

2017 Regular Session

SENATE BILL NO. 161

BY SENATOR WARD

TAX/TAXATION. Eliminates the refundability of certain corporate income and franchise tax credits. (See Act)

1 AN ACT

2 To amend and reenact the introductory paragraph of R.S. 47:6006(B), R.S. 47:6006.1(C) and

3 (D), 6014(D), 6018(E), the introductory paragraph of 6022(E)(2), R.S. 47:6030(F),

4 6032(A) and (E), 6034(D)(1), 6035(E), 6107(A) and (B), and 6108(A) and to enact

5 R.S. 47:6022(E)(3), 6105(C), and 6108(C), and R.S. 51:1807(F) relative to tax

6 credits; to eliminate the refundability of certain corporation income and franchise tax

7 credits; to provide for refundability of certain income tax credits against individual

8 income tax; to provide for an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. The introductory paragraph of R.S. 47:6006(B), R.S. 47:6006.1(C) and

11 (D), 6014(D), 6018(E), the introductory paragraph of 6022(E)(2), R.S. 47:6030(F), 6032(A)

12 and (E), 6034(D)(1), 6035(E), 6107(A) and (B), and 6108(A) are hereby amended and

13 reenacted and R.S. 47:6022(E)(3), 6105(C), and 6108(C) are hereby enacted to read as

14 follows:

15 §6006. Tax credits for local inventory taxes paid

16 * * *

17 B. Credit for taxes paid by corporations shall be applied to state corporate

1 income and corporation franchise taxes. Credit for taxes paid by unincorporated
 2 persons shall be applied to state personal income taxes. ~~The~~ **For individual income**
 3 **taxes only, the** secretary shall make a refund to the taxpayer in the amount to which
 4 he is entitled from the current collections of the taxes collected pursuant to Chapter
 5 1 ~~and Chapter 5~~ of Subtitle II. If the amount of the credit authorized pursuant to
 6 Subsection A of this Section exceeds the amount of tax liability for the tax year, the
 7 following amounts of the excess credit shall either be refundable **as applied against**
 8 **individual income tax liability only** or may be carried forward as a credit against
 9 subsequent Louisiana income or corporation franchise tax liability for a period not
 10 to exceed five years, as follows:

11 * * *

12 §6006.1. Tax credits for taxes paid with respect to vessels in Outer Continental
 13 Shelf Lands Act Waters

14 * * *

15 C. Notwithstanding any other provision of law to the contrary in Title 47 of
 16 the Louisiana Revised Statutes of 1950, as amended, any excess of allowable credit
 17 established by this Section over the aggregate **individual income** tax liabilities
 18 against which such credit can be applied, as provided in this Section, shall constitute
 19 an overpayment, as defined in R.S. 47:1621(A), and the secretary shall make a
 20 refund of such overpayment from the current collections of the taxes imposed by
 21 Chapter 1 ~~or Chapter 5~~ of Subtitle II of Title 47 of the Louisiana Revised Statutes of
 22 1950, as amended, together with interest as provided in R.S. 47:1624. The right to
 23 a credit or refund of any such overpayment shall not be subject to the requirements
 24 of R.S. 47:1621(B). All credits and refunds, together with interest thereon, must be
 25 paid or disallowed within ninety days of receipt by the secretary, of any such claim
 26 for refund or credit. Failure of the secretary to pay or disallow, in whole or in part,
 27 any claim for a credit or a refund shall entitle the aggrieved taxpayer to proceed with
 28 the remedies provided in R.S. 47:1625. **Notwithstanding any other provision of**
 29 **law to the contrary, the allowable credits established by this Section that are**

1 **applied against corporate income and corporate franchise taxes shall be**
2 **nonrefundable.**

3 D.(1) For the purpose of allowing the credit ~~or refund~~ for ad valorem taxes
4 paid to political subdivisions as provided herein, the term "vessel" shall include
5 ships, oceangoing tugs, towboats, and barges. The term "Outer Continental Shelf
6 Lands Act Waters" as used herein shall have the meaning ascribed to it in R.S.
7 47:1702.

