ENROLLED

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 AND SENATORS APPEL, BROOME, CHEEK, CLAITOR, DORSEY, KOSTELKA, LONG, MARTINY, MICHOT, MORRISH, MURRAY, NEVERS, QUINN, WALSWORTH, AND WILLARD-LEWIS

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 provide for the amount of the tax credit; to provide for the maximum amount of tax credits 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 tax credits 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 Tax Credit 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 Tax Credit Program is intended to achieve the following purposes:

(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.

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(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~~ tax credit. ~~Such credits shall be earned and granted for a period of five tax years as provided in this Part.~~ The administration of tax credit applications ~~for these credits~~, certification of eligibility and qualification of applicants for tax credits, and the provision ~~of~~ for these credits shall be ~~called~~ known as the Angel Investor Tax Credit 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 applicant for receipt of the tax credit ~~provided for in this Part~~ and the qualification of ~~any taxpayer claimant~~ an investor to claim the credit against state tax liability.

(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.

(c) ~~Provide for an annual report of~~ The submission of annual reports by the Louisiana Entrepreneurial Business regarding the use of proceeds, number of

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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~~ tax credit, 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.

(b)~~(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.

~~(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.

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~~(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, 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 tax credit 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.

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

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

D. Tax Credits (1) The total amount of tax credits 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 tax credits to investors including but not limited to a first-come, first-served system, reservation of tax credits 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 tax credits in any calendar year, the amount of residual unused tax credits 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 tax credits that are available to that pool; however, no tax credit shall

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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 in the amount approved by the secretary of the ~~Department of Economic Development~~ department. ~~for~~ The amount of the tax credit 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 Subparagraph (b) of 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 approved by the ~~Department of Economic Development~~ department shall be granted at the rate of ~~fifty~~ thirty-five percent of the ~~amount of money invested by the taxpayer in the Louisiana Entrepreneurial Business, with the credit~~ amount of the investment with the credit divided in equal portions for five years~~, subject to the limitations provided for in Paragraph (1) of this Subsection~~.

(b) ~~The total angel investor tax credits granted by the Department of Economic Development 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 certificate, a copy of which is to be attached to the tax return of the angel investor. The tax credit available in the first year shall become deductible from tax liability in the taxpayer's income tax year which occurs twenty-four months from the date the department certifies the amount of the investment.

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(c) The tax credit certificate shall contain the ~~taxpayer's~~ investor's name, address, tax identification number, the amount of credit, 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. The tax credit certificate, unless rescinded by the ~~Department of Economic Development~~ department, shall be accepted by the Department of Revenue as proof of the credit.

(d) The ~~Department of Economic Development~~ department shall maintain a list of the tax credit 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.~~(4) A tax credit granted pursuant to the Angel Investor 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 was originally granted.

(5)(a) If at the close of any calendar year in the five-year period beginning with the first year in which a tax credit certificate was issued to an investor, the

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Louisiana Entrepreneurial Business is no longer domiciled in Louisiana, the tax credit shall be recaptured from the investor unless change of domicile is the result of a merger, 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 tax credit certificate was issued to an investor, the investor transfers the equity received in connection with the qualified investment, the tax credit 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, or any report, return, statement, or other instrument or providing any other information pursuant to the provisions of the Angel Investor Tax Credit 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~~ tax credits amounts which were granted to that person. Interest shall be due on such repayments at the rate of fifteen percent per annum.

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F. Transferability of the credit. Any Angel Investor Tax Credits not previously claimed by any taxpayer against its tax may be transferred or sold to another Louisiana taxpayer, subject to the following conditions:

(1) A single transfer or sale may involve one or more transferees. The transferee of the tax credits may transfer or sell such tax credits subject to the conditions of this Subsection.

(2) Transferors and transferees shall submit to the department and the Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certificate issued by the secretary of the Department of Economic Development and, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, the price paid by the transferee to the transferor, and any other information required by the department or the Department of Revenue. Any pricing information submitted by a transferor or transferee shall be treated by the department and the Department of Revenue as proprietary to the entity reporting such information and therefore confidential. However, this shall not prevent the publication of summary data that includes no fewer than three transactions.

(3) Failure to comply with this Subsection will result in the disallowance of the tax credit until the taxpayers are in full compliance.

(4) The transfer or sale of this credit does not extend the time in which the credit can be used. The carryforward period for credit that is transferred or sold begins on the date on which the credit was earned.

(5) To the extent that the transferor did not have rights to claim or use the credit at the time of the transfer, the Department of Revenue shall either disallow the credit claimed by the transferee or recapture the credit from the transferee through any collection method authorized by this Section or R.S. 47:1561. The transferee's recourse is against the transferor.

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

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Section 3. The provisions of this Act shall be null and void and of no effect on and after July 1, 2015.

Section 4. 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.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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