Regular Session, 2011

HOUSE BILL NO. 597

BY REPRESENTATIVES MICHAEL JACKSON, AUBERT, BOBBY BADON, BALDONE, BARRAS, HENRY BURNS, BURRELL, CARMODY, CARTER, CHANEY, CROMER, FOIL, GALLOT, GISCLAIR, GREENE, HARDY, HARRISON, HAZEL, HENRY, HUTTER, GIROD JACKSON, JOHNSON, ROSALIND JONES, SAM JONES, KATZ, LEGER, MONTOUCET, RICHARD, RITCHIE, ROBIDEAUX, GARY SMITH, JANE SMITH, PATRICIA SMITH, AND TEMPLET

TAX CREDITS: Converts the Angel Investor Tax Credit Program to the Angel Investor Rebate Program and provides for the rebate program

AN ACT

To amend and reenact R.S. 47:6020 and to repeal R.S. 47:6020.1, 6020.2, and 6020.3, relative to tax credits; to convert the Angel Investor Tax Credit Program to the Angel Investor Rebate Program; to provide for the amount of the rebate; to provide for the maximum amount of rebates which may be granted in a year; to authorize the Department of Economic Development to administer the program; to provide relative to the repayment, recapture, or recovery of rebates under certain circumstances; to authorize the collection of interest under certain circumstances; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6020 is hereby amended and reenacted to read as follows:

§6020. ~~Legislative findings and purposes~~ Angel Investor Rebate Program

A. Purpose. The legislature finds that the welfare of the state is enhanced by a healthy entrepreneurial business environment and that ready sources of capital necessary to support this environment are not currently available.

~~B. This Act*~~ The Angel Investor Rebate Program is intended to achieve the following purposes:

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(1) To ~~create the Angel Investor Tax Credit Program to~~ encourage third parties to invest in early stage wealth-creating businesses in the state.

(2) To expand the economy of the state by enlarging its base of ~~wealth creating~~ wealth-creating businesses.

(3) To enlarge the number of quality jobs available to retain the presence of young people educated in Louisiana.

~~§6020.1. Angel Investor Tax Credit Program; establishment; qualifications; administration~~

~~A. Qualifying~~ B. Administration. (1) Program. Investments made on or after January 1, 2011, by qualifying individuals or entities that invest in a Louisiana Entrepreneurial Business as defined by R.S. 51:2303(5) may ~~earn,~~ apply for, and if qualified, be granted a rebate. ~~Such credits shall be earned and granted for a period of five tax years as provided in this Part.~~ The administration of rebate applications ~~for these credits~~, certification of eligibility and qualification of applicants for rebates, and the ~~provision~~ payment of ~~these credits~~ rebates shall be ~~called~~ known as the Angel Investor ~~Tax Credit~~ Rebate Program, hereinafter referred to as "program".

~~B.(1)~~ (2) Rules. The ~~Angel Investor Tax Credit Program~~ program shall be implemented and administered by the Department of Economic Development, hereinafter referred to as "department". In compliance with the Administrative Procedure Act ~~and this Part~~, the department shall adopt and promulgate ~~such~~ rules as are necessary for the efficient and effective administration of this program in keeping with the purposes for which it is enacted.

~~(2) In providing for the implementation and administration of the program, the~~ The department shall work closely with the secretary of the Department of Revenue ~~in order to promulgate~~ in the development and promulgation of rules. ~~Such~~ The rules shall include provisions for:

(a) ~~The Department of Economic Development to~~ An application process through which the department may certify the eligibility of ~~any taxpayer~~ an investor

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applicant for receipt of ~~the tax credit provided for in this Part~~ a rebate and the qualification of ~~any taxpayer claimant~~ an investor to claim ~~the credit against state tax liability~~ a rebate.

(b) The presentation of ~~a taxpayer's~~ an investor's eligibility certification and any other documentation required in order to ~~be applied for to~~ earn or claim a ~~credit~~ rebate.