8 (2) The acceptance by the sheriff and ex officio tax collector of the ad
9 valorem taxes paid without protest by a taxpayer as certified under R.S. 47:1956(B)
10 shall conclusively establish: that such property was properly classified as a "vessel",
11 for purpose of this Section; that such vessel was "principally operated" in Outer
12 Continental Shelf Lands Act Waters during the applicable tax year; and that such
13 taxpayer shall be entitled to a credit ~~or refund~~ pursuant to this Section.

14 * * *
15 §6014. Credit for property taxes paid by certain telephone companies; fund
16 * * *

17 D. The excess, if any, of the credit allowed by this Section over the aggregate
18 **individual income** tax liabilities against which such allowable credit may be applied,
19 as provided in this Section, shall constitute an overpayment, as defined in R.S.
20 47:1621(A), and the secretary shall make a refund of such overpayment from the
21 current collections of the taxes imposed under Chapter 2 of Subtitle II of this Title,
22 together with interest as provided in R.S. 47:1624. The right to a refund of any such
23 overpayment shall not be subject to the requirements of R.S. 47:1621(B). Any such
24 refund, together with interest thereon, shall be paid by the secretary within ninety
25 days of receipt by the secretary of the return on which the credit allowed by this
26 Section is claimed. Failure of the secretary to pay such refund, in whole or in part,
27 shall entitle the aggrieved taxpayer to proceed with the remedies provided in R.S.
28 47:1625. **Notwithstanding any other provision of law to the contrary, the**
29 **allowable credits established by this Section that are applied against corporate**

1 **income and corporate franchise taxes shall be nonrefundable.**

2 * * *

3 §6018. Tax credits for purchasers from "PIE contractors"

4 * * *

5 E. Notwithstanding any other law to the contrary, any excess of allowable
6 credit over aggregate **individual income** tax liabilities against which such credit can
7 be applied shall constitute an overpayment, as defined in R.S. 47:1621(A), and the
8 secretary of the Department of Revenue may make a refund of such overpayment
9 from the current collections of the taxes imposed by Chapter 1 ~~or Chapter 5~~ of
10 Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, as amended,
11 together with interest as provided in R.S. 47:1624. The right to a credit or refund of
12 any such overpayment shall not be subject to the requirements of R.S. 47:1621(B).
13 All credits and refunds, together with interest thereon, shall be paid or disallowed
14 within ninety days of receipt by the secretary of any such claim for refund or credit.
15 Failure of the secretary to pay or disallow the credit or refund in whole or in part
16 shall entitle the aggrieved taxpayer to proceed with the remedies provided in R.S.
17 47:1625. **Notwithstanding any other provision of law to the contrary, the**
18 **allowable credits established by this Section that are applied against corporate**
19 **income and corporate franchise taxes shall be nonrefundable.**

20 * * *

21 §6022. Digital interactive media and software tax credit

22 * * *

23 E. Use of tax credits.

24 * * *

25 (2) For tax credits earned for expenditures made on or after January 1, 2012,
26 **and on or before December 31, 2016:**

27 * * *

28 **(3) Notwithstanding any other provision of law to the contrary, for tax**
29 **credits earned for expenditures made on or after January 1, 2017, the allowable**

1 **credits established by this Section that are applied against corporate income**
2 **and corporate franchise taxes shall be nonrefundable.**

