



LEGISLATIVE FISCAL OFFICE  
Fiscal Note

Fiscal Note On: **SB 135** SLS 11RS 196  
Bill Text Version: **REENGROSSED**  
Opp. Chamb. Action: **w/ HSE COMM AMD**  
Proposed Amd.:  
Sub. Bill For.:

<b>Date:</b> June 14, 2011	8:34 AM	<b>Author:</b> CLAITOR
<b>Dept./Agy.:</b> Revenue/Economic Development		
<b>Subject:</b> R&D credit calculation changes and 6 year extension		<b>Analyst:</b> Deborah Vivien

TAX/TAXATIONRE1 INCREASE GF RV See NotePage 1 of 2

Extends the research and development tax credit program from December 31, 2013 to December 31, 2019; changes it from a refundable and transferable credit to a "rebate"; authorizes the rebate for the employment of any persons in Louisiana

Current law provides a refundable and transferable tax credit for companies claiming the federal research and development (R&D) tax credit, incurring qualified research expenses, or receiving a Small Business Innovation Research (SBIR) grant. The credit is a percentage of either qualifying or new research expenditures depending on SBIR grant status, the number of Louisiana residents employed, or participation in the federal alternative incremental tax credit. The base amount is defined in 26 USC 41(c), which is the calculation used in the federal R&D tax credit, apportioned to the state.

Proposed law extends the program for six years to December 31, 2019, and makes changes to credit determination, including a new base calculation, counting employees of all affiliated companies instead of just those in Louisiana, adding LED audit authority, and prohibiting multiple benefits. The credit for those claiming the alternative incremental tax credit is repealed. Proposed law also changes the credit to a rebate. Applicable to credits earned and granted on or after January 1, 2011, but all credits earned and granted prior to signing of the law will be governed by current law.

EXPENDITURES	2011-12	2012-13	2013-14	2014-15	2015-16	5 -YEAR TOTAL
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	\$0	\$0	\$0	\$0	\$0	\$0
Annual Total	\$0	\$0	\$0	\$0	\$0	\$0

REVENUES	2011-12	2012-13	2013-14	2014-15	2015-16	5 -YEAR TOTAL
State Gen. Fd.	\$6,300,000	\$7,300,000	(\$10,000,000)	(\$34,500,000)	(\$41,700,000)	(\$72,600,000)
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	\$0	\$0	\$0	\$0	\$0	\$0
Annual Total	\$6,300,000	\$7,300,000	(\$10,000,000)	(\$34,500,000)	(\$41,700,000)	(\$72,600,000)

EXPENDITURE EXPLANATION

There is no anticipated direct material effect on governmental expenditures as a result of this measure.

REVENUE EXPLANATION

The proposed legislation extends the program for six years beyond the current expiration date of December 31, 2013, and makes several material changes to the parameters of the program which would become effective prior to the extension. According to the Department of Revenue, claims of this credit have grown by 97% between FY 08 and FY 09 to \$14.6 million and by 23% from FY 09 to FY 10 to \$17.9 million. The analysis below assumes that 20% annual growth continues throughout the fiscal note horizon. In general, the first year impact of extending the tax credit by six years begins in FY 13/14 with a half year impact and FY 14/15 showing full year impacts. The changes to the parameters of the program will become effective with all credits earned after 1/1/11 and after the signing of the law. Those impacts begin in FY 11/12. The table below summarizes the impacts and the following explanations detail the assumptions.

	FY12	FY13	FY14	FY15	FY16
Credits In Current Program	(25,791,435)	(30,949,722)	(18,569,833)	-	-
Extension: Base w/ 20% annual growth	-	-	(18,569,833)	(44,567,600)	(53,481,120)
Base Calc or Application Timing	4,878,287	5,909,944	7,147,933	8,633,520	10,416,224
Repeal of the 25% AIC credit	900,000	900,000	900,000	900,000	900,000
Employee Count including Affiliates	500,000	500,000	500,000	500,000	500,000
New Base	(19,513,148)	(23,639,778)	(28,591,734)	(34,534,080)	(41,664,896)
Change from current program	6,278,287	7,309,944	(10,021,900)	(34,534,080)	(41,664,896)
Fiscal Note	6,300,000	7,300,000	(10,000,000)	(34,500,000)	(41,700,000)

While the analysis makes use of as much actual data as possible, the bill makes changes to a number of parameters that are material to the program’s fiscal results, and various assumptions are necessary to arrive at conclusions. The noteworthy aspects of the results are the changing signs and magnitudes, but high degrees of confidence can not be assigned to the specific values of the results. More discussion of these changes and others are continued on the second page of this note.