(c) ~~Provide for an annual report of~~ The submission of annual reports by the Louisiana Entrepreneurial Business regarding the use of proceeds, number of employees, amount of payroll, annual revenue, and any other information requested by the ~~Department of Economic Development~~ department.

C. Qualifications. (1) To qualify for ~~an angel investor tax credit for five tax years~~ a rebate, the investor and the investment shall meet all of the following ~~qualifications shall be required by each applicant~~ requirements:

(a) The investment in the Louisiana Entrepreneurial Business must be an investment that is at risk and not secured or guaranteed. "At risk" means that the repayment of the investment is entirely dependent on the success of the Louisiana Entrepreneurial Business.

(b) ~~The funds invested by the applicant cannot have been raised as a result of other Louisiana tax incentive programs, funds pooled or organized through capital placement agreements for the purpose of equity and venture capital investing unless approved by the Department of Economic Development, or as the result of illegal activity.~~

~~(c)~~ For the purposes of ~~this Angel Investor Tax Credit Program~~ the program, an angel investor or investors cannot be the principal owner or owners of the business who are involved in the operation of the business as a full-time professional activity, nor can their spouses and relatives within the third degree of consanguinity or affinity. A principal owner means one or more persons who own an aggregate of fifty percent or more of the Louisiana Entrepreneurial Business.

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~~(d)~~ (c) The use of proceeds from the investment must be used for capital improvements, plant equipment, research and development, working capital for the business, or other business activity as may be approved by the ~~Department of Economic Development~~ department. The proceeds cannot be used to pay dividends, repay shareholder's loans, redeem shares, or repay debt unless approved by the ~~Department of Economic Development~~ department.

~~(e)~~ (d) The investor applicant shall meet the definition of accredited investor established by ~~the Department of Economic Development~~ Rule 501 in Regulation D of the General Rules and Regulations promulgated under the Securities Act of 1933.

~~(f)~~ (e) The investment in the Louisiana Entrepreneurial Business by the applicant must be maintained for three years unless otherwise approved by the Department of Economic Development.

(2) To qualify for ~~an angel investor tax credit~~ a rebate, the Louisiana Entrepreneurial Business in which the investment is made shall meet all the following requirements:

(a) The principal business operations of the business are located in Louisiana.

(b) Prior to the investment ~~by the taxpayer, the business has received approval as qualified to receive angel investor tax credits by the Department of Economic Development~~, the department has approved the business as one which may receive investments which may qualify for a rebate under the program.

(c) The ~~Louisiana Entrepreneurial Business~~ business must demonstrate that it will be a wealth-creating business for Louisiana by demonstrating in its business plan that it will have more than fifty percent of its sales from outside Louisiana.

(d) The business is not a business engaged primarily in retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, or financial services including venture capital funds.

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~~§6020.2. Angel Investor Tax Credit; amount; duration; forfeit~~

~~A.(1) Except as provided in Subsection B of this Section, the taxpayer~~

D. Rebates. (1) The total amount of rebates granted by the department in any calendar year shall not exceed five million dollars. The department shall by rule establish the method of allocating available rebates to investors including but not limited to a first-come, first-served system, reservation of rebates for a specific time period, or other method which the department, in its discretion, may find beneficial to the program. If the department does not grant the entire five million dollars in rebates in any calendar year, the amount of residual unused rebates shall carry forward to subsequent calendar years and may be granted in any year without regard to the five million dollar per year limitation. After the approval of an investor pool, the department shall issue a letter identifying the amount of rebates that are available to that pool; however, no rebate shall be granted to an investor until the investment has been made in the Louisiana Entrepreneurial Business.