3 * * *

4 §6030. Solar energy systems tax credit

5 * * *

6 F. Notwithstanding any other provision of law to the contrary, any excess of
7 allowable credit over the aggregate **individual income** tax liabilities against which
8 such credit may be applied, as provided in this Section, shall constitute an
9 overpayment, as defined in R.S. 47:1621(A), and the secretary shall make a refund
10 of such overpayment from the current collections of the taxes imposed by Chapter
11 1, ~~Chapter 2, Chapter 2-A, Chapter 2-B, or Chapter 5~~ of Subtitle II of this Title,
12 together with interest as provided in R.S. 47:1624. The right to a credit or refund of
13 any such overpayment shall not be subject to the requirements of R.S. 47:1621(B).
14 All credits and refunds, together with interest thereof, must be paid or disallowed
15 within one year of receipt by the secretary of any such claim for refund or credit.
16 Failure of the secretary to pay or disallow, in whole or in part, any claim for a credit
17 or a refund shall entitle the aggrieved taxpayer to proceed with the remedies
18 provided in R.S. 47:1625. However, the department may withhold payment of a solar
19 energy systems tax credit from a taxpayer if there are any existing state or federal
20 liens, pending charges or investigations, or third party claims against such taxpayer
21 or any of its affiliates or related parties. In such case, the department may withhold
22 issuance of the tax credit until the department has received documentation which
23 satisfactorily demonstrates that the matter has been resolved as determined by the
24 secretary. For purposes of administering the first-come, first-served requirement, the
25 return of any taxpayer whose claim for a tax credit is withheld for the
26 aforementioned reasons shall be treated as received on the date the secretary deems
27 such matters resolved. The secretary may exercise the right to withhold issuance of
28 the tax credit for such purposes for any return, regardless of tax year or date
29 received. Further, the secretary shall provide notice to the taxpayer upon

1 determination that one or more of the aforementioned factors is applicable and the
 2 taxpayer's claim for a tax credit is being withheld. **Notwithstanding any other**
 3 **provision of law to the contrary, the allowable credits established by this Section**
 4 **that are applied against corporate income and corporate franchise taxes shall**
 5 **be nonrefundable.**

6 * * *

7 §6032. Tax credit for certain milk producers

8 A. A resident taxpayer engaged in the business of producing milk for sale
 9 shall be allowed a ~~refundable~~ tax credit based on the amount of milk produced and
 10 sold. The credit may be claimed against any Louisiana income tax and the
 11 corporation franchise tax. The credit shall be allowed when the USDA Uniform Price
 12 in Federal Order Number 7 drops below the announced production price any time
 13 during the calendar year.

14 * * *

15 E. If no taxes are due, or the credit exceeds the tax liability of the taxpayer
 16 for the taxable year, the amount of the credit or excess over the **individual income**
 17 tax liability shall be refunded to the taxpayer. The **Louisiana** Department of Health
 18 ~~and Hospitals~~ shall certify to the Department of Revenue, by January 31 of the
 19 following year, which milk producers have been permitted under Louisiana
 20 Administrative Code, Title 51, Public Health Sanitary Code, Part VII, Milk, Milk
 21 Products, and Manufactured Milk Products, and meet the requirements of the Grade
 22 A Pasteurized Milk Ordinance of the 2005 revision of the Food and Drug
 23 Administration. Any producer not certified by the **Louisiana** Department of Health
 24 ~~and Hospitals~~ as provided by this Section shall not be entitled to the credit provided
 25 for in this Section. **Notwithstanding any other provision of law to the contrary,**
 26 **the allowable credits established by this Section that are applied against**
 27 **corporate income and corporate franchise taxes shall be nonrefundable.**

28 * * *

29 §6034. Musical and theatrical production income tax credit

* * *

D.(1) The credit shall be allowed against individual or corporate income tax of the companies or financiers of the production or infrastructure project in accordance with their share of the credit as provided for in the application for certification for the production or infrastructure project. A company or financier may, on a one-time basis, transfer the credit or any refund of an overpayment to an individual or other entity including without limitation a bank or other lender, provided that the transfer shall not be effective until receipt by the Department of Revenue of written notice of such transfer. Transferors and transferees shall submit to the Department of Revenue, in writing, a notification of any transfer of the tax credit within ten business days after the transfer. The credit shall be allowed for the taxable period in which expenditures eligible for a credit are expended. Any excess of the credit over the income tax liability against which the credit may be applied shall constitute an overpayment, as defined in R.S. 47:1621(A), and the secretary of the Department of Revenue shall make a refund of such overpayment from the current collections of the taxes imposed by Chapter 1 of Subtitle II of this Title, as amended. The right to a refund of any such overpayment shall not be subject to the requirements of R.S. 47:1621(B). **Notwithstanding any other provision of law to the contrary, the allowable credits established by this Section for a state-certified musical or theatrical production or infrastructure project or a higher education musical or theatrical production or infrastructure project approved by the Department of Economic Development on or after January 1, 2017, that are applied against corporate income and corporate franchise taxes shall be nonrefundable.**

