

Regular Session, 2009
HOUSE BILL NO. 215

ACT No. 474

BY REPRESENTATIVES HUTTER AND LEGER

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(29) and to enact R.S. 47:6035, relative to tax credits;
3 to establish the Ports of Louisiana Tax Credits; to authorize the issuance of tax
4 credits for certain investments and import and export activity in ports in Louisiana;
5 to provide for definitions; to provide for certain limitations; to provide for the
6 certification and administration of such tax credits; to authorize the promulgation of
7 rules and regulations; to authorize the recapture and recovery of such tax credits
8 under certain circumstances; to provide for a termination date; to provide an
9 exception to the laws relative to public records; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 47:6035 is hereby enacted to read as follows:

12 §6035. Ports of Louisiana tax credits

13 A. Purpose.

14 The primary purpose of this Section is to encourage private investment in and
15 the use of state port facilities in Louisiana. Because public funding sources for ports
16 and port infrastructure facilities have not kept pace with the need to expand our ports
17 and port facilities, it is determined that private investment and public-private
18 partnerships should be encouraged as a means to assist the state in financing
19 improvements to our state ports and port infrastructure facilities. The development,
20 improvement, expansion, and maintenance of the state's ports and port infrastructure
21 facilities, and the utilization of public port facilities for the import and export of their
22 cargo to or from distribution, manufacturing, fabrication, assembly, processing, or
23 warehousing sites in Louisiana, are essential to Louisiana's economic health and the
24 ability of business and industry associated with the maritime industry to compete
25 cost effectively on a regional, national, and global scale.

1 B. Definitions.

2 For purposes of this Section, the following words shall have the following
3 meanings unless the context clearly indicates otherwise:

4 (1) "Breakbulk cargo" shall mean machinery, equipment, materials,
5 products, or commodities, including but not limited to palletized or unpalletized
6 bagged, packaged, wrapped, drummed, baled, or crated goods and commodities.
7 Breakbulk cargo shall mean offshore drilling platforms and equipment. Breakbulk
8 cargo shall not include any liquid or dry commodities that are handled in bulk.

9 (2) "Capital costs" shall mean and include all costs and expenses incurred
10 by one or more investing companies in connection with the acquisition, construction,
11 installation, and equipping of a qualifying project during the period commencing
12 with the date on which the acquisition, construction, installation, and equipping
13 commences and ending on the date on which the qualifying project is placed in
14 service. Capital costs shall include, but not be limited to the following:

15 (a) The costs of acquiring, constructing, installing, equipping, and financing
16 a qualifying project, including all obligations incurred for labor and to contractors,
17 subcontractors, builders, and materialmen.

18 (b) The costs of acquiring land or rights in land and any cost incidental
19 thereto, including recording fees.

20 (c) The costs of contract bonds and of insurance of any kind that may be
21 required or necessary during the acquisition, construction, or installation of a
22 qualifying project.

23 (d) The costs of architectural and engineering services, including test
24 borings, surveys, estimates, plans, and specifications, preliminary investigations,
25 environmental mitigation, and supervision of construction, as well as for the
26 performance of all the duties required by or consequent upon the acquisition,
27 construction, and installation of a qualifying project.

28 (e) The costs associated with installation of fixtures and equipment; surveys,
29 including archaeological and environmental surveys; site tests and inspections;
30 subsurface site work; excavation; removal of structures, roadways, cemeteries, and

1 other surface obstructions; filling, grading, paving, and provisions for drainage,
2 storm water retention, installation of utilities, including water, sewerage treatment,
3 gas, electricity, communications, and similar facilities; off-site construction of utility
4 extensions to the boundaries of the property.

5 (f) All other costs of a nature comparable to those described, including but
6 not limited to all project costs required to be capitalized for federal income tax
7 purposes pursuant to the provisions of 26 U.S.C. §263(A).

