

2015 Regular Session

SENATE BILL NO. 91

BY SENATOR ADLEY

TAX/TAXATION. Changes certain refundable tax credits to nonrefundable tax credits. (See Act)

1 AN ACT

2 To amend and reenact R.S. 47:297.6(A)(4), 6006(B), 6006.1(C) and (D), 6014(D) and
3 (E)(2), 6015(B)(1) and (2) and (D), 6030(F), 6032(A) and (E), 6034(C)(1)(a)(i)(dd),
4 (D)(1), and (E)(1)(d)(iv), and 6035(E), and to repeal R.S. 6014(E)(4), relative to
5 income and franchise tax credits; to make certain tax credits which are refundable
6 in excess of tax liability nonrefundable; to make a certain tax credit nontransferable;
7 and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:297.6(A)(4), 6006(B), 6006.1(C) and (D), 6014(D) and (E)(2),
10 6015(B)(1) and (2) and (D), 6030(F), 6032(A) and (E), 6034(C)(1)(a)(i)(dd), (D)(1), and
11 (E)(1)(d)(iv) and 6035(E) are hereby amended and reenacted to read as follows:

12 §297.6. Reduction to tax due; rehabilitation of residential structures

13 A. * * *

14 (4) ~~Any excess of the credit portion allowed in a taxable period over the~~
15 ~~individual income tax liability for that taxable period against which the credit can be~~
16 ~~applied 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~~

1 the taxes imposed by Chapter 1 of Subtitle II of this Title, as amended. The right to
2 a refund of any such overpayment shall not be subject to the requirements of R.S.
3 47:1621(B). The total of all such credits taken in a tax year shall not exceed the
4 total tax liability for that tax year.

5 * * *
6 §6006. Tax credits for local inventory taxes paid

7 * * *

8 B. Credit for taxes paid by corporations shall be applied to state corporate
9 income and corporation franchise taxes. Credit for taxes paid by unincorporated
10 persons shall be applied to state personal income taxes. ~~The taxpayer shall be entitled~~
11 ~~to a refund for any allowable credit which exceeds the aggregate tax liability of the~~
12 ~~taxpayer for the taxes imposed by Chapter 1 and Chapter 5 of Subtitle II of this Title.~~
13 ~~The secretary shall make such refund to the taxpayer in the amount to which he is~~
14 ~~entitled from the current collections of the taxes collected pursuant to Chapter 1 and~~
15 ~~Chapter 5 of such Subtitle II.~~ The total of all such credits taken in a tax year shall
16 not exceed the total tax liability for that tax year.

17 * * *

18 §6006.1. Tax credits for taxes paid with respect to vessels in Outer Continental
19 Shelf Lands Act Waters

20 * * *

21 C. ~~Notwithstanding any other provision of law to the contrary in Title 47 of~~
22 ~~the Louisiana Revised Statutes of 1950, as amended, any excess of allowable credit~~
23 ~~established by this Section over the aggregate tax liabilities against which such credit~~
24 ~~can be applied, as provided in this Section, shall constitute an overpayment, as~~
25 ~~defined in R.S. 47:1621(A), and the secretary shall make a refund of such~~
26 ~~overpayment from the current collections of the taxes imposed by Chapter 1 or~~
27 ~~Chapter 5 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, as~~
28 ~~amended, together with interest as provided in R.S. 47:1624. The right to a credit or~~
29 ~~refund of any such overpayment shall not be subject to the requirements of R.S.~~

1 ~~47:1621(B). All credits and refunds, together with interest thereon, must be paid or~~
 2 ~~disallowed within ninety days of receipt by the secretary, of any such claim for~~
 3 ~~refund or credit. **The total of all such credits taken in a tax year shall not exceed**~~
 4 ~~**the total tax liability for that tax year.** Failure of the secretary to pay or disallow,~~
 5 ~~in whole or in part, any claim for a credit ~~or a refund~~ shall entitle the aggrieved~~
 6 ~~taxpayer to proceed with the remedies provided in R.S. 47:1625.~~

7 D.(1) For the purpose of allowing the credit ~~or refund~~ for ad valorem taxes
 8 paid to political subdivisions as provided herein, the term "vessel" shall include
 9 ships, oceangoing tugs, towboats, and barges. The term "Outer Continental Shelf
 10 Lands Act Waters" as used herein shall have the meaning ascribed to it in R.S.
 11 47:1702.