(2)(a) An investor may ~~earn and~~ apply for and, if qualified, be granted a ~~refundable credit on any income or corporation franchise tax liability owed to the state by the taxpayer seeking to claim the credit~~ rebate in the amount approved by the secretary of the ~~Department of Economic Development~~ department. ~~for~~ The amount of the rebate shall be based upon the amount of money invested by the ~~taxpayer~~ investor in the Louisiana Entrepreneurial Business, which investment shall not exceed one million dollars per year per business and two million dollars total per business. ~~Except as otherwise provided in this Paragraph, the refundable credit shall be allowed against the income tax for the taxable period in which the credit is earned and the franchise tax for the taxable period following the period in which the credit is earned. However, credits earned on or before December 31, 2005, shall not be allowed until the income tax period beginning January 1, 2006, and the franchise tax due January 1, 2007.~~

~~(2)(a) The credits~~ Rebates approved by the ~~Department of Economic Development~~ department shall be granted at the rate of ~~fifty~~ thirty-five percent of the

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~~amount of money invested by the taxpayer in the Louisiana Entrepreneurial Business, with the credit~~ amount of the investment. The total rebate amount shall be divided in equal portions ~~for~~ and shall be payable over five years~~, subject to the limitations provided for in Paragraph (1) of this Subsection~~.

(b) ~~The total angel investor tax credits~~ amount of rebates ~~granted by the Department of Economic Development~~ department ~~in any calendar year shall not exceed five million dollars.~~

~~(c)~~ After certifying the eligibility of the Louisiana Entrepreneurial Business and the amount of the investment, the secretary of the ~~Department of Economic Development~~ department shall issue a ~~tax credit~~ rebate certificate~~, a copy of which is to be attached to the tax return of the angel investor~~ to the investor, and shall provide a copy of the certificate to the secretary of the Department of Revenue. The rebate shall be payable over five years, divided into equal amounts. The amount available in the first year shall become payable twenty-four months from the date the department certifies the amount of the investment.

(c) For rebates certified after July 1, 2011, beginning with the date the first angel investor rebate becomes payable, the department shall transmit monthly an angel investor rebate report to the Department of Revenue. The report shall contain the following information for each investor whose rebate is payable within that month: the ~~The tax credit certificate shall contain the taxpayer's~~ investor's name, address, tax identification number, the amount of ~~credit~~ the rebate, the name of the qualifying ~~business~~ Louisiana Entrepreneurial Business, a statement certifying that the Louisiana Entrepreneurial Business was domiciled in Louisiana at the close of the previous calendar year, and other information which may be required by the Department of Revenue. Upon receipt of the report, the secretary of the Department of Revenue shall make payment to each investor listed in the report in the amount to which he is entitled from the current collections of the taxes collected pursuant to Chapter 1 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, as amended. The ~~tax credit~~ rebate certificate, unless rescinded by the ~~Department of~~

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~~Economic Development~~ department, shall be accepted by the Department of Revenue as proof of the ~~credit~~ rebate. A rebate certificate shall expire and have no value or effect after the last day of the sixth year after it was granted.

(d) The ~~Department of Economic Development~~ department shall maintain a list of the ~~tax credit~~ rebate certificates issued.

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

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

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

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

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

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

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

~~B. A tax credit~~ rebate ~~granted pursuant to the Angel Investor Rebate Program shall expire and have no value or effect on tax liability beginning with the eleventh tax year after the tax year in which it~~ last day of the sixth year after the ~~year it was originally granted.~~

If at the close of any calendar year in the five-year period beginning with the first year in which a rebate certificate was issued to an investor, the Louisiana Entrepreneurial Business is no longer domiciled in Louisiana, the rebate shall be recaptured from the investor unless change of domicile is the result of a merger,

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consolidation, or other acquisition of such business with or by a party not affiliated with the business.

(b) If at the close of any calendar year in the three-year period beginning with the first year a rebate certificate was issued to an investor, the investor transfers the equity received in connection with the qualified investment, the rebate shall be recaptured from the investor unless the transfer results from any of the following circumstances:

(i) The liquidation of the business issuing the equity;

(ii) The merger, consolidation, or other acquisition of such business with or by a party not affiliated with the business; or

(iii) The death of the investor.