8 (g) Costs otherwise defined as capital costs incurred by the investing
9 company where the investing company is the lessee under a lease that contains a
10 term of not less than five years and is characterized as a capital lease for federal
11 income tax purposes. Capital costs shall not include property owned or leased by the
12 investing company or a related party before the commencement of the acquisition,
13 construction, installation, or equipping of the qualified project unless such property
14 was physically located outside the state for a period of at least one year prior to the
15 date on which the qualifying project was placed in service.

16 (3) "Containerized cargo" shall mean any machinery, equipment, materials,
17 products, or commodities including but not limited to containers which are rigid,
18 sealed, reusable metal boxes in which merchandise is shipped by vessel, truck, or
19 rail.

20 (4) "Import cargo" and "export cargo" shall mean any breakbulk or
21 containerized cargo brought to the state of Louisiana from a foreign country or from
22 the state of Louisiana to a foreign country.

23 (5) "International business entity" shall mean a taxpayer corporation,
24 partnership, limited liability company, or other commercial entity, all or a portion of
25 whose activities involve the import or export of breakbulk or containerized cargo to
26 or from manufacturing, fabrication, assembly, distribution, processing, or
27 warehousing facilities located within Louisiana.

28 (6) "Investing company" shall mean and include any corporation,
29 partnership, limited liability company, proprietorship, trust, or other business entity,
30 regardless of form, making a qualified investment.

1 (7) "Oceangoing vessel" shall mean any vessel, ship, barge, or watercraft that
2 floats, including offshore oil exploration platforms.

3 (8) "Port or port and harbor activity" shall mean and include any trade or
4 business described in the 1997 North American Industry Classification System
5 (NAICS) within Subsector 493 (Warehousing and Storage), Industry Number
6 488310 (Port and Harbor Operations), or Industry Number 488320 (Marine Cargo
7 Handling), when the trade or business is conducted on premises in which a duly
8 recognized port authority has an ownership, leasehold, or other possessory interest
9 and such premises are used as part of the operations of a duly recognized port
10 authority, including the above trades and businesses as they may hereafter be
11 reclassified in any subsequent publication of the NAICS or similar classification
12 system developed in conjunction with the United States Department of Commerce
13 and Office of Management and Budget.

14 (9) "Project" shall mean and include any land, building, or other
15 improvement, and all real and personal properties deemed necessary or useful in
16 connection therewith, whether or not previously in existence, located or to be located
17 in a public port of this state.

18 (10) "Public port" shall mean any deep-water port commission or port,
19 harbor and terminal district as defined in Article VI, Section 44 of the Constitution
20 of Louisiana, and any other port, harbor, and terminal district established under Title
21 34 of the Louisiana Revised Statutes of 1950.

22 (11) "Qualified cargo" shall mean any breakbulk or containerized machinery,
23 equipment, materials, products, or commodities owned by an international business
24 entity which are imported or exported to or from a manufacturing, fabrication,
25 assembly, distribution, processing, or warehouse facility located in Louisiana and
26 which are so moved by way of an oceangoing vessel berthed at a public port facility
27 during the taxable year.

28 (12) "Qualifying investment" shall mean and include the undertaking by one
29 or more investing companies of a qualifying project.

1 (13) "Qualifying project" shall mean and include a project to be sponsored
2 or undertaken by a public port and one or more investing companies that have a
3 capital cost of not less than five million dollars and at which the predominant trade
4 or business activity conducted will constitute industrial, warehousing, or port and
5 harbor operations and cargo handling, including any port or port and harbor activity.

6 (14) "Ton" shall be a net ton of two thousand pounds and in the case of
7 containerized cargo it shall exclude the weight of the container.

8 C. Investor tax credit.

9 (1)(a) There are hereby authorized the following credits against state income
10 and corporate franchise tax:

11 (i) An Investor Tax Credit as provided for in Subsections A through H of this
12 Section for the total capital costs of a qualifying project in the manner and according
13 to the provisions of those Subsections.

14 (ii) An Import Export Cargo Credit as provided for in Subsection I of this
15 Section in the manner and according to the provisions of that Subsection.