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

18 * * *

19 §6014. Credit for property taxes paid by certain telephone companies; fund

20 * * *

21 D. ~~The excess, if any, of the credit allowed by this Section over the aggregate~~
 22 ~~tax liabilities against which such allowable credit may be applied, as provided in this~~
 23 ~~Section, shall constitute an overpayment, as defined in R.S. 47:1621(A), and the~~
 24 ~~secretary shall make a refund of such overpayment from the current collections of~~
 25 ~~the taxes imposed under Chapter 2 of Subtitle II of this Title, together with interest~~
 26 ~~as provided in R.S. 47:1624. The right to a refund of any such overpayment shall not~~
 27 ~~be subject to the requirements of R.S. 47:1621(B). Any such refund, together with~~
 28 ~~interest thereon, shall be paid by the secretary within ninety days of receipt by the~~
 29 ~~secretary of the return on which the credit allowed by this Section is claimed. Failure~~

1 ~~of the secretary to pay such refund, in whole or in part, shall entitle the aggrieved~~
2 ~~taxpayer to proceed with the remedies provided in R.S. 47:1625. The total of all~~
3 ~~such credits taken in a tax year shall not exceed the total tax liability for that tax~~
4 ~~year.~~

5 E. * * *

6 (2) The monies in the fund shall be ~~used solely and exclusively for the~~
7 ~~purpose of providing funds to pay the credits or refunds as provided in this Section~~
8 ~~appropriated as provided for by law.~~ The treasurer shall annually transfer to the
9 state general fund an amount equal to the credits taken and refunds issued pursuant
10 to this Section.

11 * * *

12 §6015. Research and development tax credit

13 * * *

14 B.(1) Any taxpayer who employs fifty or more persons and claims for the
15 taxable year a federal income tax credit under 26 U.S.C. 41(a) for increasing research
16 activities shall be allowed a refundable tax credit to be applied against income and
17 corporation franchise taxes due ~~for applications approved and granted by the~~
18 ~~Department of Economic Development until July 1, 2015. Applications of~~
19 ~~taxpayers approved and granted on and after July 1, 2015, shall be allowed a~~
20 ~~nonrefundable tax credit.~~

21 (2) Any taxpayer who employs less than fifty persons and claims for the
22 taxable year a federal income tax credit under 26 U.S.C. 41(a) for the taxable year,
23 or meets the requirements of Subparagraph (3)(i) of this Subsection, shall be allowed
24 a refundable tax credit to be applied against income and corporation franchise taxes
25 due ~~for applications approved and granted by the Department of Economic~~
26 ~~Development until July 1, 2015. Applications of taxpayers approved and~~
27 ~~granted on and after July 1, 2015, shall be allowed a nonrefundable tax credit.~~

28 * * *

29 D. A taxpayer who receives a federal Small Business Innovation Research

1 Grant as created by the Small Business Innovation Development Act of 1982 (P.L.
 2 97-219), reauthorized by the Small Business Research and Development
 3 Enhancement Act (P.L. 102-564), and reauthorized again by the Small Business
 4 Reauthorization Act of 2000 (P.L. 106-554), shall be allowed a refundable tax credit
 5 in an amount equal to forty percent of the award received during the tax year for
 6 applications approved and granted by the Department of Economic
 7 Development until July 1, 2015. Applications of taxpayers approved and
 8 granted on and after July 1, 2015, shall be allowed a nonrefundable tax credit.

9 * * *

10 §6030. Solar energy systems tax credit

11 * * *

12 F. Notwithstanding any other provision of law to the contrary, any excess of
 13 ~~allowable credit~~ tax credits allowed on systems purchased and installed before
 14 July 1, 2015, over the aggregate tax liabilities against which such credit may be
 15 applied, as provided in this Section, shall constitute an overpayment, as defined in
 16 R.S. 47:1621(A), and the secretary shall make a refund of such overpayment from
 17 the current collections of the taxes imposed by Chapter 1, Chapter 2, Chapter 2-A,
 18 Chapter 2-B, or Chapter 5 of Subtitle II of this Title, together with interest as
 19 provided in R.S. 47:1624. The right to a credit or allowed refund of any such
 20 overpayment shall not be subject to the requirements of R.S. 47:1621(B). No such
 21 refunds shall be allowed for excess tax credits on systems purchased and
 22 installed on or after July 1, 2015; the total of all such credits taken in a tax year
 23 for such systems shall not exceed the total tax liability for that tax year. All
 24 credits and allowed refunds, together with interest thereof, ~~must~~ shall be paid or
 25 disallowed within one year of receipt by the secretary of any such claim for refund
 26 or credit. Failure of the secretary to pay or disallow, in whole or in part, any claim
 27 for a credit or a an allowable refund shall entitle the aggrieved taxpayer to proceed
 28 with the remedies provided in R.S. 47:1625.