* * *

§6035. Tax credit for conversion of vehicles to alternative fuel usage

* * *

E. If the tax credit allowed pursuant to the provisions of this Section exceeds the amount of **individual** income taxes due or if the taxpayer owes no state

1 **individual** income taxes, any excess of the tax credit over the income tax liability
 2 against which the credit can be applied shall constitute an overpayment, as defined
 3 in R.S. 47:1621(A), and the secretary shall make a refund of the overpayment from
 4 the current collections of the taxes imposed by Chapter 1 of Subtitle II of this Title,
 5 as amended. The right to a refund of any overpayment shall not be subject to the
 6 requirements of R.S. 47:1621(B). **Notwithstanding any other provision of law to**
 7 **the contrary, the allowable credits established by this Section that are applied**
 8 **against corporate income and corporate franchise taxes shall be nonrefundable.**

9 * * *

10 §6105. Child care provider tax credit

11 * * *

12 **C. Notwithstanding any other provision of law to the contrary, the**
 13 **allowable credits established by this Section that are applied against corporate**
 14 **income and corporate franchise taxes shall be nonrefundable.**

15 * * *

16 §6107. Business-supported child care

17 A.(1) There shall be a ~~refundable~~ credit against any Louisiana individual or
 18 corporation income tax or corporation franchise tax for the eligible business child
 19 care expenses supported by a business. The credit shall be the following percentages
 20 of such eligible business child care expenses depending upon the quality rating of the
 21 child care facility to which the expenses are related or the quality rating of the child
 22 care facility the child attends:

| Quality Rating of Child Care Facility | Percentage of eligible business child care expenses |
|--|--|
| Five star | 20% |
| Four star | 15% |
| Three star | 10% |
| Two star | 5% |
| One star or non-participating facility | -0- |

29 (2) There shall be an additional ~~refundable~~ credit against any Louisiana
 30 individual or corporation income tax or corporation franchise tax for the payment by

1 a business of fees and grants to child care resource and referral agencies not to
2 exceed five thousand dollars per tax year.

3 B. The credits provided for in this Section shall be allowed against income
4 tax or corporate franchise tax for the taxable period in which the credit is earned. If
5 the tax credit exceeds the amount of ~~such~~ **individual income** taxes due, then the
6 unused credit shall be refunded as provided for in R.S. 47:6108. **Notwithstanding**
7 **any other provision of law to the contrary, the allowable credits established by**
8 **this Section that are applied against corporate income and corporate franchise**
9 **taxes shall be nonrefundable.**

10 * * *

11 §6108. Refundable tax credits

12 A. Notwithstanding any other provision of law to the contrary, any excess of
13 allowable credit provided in R.S. 47:6105, 6106, and 6107 and the refundable
14 portion of the credit as provided for in R.S. 47:6104 over the aggregate **individual**
15 **income** tax liabilities against which such credit may be applied, as provided in this
16 Section, shall constitute an overpayment, as defined in R.S. 47:1621(A), and the
17 secretary shall make a refund of such overpayment from the current collections of
18 the taxes imposed by Chapter 1 ~~or Chapter 5~~ of Subtitle II of this Title, together with
19 interest as provided in R.S. 47:1624. The right to a credit or refund of any such
20 overpayment shall not be subject to the requirements of R.S. 47:1621(B). All credits
21 and refunds, together with interest thereof, must be paid or disallowed within one
22 year of receipt by the secretary of any such claim for refund or credit. Failure of the
23 secretary to pay or disallow, in whole or in part, any claim for a credit or a refund
24 shall entitle the aggrieved taxpayer to proceed with the remedies provided in R.S.
25 47:1625.

26 * * *

27 **C. Notwithstanding any provision of this Chapter or other law to the**
28 **contrary, the allowable credits established by this Section that relate to**
29 **contracts entered into on or after January 1, 2017, shall be nonrefundable as**

1 **applied against corporate income taxes.**

2 Section 2. R.S. 51:1807(F) is hereby enacted to read as follows:

3 §1807. Incentives

4 * * *

5 **F. Notwithstanding any provision of this Chapter or other law to the**
6 **contrary, the allowable credits established by this Section that relate to**
7 **contracts entered into on or after January 1, 2017, shall be nonrefundable as**
8 **applied against corporate income and corporate franchise taxes.**

9 Section 3. The provisions of this Act shall be applicable to all income tax years
10 beginning on and after January 1, 2017, and franchise tax years beginning on and after
11 January 1, 2018.