16 (b) The Investor Tax Credit provided for in this Subsection shall be issued
17 by the Department of Economic Development for a qualifying project if the
18 commissioner of administration, after approval of the Joint Legislative Committee
19 on the Budget, and the state bond commission certifies to the secretary of the
20 department that there will be sufficient revenue received by the state to offset the
21 effect to the state of the tax credits provided for the capital costs of the project,
22 whether from increased port or port and harbor activity because of the grant of the
23 tax credit or otherwise. If the commissioner with the approval of the committee so
24 certifies, then the Department of Economic Development may grant a tax credit
25 equal to the total capital costs of a qualifying project to be taken at five percent per
26 tax year; however, the total amount of tax credits granted on a qualifying project
27 shall not exceed the total cost of the project.

28 (c) The tax credit shall be earned by investors at the time expenditures are
29 made by an investing company; however, tax credits shall not be applied against a
30 tax liability until the project is approved by the department after certification from

1 the commissioner with the approval of the committee and the state bond commission
2 and capital cost expenditures are certified by the department. The Department of
3 Economic Development shall certify capital cost expenditures no less than twice
4 during the duration of the qualifying project unless the investing company agrees,
5 in writing, to reimburse the Department of Economic Development for the costs of
6 any additional certifications.

7 (2) Prior to issuance of any tax credit pursuant to the provisions of this
8 Subsection, a cooperative endeavor agreement shall be fully executed between the
9 investing company or entity proposing the qualifying project and the public port in
10 whose geographic jurisdiction the proposed qualifying project is to be located
11 indicating cooperation and support among all of the parties. Failure to fully execute
12 the cooperative endeavor agreement shall render the qualifying project ineligible for
13 the tax credit authorized by this Subsection.

14 (3) If the tax credit allowed pursuant to this Subsection exceeds the amount
15 of taxes due for such tax period, then any unused credit may be carried forward as
16 a credit against subsequent tax liability for a period not to exceed ten years.

17 (4) Application of the credit.

18 (a) All entities taxed as corporations for Louisiana income tax purposes shall
19 claim any credit allowed under this Subsection on their corporation income tax
20 return.

21 (b) Individuals, estates, and trusts shall claim any credit allowed under this
22 Subsection on their income tax return.

23 (c) Entities not taxed as corporations shall claim any credit allowed under
24 this Subsection on the returns of the partners or members as follows:

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

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

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

1 D. Certification and administration.

2 (1) The secretary of the Department of Economic Development shall
3 determine through the promulgation of rules and regulations in accordance with the
4 Administrative Procedure Act, which projects and capital cost expenditures,
5 including amounts expended in this state on qualifying projects, qualify for tax
6 credits. The Department of Economic Development shall take the following factors
7 into consideration when determining which projects qualify:

8 (a) The economic impact of the qualifying project on similar or existing
9 publicly owned or privately owned projects located within fifty miles of the
10 qualifying project. The Department of Economic Development may require the
11 investing company or entity proposing the qualifying project to conduct a public
12 meeting, properly noticed in accordance with the open meetings law, in the
13 geographic area the proposed project is to be located.

14 (b) The impact of the qualifying project on the immediate and long-term
15 objectives of the tax credit provided for such investment.

16 (c) The impact of the qualifying project on the employment of Louisiana
17 residents.

18 (d) The impact of the qualifying project on the overall economy of the state.

19 (e) The availability of similar infrastructure or facilities within fifty miles of
20 the proposed qualifying project.

21 (2)(a) Application. An applicant for the ports of Louisiana investor tax
22 credit shall submit an application for initial certification of the qualifying project to
23 the Department of Economic Development that includes the following information:

24 (i) A preliminary budget including the actual or if not known, the estimated
25 capital costs of the qualifying project and the qualifying project's estimated
26 Louisiana payroll.

27 (ii) A detailed description of the qualifying project.