29 * * *

1 §6032. Tax credit for certain milk producers

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

8 * * *

9 E. ~~If no taxes are due, or the credit exceeds the tax liability of the taxpayer~~
10 ~~for the taxable year, the amount of the credit or excess over the tax liability shall be~~
11 ~~refunded to the taxpayer.~~ **The total of all such credits taken in a tax year shall not**
12 **exceed the total tax liability for that tax year.** The Department of Health and
13 Hospitals shall certify to the Department of Revenue, by January 31 of the following
14 year, which milk producers have been permitted under Louisiana Administrative
15 Code, Title 51, Public Health Sanitary Code, Part VII, Milk, Milk Products, and
16 Manufactured Milk Products, and meet the requirements of the Grade A Pasteurized
17 Milk Ordinance of the 2005 revision of the Food and Drug Administration. Any
18 producer not certified by the Department of Health and Hospitals as provided by this
19 Section shall not be entitled to the credit provided for in this Section.

20 * * *

21 §6034. Musical and theatrical production income tax credit

22 * * *

23 C. Income tax credits for state-certified productions and state-certified
24 musical or theatrical facility infrastructure projects:

25 (1) There is hereby authorized the following types of credits against the state
26 income tax:

27 (a)(i) * * *

28 (dd) The initial certification may require the tax credits to be taken and/or,
29 **if transferable, require them to be** transferred in the tax period in which the credit

1 is earned or the tax credits may be structured in the initial certification of the project
2 to provide that only a portion of the tax credit be taken over the course of two or
3 more tax years.

4 * * *

5 D.(1) The credit shall be allowed against individual or corporate income tax
6 of the companies or financiers of the production or infrastructure project in
7 accordance with their share of the credit as provided for in the application for
8 certification for the production or infrastructure project. A company or financier
9 may, on a one-time basis, transfer ~~the~~ a credit or any refund of an overpayment for
10 a state-certified musical or theatrical production or infrastructure project or a
11 higher education musical or theatrical infrastructure project approved by the
12 Department of Economic Development prior to July 1, 2015, to an individual or
13 other entity including without limitation a bank or other lender, provided that the
14 transfer shall not be effective until receipt by the Department of Revenue of written
15 notice of such transfer. ~~Transferors~~ Such transferors and transferees shall submit
16 to the Department of Revenue, in writing, a notification of any transfer of the tax
17 credit within ten business days after the transfer. The credit shall be allowed for the
18 taxable period in which expenditures eligible for a credit are expended. Any excess
19 of the credit allowed for a state-certified musical or theatrical production or
20 infrastructure project or a higher education musical or theatrical infrastructure
21 project initially certified by the Department of Economic Development prior to
22 July 1, 2015, over the income tax liability against which the credit may be applied
23 shall constitute an overpayment, as defined in R.S. 47:1621(A), and the secretary of
24 the Department of Revenue shall make a refund of such overpayment from the
25 current collections of the taxes imposed by Chapter 1 of Subtitle II of this Title, as
26 amended. The right to a such refund of any such overpayment shall not be subject
27 to the requirements of R.S. 47:1621(B). The tax credit provided for in this Section
28 for state-certified musical or theatrical productions or infrastructure projects
29 or higher education musical or theatrical infrastructure projects initially

1 certified by the Department of Economic Development on or after July 1, 2015,
2 shall not be refundable or transferable.

3 * * *

4 E. Certification and administration:

5 (1) * * *

6 (d) Upon approval the Department of Economic Development shall initially
7 certify a production or project as a state-certified production or state-certified
8 infrastructure project and send notice of such certification to the applicant and to the
9 secretary of the Department of Revenue. The initial certification shall include all of
10 the following:

11 * * *

12 (iv) In the case of state-certified infrastructure projects, when such tax credits
13 may be taken or, **if transferable, when they may be** transferred.

14 * * *

15 §6035. Tax credit for conversion of vehicles to alternative fuel usage

16 * * *

17 E. If the tax credit allowed pursuant to the provisions of this Section exceeds
18 the amount of income taxes due or if the taxpayer owes no state income taxes, any
19 excess of the tax ~~credit~~ **credits allowed on qualified clean-burning motor vehicle**
20 **fuel property purchased and installed, or new motor vehicles purchased at**
21 **retail, before July 1, 2015,** over the income tax liability against which the credit can
22 be applied shall constitute an overpayment, as defined in R.S. 47:1621(A), and the
23 secretary shall make a refund of the overpayment from the current collections of the
24 taxes imposed by Chapter 1 of Subtitle II of this Title, as amended. The right to a
25 refund of any overpayment shall not be subject to the requirements of R.S.
26 47:1621(B). **No such refunds shall be allowed for excess tax credits for qualified**
27 **clean-burning motor vehicle fuel property purchased and installed, or new**
28 **motor vehicles purchased at retail, on and after July 1, 2015; the total of all**
29 **such credits taken in a tax year for such property and motor vehicles shall not**

1 **exceed the total tax liability for that tax year.**

2 * * *

3 Section 2. R.S. 6014(E)(4) is hereby repealed.

4 Section 3. The provisions of this Act shall be applicable to all income tax years
5 beginning on and after January 1, 2015, and franchise tax years beginning on and after
6 January 1, 2016.