~~§6020.3. False or fraudulent information in making application, claim for credit rebate, or other instrument; penalties~~

~~A.~~ E.(1) Any person making an application, claim for ~~an angel investor tax credit~~ a rebate, or any report, return, statement, or other instrument or providing any other information pursuant to the provisions of the Angel Investor ~~Tax Credit~~ Rebate Program who willfully makes a false or fraudulent application, claim, report, return, statement, invoice, or other instrument or who willfully provides any false or fraudulent information, any person who willfully aids or abets another in making ~~such~~ a false or fraudulent application, claim, report, return, statement, invoice, or other instrument, or any person who willfully aids or abets another in providing any false or fraudulent information, shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than one thousand dollars and not more than fifty thousand dollars or imprisoned for not less than two years and not more than five years, or both.

~~B.~~(2) Any person convicted of a violation of this Section shall be liable for the repayment of all rebate amounts which were granted to that person. Interest shall be due on such repayments at the rate of fifteen percent per annum.

Section 2. R.S. 47:6020.1, 6020.2, and 6020.3 are hereby repealed in their entirety.

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Michael Jackson HB No. 597

Abstract: Converts the Angel Investor Tax Credit Program to the Angel Investor Rebate Program and provides for the administration of the rebate program for eligible investments made on or after Jan. 1, 2011.

Present law became null and void on Dec. 31, 2009. It authorized a credit against La. income and corporation franchise tax liability for qualifying individuals which invested in "La. Entrepreneurial Businesses", as approved by the Dept. of Economic Development (hereinafter department).

Present law authorized credits equal to 50% of the amount of the investment, for investments of up to $1 million per year, per business.

Proposed law converts the tax credit program to a rebate program to be administered by the department in generally the same manner as the former tax credit program.

Proposed law provides for the eligibility requirements for investments and the businesses in which they are made.

Proposed law authorizes the department to establish by rule the method of allocating available tax rebates to applicants, which may include a first-come, first-served system, reservation of tax rebates for a specified time period, or other method which the department deems appropriate.

Proposed law limits the total amount of rebates which the department may grant each calendar year to $5 million. Any residual amount of which remains at year's end may be used to provide rebates in subsequent years, notwithstanding the $5 million annual cap.

Proposed law authorizes the secretary of the department to issue rebate certificates to investors in amounts of up to 35% of the amount of the investment for investments of up to $1 million per year, per business.

Present law requires the department to issue a tax credit certificate to qualifying investors and requires the certificate to contain certain specific background information for the rebate regarding the investor, investment, and Louisiana Entrepreneurial Business. Further, a copy of the tax credit certificate is provided to the secretary of the Dept. of Revenue.

Proposed law changes present law by renaming the document from tax credit certificate to rebate certificate, and changes the form of transmittal of the specific background information for each rebate from the tax credit certificate to the angel investor rebate report.

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Further, requires monthly transmittal by the department of an angel investor rebate report to the Dept. of Revenue.

Proposed law authorizes the secretary of the Dept. of Revenue to pay rebates from income tax collections.

Proposed law provides the conditions under which rebates must be repaid or recaptured, including the change of domicile of a La. Entrepreneurial Business or the use of investment monies in a manner deemed inappropriate by the department.

Proposed law provides that rebates granted but later disallowed in whole, or in part, or subject to recapture or repayment, may be recovered by the Dept. of Revenue. Interest may be assessed and collected on recovered rebate monies, at a rate of 15% per annum.

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

(Amends R.S. 47:6020; Repeal R.S. 47:6020.1, 6020.2, and 6020.3)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Added requirement that the Dept. of Economic Development transmit monthly an angel investor rebate report to the Dept. of Revenue.

2. Changed the document which contains the background information relating to each rebate from the tax rebate certificate to the monthly angel investor rebate report.

3. Deleted corporation franchise tax collections as a source from which rebates shall be paid.

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