28 (iii) A statement that the proposed project will qualify as a qualifying
29 project.

1 (iv) Estimated start and completion dates. The estimated start date shall
2 include the estimated date on which the acquisition, construction, installation, or
3 equipping of the qualifying project was commenced or is expected to commence.

4 (v) The name of each investing company, or the name or names of its
5 shareholders, partners, members, owners, or beneficiaries to become entitled to the
6 tax credit.

7 (vi) Any other information required by the Department of Economic
8 Development.

9 (b) If the application is incomplete, additional information may be requested
10 prior to further action by the Department of Economic Development.

11 (c) The Department of Economic Development shall submit its initial
12 certification of a project as a qualifying project to the investing company and to the
13 secretary of the Department of Revenue. The initial certification shall include a
14 unique identifying number for each qualifying project, the total amount of tax credits
15 issued for the capital costs of the qualifying project, and the amount to be taken at
16 five percent per tax year.

17 (d) Prior to any certification of a qualifying project, the investing company
18 shall submit to the Department of Economic Development a cost report of project
19 expenditures which the Department of Economic Development may require to be
20 prepared by an independent certified public accountant. Additionally, the
21 Department of Transportation and Development shall inspect the construction site
22 of the qualifying project and shall verify that the capital costs expenditures for which
23 the investing company is applying for tax credits has been expended by the investing
24 company. The Department of Economic Development shall review such
25 expenditures and shall issue a tax credit certification letter to the investing company
26 indicating the amount of tax credits certified for the state-certified qualifying project
27 and the amount to be taken at five percent per tax year.

28 (3) The secretary of the Department of Economic Development, in
29 consultation with the Department of Revenue, shall promulgate rules and regulations
30 in accordance with the Administrative Procedure Act as are necessary to carry out

1 the intent and purposes of the tax credit for port investors. All rules promulgated to
2 implement the provisions of the tax credit for port investors shall be subject to
3 oversight and approval by the House Ways and Means Committee and the Senate
4 Committee on Revenue and Fiscal Affairs.

5 (4) Any taxpayer applying for the credit shall be required to reimburse the
6 Department of Economic Development for any audit required in relation to granting
7 the credit.

8 (5) With input from the Legislative Fiscal Office, the Department of
9 Economic Development shall prepare a written report to be submitted to the House
10 Committee on Ways and Means and the Senate Committee on Revenue and Fiscal
11 Affairs no less than sixty days prior to the start of the regular session of the
12 legislature in 2010, and every second year thereafter. The report shall include the
13 overall impact of the tax credits, the amount of the tax credits issued, the number of
14 new jobs created, the amount of Louisiana payroll created, the economic impact of
15 the tax credits on the port and maritime industry located in this state and regionally,
16 the amount of new infrastructure that has been developed in the state, and any other
17 factors that describe the impact of the program.

18 E. Recapture of credits.

19 If the Department of Economic Development finds that funds for which an
20 investing company received credits according to the provisions of Subsection C of
21 this Section are not invested in and expended with respect to capital costs of a
22 qualifying investment, the investing company's state income tax for such taxable
23 period shall be increased by an amount necessary for the recapture of credit provided
24 by Subsection C of this Section.

25 F. Recovery of credits by the Department of Revenue.

26 (1) Credits previously granted to a taxpayer, but later disallowed, may be
27 recovered by the Department of Revenue through any collection remedy authorized
28 by R.S. 47:1561 and initiated within three years from December thirty-first of the
29 year in which the credits were earned.

1 (2) The only interest that may be assessed and collected on recovered credits
2 is interest at a rate of three percentage points above the rate provided in R.S.
3 9:3500(B)(1), which shall be computed from the original due date of the return on
4 which the credit was taken.

5 (3) The provisions of this Subsection are in addition to and shall not limit the
6 authority of the secretary of the Department of Revenue to assess or to collect under
7 any other provision of law.