Senate	Dual Referral Rules	House	
<input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H}		<input type="checkbox"/> 6.8(F)1 >= \$500,000 Annual Fiscal Cost {S}	
		<input type="checkbox"/> 6.8(F)2 >= \$100,000 Annual SGF Cost {H&S}	
<input checked="" type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H}		<input checked="" type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}	<div>Gregory V. AlbrechtChief Economist</div>



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**CONTINUED EXPLANATION from page one:** Page 2 of 2  
Revenue Explanation (Continued)

**Six Year Extension and Rebate**

The credit expires on December 31, 2013 and this legislation extends the expiration to December 31, 2019, or six years and changes the refundable, transferable credit to a rebate. Changing the credit to a rebate is expected to shorten the time of impact to the state general fund since the request will not be filed with a tax return and can be presented at any time during the year, but will not change the total amount of program credits. Thus, credits claimed in FY 12 could be larger than those stated above should rebates be claimed quicker than current credits. The current expiration on December 31, 2013 implies that the first impact due to the extension will occur in FY 13/14 with six months allowed for rebates to be processed during the remainder of the year (-\$18.6 million in state general fund) with subsequent years sustaining a full year state general fund impact (-\$44.6 million in FY 15 and -\$53.5 million in FY 16).

**Change in the Base Calculation or Timing of Application**

Currently, the base is calculated in the same manner as the federal R&D tax credit, which considers a company's total expenditures for R&D then apportions it to the state. The proposed legislation defines the base calculation as 70% of the three year average of only those research expenditures made in the state. Current LED evaluation expects that the new base calculation will be budget neutral, though definitive data was not available. It is possible that potential applicants will rush to apply for the program prior to its January 1, 2013 expiration, boosting the baseline credit cost of the program, and that this legislation will keep the application process at a more consistent pace, resulting in a lower credit realization baseline (shown as increasing state general fund revenue. Based on original LED assumptions that a change in the base calculation could reduce eligible expenditures by 20%, credits generated under the proposed law could be reduced by 20% under the current rate structure, if all other things are held constant. The base change would be assumed to take place after all other adjustments from the bill are made. Regardless, in early periods smaller credit realizations are likely and in later periods larger credit realizations are likely.

**Repeal of the 25% Credit for Claimants of the Alternative Incremental Credit**

Currently, credits are in the amount of 8% of the state's apportioned share of the taxpayer's expenditures for increasing research activities for those employing 100 or more Louisiana residents, 20% of the state's apportioned share of increasing research activities for those employing 50-99 Louisiana residents, 25% of the state apportioned share of the federal research credit claimed for research expenditures in the state if the taxpayer claims the alternative incremental tax credit, and 40% of qualified research expenses for those employing fewer than 50 Louisiana residents. There is also a 40% credit for those receiving SBIR grants. The proposed legislation repeals the 25% credit for those claiming the alternative incremental credit. In recent years, about 10% of the credits granted are in the alternative incremental tax credit bracket. Without this bracket, it is presumed that these companies would continue to be eligible for the credit but the applicable rate would be lowered to 20% or 8%, depending on the employee count of all affiliated companies. Assuming that all would be eligible for an 8% credit, state general fund would increase by about 900,000 annually.

**Including all Affiliated Companies in the Employee Count**

Currently, only Louisiana employees are considered in the employee count which, in some instances, determines the rate of the benefit because the smaller the employee count, the larger the credit. Companies that form subsidiaries can currently qualify for a larger credit since only those employees in Louisiana are counted. The proposed legislation will require that all employees of all affiliated companies are counted to determine the appropriate rate. Larger corporations (100 or more employees) will obtain the lowest rate of 8% of qualifying expenditures and the smallest companies (up to 50 employees) receiving the highest rate of 40% of qualifying expenditures. Without the requirement that employees are limited to those in Louisiana, it is expected that more applicants will be subject to the lower brackets, which will increase state general fund. LED can identify credits totaling at least \$500,000 that would no longer qualify under the proposed legislation. if the employee count of more applicants are increased beyond the current thresholds, state general fund could increase by a larger amount.

**Audit Authority**

The proposed legislation will allow LED to have audit authority at any time. To the extent that companies are currently obtaining credits inappropriately and that audits deter such claims, state general fund will increase (smaller credit realizations will occur). However, there is no audit history to rely on to estimate any potential effect.

**Prohibiting Multiple Benefits**

The proposed legislation prohibits the taxpayer from receiving any other state tax credit, exemption, exclusion, rebate, or other tax incentive for any expenditures subject to the R&D credit. To the extent that taxpayers are currently obtaining multiple credits for the same expenditures, state general fund will increase as this practice will no longer be allowed. According to LED, an indication of the prevalence of this practice is not currently available but, if it is occurring, is expected to be limited to a small number of applicants.

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Senate

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House

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**Chief Economist**