

Regular Session, 2011

SENATE BILL NO. 135

BY SENATOR CLAITOR

TAX/TAXATION. Changes the research and development tax credit program to a "rebate"; decreases the program from December 31, 2013 to June 30, 2013; reduces the amount of the rebate by requiring all employees to be counted in the size of the business, rather than only resident employees; and changes its calculation. (gov sig)

AN ACT

To amend and reenact R.S. 47:6015, relative to tax credits; to change the research and development tax credit to a rebate and make certain changes in its calculation and administration; to provide for a limitation on the receipt of other tax benefits and incentives; 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 to read as follows:

§6015. Research and development ~~tax credit~~ **rebate**

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~~ **rebate** to ~~be applied against income and corporation franchise taxes due.~~

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

5           (3) Each taxpayer seeking the ~~credits~~ **rebates** authorized in this Section shall  
6 apply to the Department of Economic Development for the ~~credits~~ **rebates**. The  
7 taxpayer shall remit an application fee of two hundred fifty dollars with the  
8 application. The application shall include all of the following:

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

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

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

22           (d) The average wages of the ~~Louisiana resident employees~~ **persons**  
23 **employed in Louisiana** not directly engaged in research and development and the  
24 average wages of the ~~Louisiana resident employees~~ **persons employed in Louisiana**  
25 directly engaged in research and development.

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

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

1 (g) Any other information required by the Department of Economic  
2 Development.

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

6 C.(1) **For purposes of determining the amount of the rebate earned, an**  
7 **"entity" shall be determined by the total number of employees based on the**  
8 **aggregate of all affiliated companies.**

9 (2) The amount of the ~~credit~~ **rebate** authorized in this Section shall be equal  
10 to either:

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

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

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

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

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

1 taxable year.

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

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

7 (c) Estates or trusts shall claim any credit allowed under this Section on their  
8 fiduciary income tax returns.

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

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

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

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

17 D. A taxpayer who receives a federal Small Business Innovation Research  
18 Grant as created by the Small Business Innovation Development Act of 1982 (P.L.  
19 97-219), reauthorized by the Small Business Research and Development  
20 Enhancement Act (P.L. 102-564), and reauthorized again by the Small Business  
21 Reauthorization Act of 2000 (P.L. 106-554), shall be allowed a refundable tax credit  
22 rebate in an amount equal to forty percent of the award received during the tax year.

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

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

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

29 (2) (3) The terms "base amounts", "qualified research expenses"; and

1 "qualified research" shall have the same meanings as those terms are defined in 26  
2 U.S.C. §41, as amended.

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

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

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

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

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

14 (4) To receive information from the Department of Revenue regarding the  
15 identity of the taxpayer and the amount of ~~credit~~ **rebate** claimed ~~for any credits~~  
16 ~~claimed~~ pursuant to this Section. Such information shall not be public record and  
17 shall be subject to the same prohibition of disclosure as in the possession of the  
18 Department of Revenue.

19 **(5) To audit all relevant records and accounts of any taxpayer applying**  
20 **for rebates provided for by this Section.**

21 G. **After approval of the rebate, the Louisiana Department of Economic**  
22 **Development shall submit the rebate certification to the Department of Revenue**  
23 **on behalf of the taxpayer who earned the Research and Development rebate.**  
24 **The Department of Revenue may require the taxpayer to submit additional**  
25 **information as may be necessary to administer the provisions of this Section.**  
26 **Upon receipt of the rebate certification and any additional information required**  
27 **by the Department of Revenue, the secretary of the Department of Revenue**  
28 **shall make payment to the taxpayer in the amount to which he is entitled from**  
29 **the current collections of the taxes collected pursuant to Chapter 1 of this Title.**

1           **H.**(1) Recovery of ~~credits~~ **rebates** by Department of Revenue. ~~Credits~~  
2           **Rebates** granted under this Section, but later disallowed in whole or in part, may be  
3           recovered by the secretary of the Department of Revenue from the taxpayer applicant  
4           through any collection remedy authorized by R.S. 47:1561 that is initiated within  
5           three years from December thirty-first of the year in which the ~~credit~~ **rebate** was  
6           originally granted. The only interest that may be assessed and collected on these  
7           recovered ~~credits~~ **rebates** is interest at a rate three percentage points above the rate  
8           provided in R.S. 9:3500(B)(1), which shall be computed from the ~~original due date~~  
9           ~~of the return on which the disallowed credit rebate was taken.~~ **date on which the**  
10          **rebate was issued.**

