

Regular Session, 2013
HOUSE BILL NO. 563

ACT No. 257

BY REPRESENTATIVE THIBAUT

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AN ACT

To amend and reenact R.S. 47:6015(B), (C)(2)(c), (G), (H), and (I) and to enact R.S. 47:6015(J), relative to the research and development tax credit; to provide for eligibility for the credit; to provide with respect to administration of the credit; to provide for the examination of certain records; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6015(B), (C)(2)(c), (G), (H), and (I) are hereby amended and reenacted and R.S. 47:6015(J) is hereby enacted to read as follows:

§6015. Research and development tax credit

* * *

B.(1) Any taxpayer who employs fifty or more ~~than fifty~~ 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~~ less than fifty persons and ~~incurs qualified research expenses as defined in~~ claims for the taxable year a federal income tax credit under 26 U.S.C. §41(ba); for the taxable year, or meets the requirements of Subparagraph (3)(i) of this Subsection, 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 to the Department of Economic Development for the credits. The taxpayer shall remit an application fee of two hundred fifty dollars with the application. The application shall include all of the following:

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

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

10 (c) The total number of persons employed in Louisiana by the taxpayer and
 11 the number of those persons employed in Louisiana directly engaged in research and
 12 development.

13 (d) The average wages of the persons employed in Louisiana not directly
 14 engaged in research and development and the average wages of the persons
 15 employed in Louisiana directly engaged in research and development.

16 (e) The average value of benefits received by all persons employed in
 17 Louisiana.

18 (f) The cost of health insurance coverage offered to all persons employed in
 19 Louisiana.

20 (g) At the department's request, the taxpayer shall provide federal income tax
 21 information related to the research and development credit. This information shall
 22 include but shall not be limited to IRS forms 8821 and 4506.

23 (h) Any other information required by the Department of Economic
 24 Development.

25 (i) A taxpayer who employs less than fifty employees may apply for credits
 26 without providing a federal income tax return as required by Subparagraph (a) of this
 27 Paragraph if all of the following criteria are met:

28 (i) Unless waived by the secretary of the department, the taxpayer provides
 29 the department with a report from a certified public accountant authorized to practice
 30 in the state of Louisiana. The report shall be rendered based upon procedures and

1 regulations developed by the department in accordance with the Administrative
2 Procedure Act.

3 (ii) The taxpayer provides all supporting documentation required by the
4 department to show the amount of qualified research expenses for such taxable year.

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

8 (5) The following types of businesses that do not have a pending or issued
9 United States patent directly related to the qualified research expenditures claimed
10 under this Section are ineligible to apply for or receive benefits under this Section,
11 unless specifically invited by the secretary of the department to do so:

12 (a) Professional services firms as defined by departmental rule.

13 (b) Businesses primarily engaged in custom manufacturing and custom
14 fabricating as defined by departmental rule.

15 C.

16 * * *

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

19 * * *

20 (c) Forty percent of the Louisiana qualified research expenses for the taxable
21 year, if the taxpayer is an entity that employs ~~fewer~~ less than fifty persons.

22 * * *

23 G.(1) Each year, prior to the issuance of credits, the department shall
24 perform a detailed examination of at least ten percent of all applications received.
25 The department shall select applications for examination based on one or more of the
26 following: a random sampling of applications, the applicant's business sector, and
27 other selection criteria as determined by the department.

28 (2) If a taxpayer's application is selected for examination, the taxpayer shall
29 submit all supporting documentation required by the department. The department

1 shall use this evidence to verify that the amount of the qualified research expenses
2 incurred in Louisiana for the taxable year support the corresponding tax credit.

3 (3) Upon examination, the department will disallow any credits that are not
4 substantiated by supporting documentation to include Internal Revenue Service
5 documents.

6 (4) The applicant bears the burden of proving that its activities meet the
7 definition of qualified research provided in 26 U.S.C. §41(d).

8 (5) Nothing in this Subsection shall preclude the department from examining
9 a taxpayer's application for research and development credits after the issuance of
10 credits. Credits disallowed following an examination conducted after the issuance
11 of credits will be subject to recovery, recapture, or offset.

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

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

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

1 † J. No credit shall be allowed pursuant to this Section for research
2 expenditures incurred or Small Business Innovation Research Grant funds received
3 after December 31, 2019.

4 Section 2. This Act shall be applicable to tax years beginning on or after January 1,
5 2013. This Act shall become effective on July 1, 2013; if vetoed by the governor and
6 subsequently approved by the legislature, this Act shall become effective on July 1, 2013,
7 or on the day following such approval by the legislature, whichever is later.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____