12 Section 4. This Act shall take effect and become operative if and when the Act
13 which originated as Senate Bill No. ____ of this 2017 Regular Session of the Legislature is
14 enacted into law and becomes effective.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Leonore Heavey.

| | | |
|-----------------|--------------------------------|------|
| SB 161 Original | DIGEST 2017 Regular Session | Ward |
|-----------------|--------------------------------|------|

Present law provides for the payment of certain credits in excess of the tax liability for the taxable period, also known as refundable credits, including the following credits:

- (1) Local inventory taxes (R.S. 47:6006) - credit against income or corporation franchise tax for ad valorem property taxes paid to political subdivisions on inventory held.
- (2) Vessels in Outer Continental Shelf Lands Act Waters (R.S. 47:6006.1) - credit against income or corporation franchise tax for ad valorem property taxes paid to political subdivisions on vessels in Outer Continental Shelf Lands Act Waters.
- (3) Property taxes paid by certain telephone companies (R.S. 47:6014) - credit against income corporation franchise tax for certain ad valorem property taxes paid to political subdivisions by a telephone company.
- (4) Prison Industry Enhancement contractors (R.S. 47:6015) - credit against income or corporation franchise tax for businesses that utilize inmate labor in producing items for sale and then pay 30% of the salary paid to such inmates back to the state.
- (5) Digital interactive media and software tax credit (R.S. 47:6022) - credit against income or corporation franchise tax for investment in the production of digital interactive media products and platforms in this state.
- (6) Solar energy systems tax credit (R.S. 47:6030) - credit against income or corporation

franchise tax for a portion of the cost of a solar energy system that is already installed in a newly constructed residence or which is purchased and installed at an existing residence.

- (7) Certain milk producers (R.S. 47:6032) - credit against income or corporation franchise tax based on certain amounts of milk produced and sold.
- (8) Musical and theatrical production income (R.S. 47:6034) - credit against income or corporation franchise tax for state-certified musical or theatrical productions or infrastructure projects or for higher education musical or theatrical infrastructure projects certified by the Department of Economic Development.
- (9) Conversion of vehicles to alternative fuel usage (R.S. 47:6035) - credit against income or corporation franchise tax for a portion of the cost of qualified clean-burning motor vehicle fuel property which operates on "alternative fuel", defined as natural gas, liquified petroleum gas, and any nonethanol based advanced biofuel and includes certain electric vehicles.
- (10) Child care provider tax credit (R.S. 47:6105) - credit against income or corporation franchise tax for a child care provider who operates a facility or facilities where care is given to foster children in the custody of the Department of Children and Family Services or to children who participate in the Child Care Assistance Program administered by the Department of Education.
- (11) Business-supported child care tax credit (R.S. 47:6107) - credit against income or corporation franchise tax for a taxpayer who incurs eligible business-supported child care expenses and for the payment by a business of fees and grants to child care resource and referral agencies.
- (12) Urban Revitalization tax credit (R.S. 51:1807) - credit against income or corporation franchise tax for a taxpayer who invests in certain economically depressed areas of the state.

Proposed law changes credits provided for in present law from refundable credits to nonrefundable credits for which the taxpayer will not receive payment in excess of the tax liability for the taxable period but only as applied against corporate income and corporate franchise tax liabilities.

Applicable to all income tax years beginning on and after January 1, 2017, and franchise tax years beginning on and after January 1, 2018.

Act takes effect and is operative if and when the Act which originated as SB ___ of the 2017 Regular Session is enacted and becomes effective.

(Amends R.S. 47:6006(B)(intro para), 6006.1(C) and (D), 6014(D), 6018(E), 6022(E)(2)(intro para), 6030(F), 6032(A) and (E), 6034(D)(1), 6035(E), 6107(A) and (B), and 6108(A); adds R.S. 47:6022(E)(3), 6105(C), and 6108(C) and R.S. 51:1807(F))