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

16           **I. A taxpayer shall not receive any other incentive administered by the**  
17          **Department of Economic Development for any expenditures for which the**  
18          **taxpayer has received a rebate pursuant to this Section.**

19           ~~H.~~ **J.** No ~~credit~~ **rebate** shall be allowed pursuant to this Section for research  
20          expenditures incurred or Small Business Innovation Research Grant funds received  
21          after ~~December 31, 2013~~ **June 30, 2013.**

22          Section 2. The provisions of this Act shall be applicable to tax years beginning on  
23          and after January 1, 2011. However, any refundable research and development tax credits  
24          earned and granted prior to the effective date of this Act shall continue to be valid, effective,  
25          and transferable according to the terms of the original grant.

26          Section 3. This Act shall become effective upon signature by the governor or, if not  
27          signed by the governor, upon expiration of the time for bills to become law without signature  
28          by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
29          vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 effective on the day following such approval.

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The original instrument was prepared by Riley Boudreaux. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy Wells.

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#### DIGEST

Claitor (SB 135)

Present law grants refundable and transferable research and development tax credits for expenditures incurred or Small Business Innovation Research Grant funds received through December 31, 2013.

Proposed law changes the credit to a "rebate" payable by the Department of Revenue upon receipt of a rebate certification from the Department of Economic Development from the current collections of income taxes.

Proposed law decreases the rebate program from December 31, 2013 to June 30, 2013.

Present law grants a credit if a taxpayer claims for the taxable year a federal income tax credit under 26 U.S.C. §41(a) of 8% of the "state's apportioned share" of the taxpayer's expenditures for increasing research activities, if the taxpayer employs 100 or more Louisiana residents; 25% if he employs 50 to 99 Louisiana residents.

The "state's apportioned share" was defined as the excess of the taxpayer's qualified research expenses for the taxable year over the base amount as defined in the federal law, multiplied by a percentage equal to the ratio of the qualified research expenses in the state for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

Proposed law grants a "rebate" of 8% of the difference of the "Louisiana qualified research expenses" as defined in 26 U.S.C. §41 for the taxable year minus the "base amount", if the taxpayer employs 100 "persons" in the state; 20% if he employs 50 to 99 "persons".

"Base amount" is defined as 70% of the average annual "qualified research expenses within Louisiana" during the three years preceding the taxable year.

Present law grants a credit if a taxpayer claims for the taxable year a federal income tax credit under 26 U.S.C. §41(b) of 40% of the "state's apportioned share" of the taxpayer's qualified research expenses conducted in this state if the taxpayer employs fewer than 50 Louisiana residents.

Proposed law grants a rebate of 40% of the "Louisiana qualified research expenses" as defined in 26 U.S.C. §41 for the taxable year if the taxpayer employs fewer than 50 "persons".

Present law granted a further credit of 25% of the state's apportioned share of the federal research credit claimed for research expenditures in the state if the taxpayer claimed the alternative incremental tax credit under 26 U.S.C. §41.

Proposed law deletes this provision.

Present law authorizes a taxpayer who receives a federal Small Business Innovation Research Grant a credit in an amount equal to 40% of the award received during the tax year.

Proposed law retains present law but changes the credit to a rebate.

Proposed law requires the size of the "entity" for purposes of determining the amount of the

rebate earned to be determined by the total number of employees based on the aggregate of all affiliated companies.

Proposed law prohibits a taxpayer from receiving any other incentive administered by DED for any expenditures for which he receives a rebate.

Proposed law specifically grants DED the authority to audit all relevant records and accounts of applicants for the rebate and authorizes the Department of Revenue to require an applicant to submit additional information before a rebate is paid.

Applicable to tax years beginning on and after January 1, 2011.

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

(Amends R.S. 47:6015)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill.

1. Changes the wording of the prohibition on a taxpayer/recipient from receiving any other tax credits, exemptions, etc. on expenditures for which he receives a rebate to a prohibition from receiving any other incentive administered by DED.
2. Changes the date from which interest may be assessed on credits recovered by the Department of Revenue from the due date of the return on which the disallowed rebate was taken to the date on which the rebate was issued.

Senate Floor Amendments to engrossed bill.

1. Changes proposed law sunset date from December 31, 2013 to June 30, 2013.