qualified research expenses for the taxable year minus the base amount**, if the
 12 taxpayer is an entity that employs fifty to ninety-nine ~~Louisiana residents~~ **persons**.

13 (c) ~~Twenty-five percent of the state's apportioned share of the federal~~
 14 ~~research credit claimed for research expenditures in the state if the taxpayer claims~~
 15 ~~the alternative incremental tax credit under 26 U.S.C. §41.~~

16 (d) Forty percent of the ~~state's apportioned share of the taxpayer's~~ **Louisiana**
 17 ~~qualified research expenses~~ **for the taxable year**, ~~conducted in this state~~ if the
 18 taxpayer is an entity that employs fewer than fifty ~~Louisiana residents~~ **persons**.

19 ~~(2) The state's apportioned share of a taxpayer's expenditures for increasing~~
 20 ~~research activities shall be the excess of the taxpayer's qualified research expenses~~
 21 ~~for the taxable year over the base amount, as determined under 26 U.S.C. §41,~~
 22 ~~multiplied by a percentage equal to the ratio of the qualified research expenses in this~~
 23 ~~state for the taxable year to the taxpayer's total qualified research expenses for the~~
 24 ~~taxable year.~~

25 (3)(a) All entities taxed as corporations for Louisiana income or corporation
 26 franchise tax purposes shall claim any credit allowed under this Section on their
 27 corporation income and corporation franchise tax return.

28 (b) Individuals shall claim any credit allowed under this Section on their
 29 individual income tax return.

30 (c) Estates or trusts shall claim any credit allowed under this Section on their

1 fiduciary income tax returns.

2 (d) Entities not taxed as corporations shall claim any credit allowed under this
3 Section on the returns of the partners or members as follows:

4 (i) Corporate partners or members shall claim their share of the credit on their
5 corporation income or corporation franchise tax returns.

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

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

10 D. A taxpayer who receives a federal Small Business Innovation Research
11 Grant as created by the Small Business Innovation Development Act of 1982 (P.L.
12 97-219), reauthorized by the Small Business Research and Development
13 Enhancement Act (P.L. 102-564), and reauthorized again by the Small Business
14 Reauthorization Act of 2000 (P.L. 106-554), shall be allowed a refundable tax credit
15 in an amount equal to forty percent of the award received during the tax year.

16 E. As used in this Section, the following terms shall have the meaning
17 hereafter ascribed to them, unless the context clearly indicates otherwise:

18 (1) "Department" shall mean the Department of Economic Development.

19 **(2) "Base amount" shall mean seventy percent of the average annual**
20 **qualified research expenses within Louisiana during the three years preceding**
21 **the taxable year.**

22 ~~(2)~~ **(3)** The terms "~~base amounts~~", "qualified research expenses"; and
23 "qualified research" shall have the same meanings as those terms are defined in 26
24 U.S.C. §41, as amended.

25 **(4) "Person" shall mean a natural person.**

26 F. The department shall administer the provisions of this Section and shall
27 have the following powers and duties in addition to those granted by other laws of
28 this state:

29 (1) To monitor the implementation and operation of this Section and conduct
30 a continuing evaluation of the program.

1 (2) To assist any taxpayer in obtaining the benefits of any incentive or
2 inducement program authorized by Louisiana law.

3 (3) To promulgate **program** rules and regulations ~~regarding the sale of tax~~
4 ~~credits allowed by this Section~~, in consultation with the secretary of the Department
5 of Revenue, in accordance with the Administrative Procedure Act.

6 (4) To receive information from the Department of Revenue regarding the
7 identity of the taxpayer and the amount of credit claimed for any credits claimed
8 pursuant to this Section. Such information shall not be public record and shall be
9 subject to the same prohibition of disclosure as in the possession of the Department
10 of Revenue.

11 **(5) To audit all relevant records and accounts of any taxpayer applying**
12 **for credits provided for by this Section.**

13 G.(1) Recovery of credits by Department of Revenue. Credits granted under
14 this Section, but later disallowed in whole or in part, may be recovered by the
15 secretary of the Department of Revenue from the taxpayer applicant through any
16 collection remedy authorized by R.S. 47:1561 that is initiated within three years from
17 December thirty-first of the year in which the credit was originally granted. The only
18 interest that may be assessed and collected on these recovered credits is interest at
19 a rate three percentage points above the rate provided in R.S. 9:3500(B)(1), which
20 shall be computed from the original due date of the return on which the disallowed
21 credit was taken.

22 (2) The provisions of this Subsection are in addition to and shall not limit the
23 authority of the secretary of the Department of Revenue to assess or to collect under
24 any other provision of law. This includes the disallowance of any disallowed credit
25 claimed by a taxpayer who received the credit through purchase or through a
26 distribution by an entity not taxed as a corporation.

27 H. **A taxpayer shall not receive any other incentive administered by the**
28 **Department of Economic Development for any expenditures for which the**
29 **taxpayer has received a credit pursuant to this Section.**

30 **I.** No credit shall be allowed pursuant to this Section for research

1 expenditures incurred or Small Business Innovation Research Grant funds received
 2 after ~~December 31, 2013~~ December 31, 2019.

3 * * *

4 §6038. Reports; tax incentives administered by the Department of Economic
 5 Development

6 Notwithstanding any provision of law to the contrary, the secretary of
 7 the Department of Economic Development shall report to the Joint Legislative
 8 Committee on the Budget information concerning the granting and denial of tax
 9 credits and rebates, hereinafter referred to as "tax incentives", administered by
 10 the department authorized under this Chapter. On January 30th of each year,
 11 the secretary shall transmit to the members of the committee a list of the
 12 recipients of each tax incentive, as well as a list of applicants denied tax
 13 incentives, over the most recently concluded calendar year. The report shall
 14 contain the name and primary place of business of each applicant.

15 Section 2. R.S. 51:2306 is hereby enacted to read as follows:

16 §2306. Reports; tax incentives administered by the Department of Economic
 17 Development

18 Notwithstanding any provision of law to the contrary, the secretary of
 19 the Department of Economic Development shall report to the Joint Legislative
 20 Committee on the Budget information concerning the granting and denial of tax
 21 credits and rebates, hereinafter referred to as "tax incentives", administered by
 22 the department authorized under this Title. On January 30th of each year, the
 23 secretary shall transmit to the members of the committee a list of the recipients
 24 of each tax incentive, as well as a list of applicants denied tax incentives, over
 25 the most recently concluded calendar year. The report shall contain the name
 26 and primary place of business of each applicant.

27 Section 3. The provisions of this Act shall be applicable to tax years beginning on
 28 and after January 1, 2011. However, any refundable research and development tax credits
 29 earned and granted prior to the effective date of this Act shall continue to be valid, effective,
 30 and transferable according to the terms of the original grant.

1 Section 4. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without signature
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
5 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____