8 G. Termination of Investor Tax Credit.

9 The provisions of Subsection C of this Section shall be effective until January
10 1, 2015, and no investor tax credit pursuant to the provisions of this Section shall be
11 granted after such date.

12 H. No new employees shall be hired by the Department of Economic
13 Development for the implementation of the Investor Tax Credit provided for in this
14 Section.

15 I. Import Export Cargo Credit.

16 (1) Certification of taxpayer. Only those taxpayers who have received
17 certification from the secretary of the Department of Economic Development shall
18 be eligible to take the tax credits provided for by this Subsection and then only for
19 the taxable year or years and for the amount provided for in the commissioner of
20 administration's certification, approved by the Joint Legislative Committee on the
21 Budget and the state bond commission, provided for in Item (2)(a)(ii) of this
22 Subsection as allocated by the secretary. The secretary shall promulgate rules in
23 accordance with the Administrative Procedure Act which establish the process by
24 which a taxpayer shall apply for certification.

25 (a) Taxpayers eligible for certification include those international business
26 entities which provide to the department a verified statement of cargo volume data
27 for the calendar year prior to the year of the application, specifically including the
28 total annual volume and tons of breakbulk or containerized cargo imported and

1 exported from or to, manufacturing, fabrication, assembly, distribution, processing,
2 or warehousing facilities located in Louisiana.

3 (b) In no event, however, shall an applicant be certified if its exports and
4 imports are limited to bulk commodities.

5 (c) The secretary shall provide a statement of certification to each taxpayer
6 which he has certified as eligible to take the tax credit after approval of the Joint
7 Legislative Committee on the Budget and the state bond commission, which shall
8 contain the taxable year or years for which the taxpayer is allowed the tax credit and
9 the amount of tax credit allocated for such taxable year or years. The secretary shall
10 also transmit a copy of such statement to the secretary of the Department of
11 Revenue.

12 (2)(a)(i) For taxable years beginning on and after January 1, 2009, there shall
13 be allowed a credit against the individual income, corporation income, and
14 corporation franchise tax liability of a taxpayer who has received certification
15 pursuant to the provisions of Paragraph (1) of this Subsection. The amount of the
16 credit shall be equal to the product of multiplying five dollars by the taxpayer's
17 number of tons of qualified cargo for the taxable year but only for the total amount
18 of the allocation provided to the taxpayer by the secretary of the Department of
19 Economic Development for such taxable year.

20 (ii) The tax credit provided for in this Subsection shall only be allowed for
21 all or a portion of a fiscal year if the commissioner of administration certifies to the
22 secretary of the Department of Economic Development that there will be sufficient
23 revenue received by the state to offset the effect to the state of the tax credits
24 provided for in this Subsection whether from increased utilization of public port
25 facilities because of the tax credit or otherwise, and such certification is approved by
26 the Joint Legislative Committee on the Budget and the state bond commission.

27 (b) In the event that the tax credits allowed pursuant to this Subsection
28 exceed the total tax liability of the taxpayer in the taxable year, the amount of the
29 credit not used as an offset against such tax liability may be carried forward as a

1 credit against subsequent individual and corporation income, or corporation franchise
2 tax liabilities for a period not to exceed five taxable years.

3 J. The Department of Economic Development may promulgate rules and
4 regulations in accordance with the Administrative Procedure Act as are necessary to
5 implement the provisions of this Section subject to oversight by the House ways and
6 means and the Senate revenue and fiscal affairs committees.

7 Section 2. R.S. 44:4.1(B)(29) is hereby amended and reenacted to read as follows:

8 §4.1. Exceptions

9 * * *

10 B. The legislature further recognizes that there exist exceptions, exemptions,
11 and limitations to the laws pertaining to public records throughout the revised
12 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
13 limitations are hereby continued in effect by incorporation into this Chapter by
14 citation:

15 * * *

16 (29) R.S. 47:15, 349, 633.6, 1508, 1515.3, 1516, 1837, 2130, 2327, 2605,
17 6035, 9006

18 * * *

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____