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

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

SB 91 Original DIGEST 2015 Regular Session Adley

Proposed law changes various refundable income and/or corporate franchise tax credits to nonrefundable tax credits in Title 47 applicable to taxes beginning with returns filed on and after January 1, 2015, unless otherwise noted:

§297.6. Rehabilitation of residential structures - allows a refundable income tax credit of varying percentages of the cost for the rehabilitation of owner-occupied residential or owner-occupied mixed use structures (occupied by the owner for at least five years) located in a National Register Historic District, a local historic district, a Main Street District, a cultural products district, or a downtown development district, or if the owner-occupied residential structure has been listed or is eligible for listing on the National Register or has been certified by the State Historic Preservation Office as contributing to the historical significance of the district, or is a vacant and blighted owner-occupied residential structure located anywhere in the state that is at least 55 years old. The total credit cannot exceed \$25,000 per structure and the total credit is capped at \$2.5 million per calendar year, and the rehabilitation costs for the structure must exceed \$10,000. The credit terminates January 1, 2018.

§6006. Tax credits for local inventory taxes paid - allows a refundable credit against any Louisiana income or corporation franchise tax for ad valorem property taxes paid to political subdivisions on inventory held by manufacturers, distributors, and retailers and on natural gas held, used, or consumed in providing natural gas storage services or operating natural gas storage facilities.

§6006.1. Tax credits for taxes paid with respect to vessels in Outer Continental Shelf Lands Act Waters - allows a refundable credit against income or corporation franchise tax for all of the ad valorem property taxes paid to political subdivisions on vessels in Outer Continental Shelf Lands Act Waters as certified to the assessor within the calendar year immediately preceding the taxable year of assessment of the

vessel.

§6014. Credit for property taxes paid by certain telephone companies - allows a refundable tax credit against income taxes and corporation franchise tax for 40% of the aggregate ad valorem property taxes paid to political subdivisions by a telephone company with respect to the telephone company's public service properties which are assessed by the Louisiana Tax Commission at 25% of fair market value. Also requires state sales tax collected on the furnishing of interstate and international telecommunication services, to be deposited in the Telephone Company Property Assessment Relief Fund, to be used solely and exclusively for the purpose of providing funds to pay the "credits or refunds" in present law.

Proposed law makes the tax credit nonrefundable beginning January 1, 2015, and allows money in the fund "to be appropriated as provided for by law".

§6015. Research and development tax credit - authorizes the Department of Economic Development, until January 1, 2020, to approve or disapprove applications for refundable research and development tax credits equal to 80% of the difference, if any, of the Louisiana qualified research expenses for the taxable year minus the base amount, if a taxpayer and the aggregate of all its affiliated companies is an entity that employs 100 or more people; 20% if the entity employs 50 to 99 people; and 40% if the entity employs less than 50 people.

Proposed law authorizes the Department of Economic Development to grant only nonrefundable credits for research and development tax credit applications approved on and after July 1, 2015.

§6030. Solar energy systems tax credit - grants a solar energy systems tax credit of 50% of the first \$25,000 of the cost of a system that is already installed in a newly constructed residence or which is purchased and installed at an existing residence before January 1, 2018, and 38% of the first \$25,000 for a system that is purchased and installed "at a Louisiana residence by a third party through a lease with the owner of the residence".

Proposed law prohibits refunds of tax credits on systems purchased and installed on or after July 1, 2015.

§6032. Tax credit for certain milk producers - allows a refundable tax credit based on the amount of milk produced and sold below the "announced production price" when the USDA Uniform Price in Federal Order Number 7 drops below such "announced production price" any time during the calendar year. The maximum credit is \$30,000 and the total aggregate amount of tax credits for all producers is capped at \$2.5 million per calendar year.

§6034. Musical and theatrical production income tax credit - provides income refundable and transferable tax credits 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 .

Proposed law provides that tax credits for such projects initially certified by the department on or after July 1, 2015, shall not be refundable or transferable.

§6035. Tax credit for conversion of vehicles to alternative fuel usage - grants a refundable income tax credit equal to 50% 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. The purchaser of a new motor vehicle is able to claim a refundable credit of 10% of the cost of the motor vehicle or \$3,000,

whichever is less.

Applicable to all income tax years beginning on and after January 1, 2015, and franchise tax years beginning on and after January 1, 2016.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:297.6(A)(4), 6006(B), 6006.1(C) and (D), 6014(D) and (E)(2), 6015(B)(1) and (2) and (D), 6030(F), 6032(A) and (E), 6034(C)(1)(a)(i)(dd), (D)(1), and (E)(1)(d)(iv) and 6035(E); repeals R.S. 6014(E)(4))