

Regular Session, 2013

HOUSE BILL NO. 377

BY REPRESENTATIVE LEGER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX CREDITS: Establishes a registry for tax credits and provides relative to the period of time to report claims or a transfer to the registry

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(32) and R.S. 47:6007(C)(4)(b), 6016(F)(1)(b),

3 6019(A)(3)(b)(i)(cc), 6020(F)(2), 6021(I)(2), 6022(E)(1)(e)(ii), and 6034(D)(1) and

4 to enact R.S. 47:1508(B)(33) and 1524, relative to tax credits; to establish a registry

5 for certain tax credits; to provide relative to agencies required to submit information

6 to the registry; to provide relative to the information which shall be recorded in the

7 registry; to provide for certain requirements and limitations; to provide relative to

8 access to information in the registry; to provide with respect to the confidentiality of

9 certain tax records; to authorize the secretary of the Department of Revenue to share

10 certain tax credit transfer information; to provide relative to the transferability of

11 certain tax credits; to provide relative to the notification of the transfer or sale of

12 certain tax credits; to provide that certain records are private; to provide for an

13 effective date; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 47:6007(C)(4)(b), 6016(F)(1)(b), 6019(A)(3)(b)(i)(cc), 6020(F)(2),

16 6021(I)(2), 6022(E)(1)(e)(ii), and 6034(D)(1) are hereby amended and reenacted and R.S.

17 47:1508(B)(33) and 1524 are hereby enacted to read as follows:

18 §1508. Confidential character of tax records

19 * * *

1 B. Nothing herein contained shall be construed to prevent:

2 * * *

3 (33) The furnishing of information as requested by the transferor pursuant
4 to the provisions of R.S. 47:1524(G).

5 * * *

6 §1524. Tax credit registry; requirements; limitations

7 A. Purpose. The intent of this Section is to provide for a centralized
8 registration and recordation system for transferable tax credits granted, issued, and
9 authorized by the state of Louisiana. The provisions of this Section shall be known
10 and cited as the "Louisiana Tax Credit Registry Act".

11 B. Definitions. For purposes of this Section, the following words shall have
12 the following meaning unless the context clearly indicates otherwise:

13 (1) "Department" means the Department of Revenue.

14 (2) "Identification number" means a unique identifying number that shall be
15 assigned to each tax credit certificate registered in the registry. A tax credit's
16 identification number shall remain associated with the tax credit from the time the
17 credit is originally entered into the registry through any claim, transfer, or refund
18 associated with the credit, until such time as the tax credit is fully redeemed.

19 (3) "Secretary" means the secretary of the Department of Revenue.

20 (4) "Tax credit" means any transferable tax credit granted, issued, and
21 authorized by the state applied against taxes collected by the department.

22 (5) "Tax credit certificate" means any document granting tax credits issued
23 by a state agency administering a tax credit program, including but not limited to tax
24 credit certification letters which shall include the name of the individual or entity
25 issued the tax credit, the amount of the tax credit, and any other identifying
26 information regarding the tax credit.

27 (6) "Transfer" means an assignment, disposition, transfer, or allocation of
28 tax credits.

1 (7) "Transferee" means an individual or entity that receives a transfer of tax
2 credits.

3 (8) "Transferor" means an individual or entity that makes a transfer of tax
4 credits.

5 C. Administration. There is hereby established a central tax credit registry,
6 hereinafter referred to as "registry", within the department for the registration and
7 recordation of tax credits granted, issued, and authorized by the state and any
8 subsequent transfers.

9 (1) Beginning January 1, 2014, all state agencies issuing tax credits to be
10 applied against taxes collected by the department shall promptly send a copy of any
11 newly granted, issued, or authorized tax credit certificates to the department. Upon
12 receipt of this information, the department shall assign an identifying number to each
13 tax credit, and shall record the tax credit into the registry along with the name of the
14 individual or entity issued the tax credit, the amount of the tax credit, and any other
15 information deemed necessary by the secretary.

16 (2) Any state agency that issues or authorizes tax credits shall remit an
17 electronic report on forms prescribed by the secretary no later than January 31, 2014,
18 of all tax credit certificates issued prior to January 1, 2014. The department shall
19 endeavor to record all tax credit transfers which occurred prior to January 1, 2014,
20 into the registry.

21 D. Transfers.

22 (1) Joint notice from the transferor and the transferee of all tax credit
23 transfers shall be submitted to the department, including additional information
24 which the secretary deems necessary and appropriate. Upon receipt of the
25 applicable tax credit information, the department shall record the transfer of the tax
26 credit by recording the applicable identification numbers, the name of the transferor
27 and transferee, the amount of the tax credits being transferred, and any other
28 information deemed necessary by the secretary.

1 (2) Notwithstanding any other provision of law to the contrary, no issuance
2 or transfer of tax credits after January 1, 2014, shall be effective as to third parties
3 nor recognized by the department until it has been recorded in the registry.

4 (3) The effectiveness of a tax credit transfer as between the transferor and
5 the transferee shall be provided by agreement of the parties or, in the absence of an
6 agreement, in accordance with the provisions of the Louisiana Civil Code and its
7 ancillaries.

8 E. Disallowance and recapture of tax credits. A tax credit shall be
9 disallowed and recaptured if the department or state agency issuing the tax credit
10 finds that an individual or entity obtained a tax credit in violation of the provisions
11 of the statute authorizing issuance of the tax credit, including but not limited to fraud
12 or misrepresentation. Any tax credit previously granted to an individual or entity but
13 later disallowed may be recovered by the secretary pursuant to the provisions of R.S.
14 47:1561. The provisions of this Subsection are in addition to and shall not limit the
15 authority of the secretary of the department to assess, collect, or recapture under any
16 other provision of law.

17 (1) If the transferor of a tax credit did not have the right to claim or use the
18 tax credit at the time of the transfer, the transferee's recourse shall be against the
19 transferor, as provided by agreement of the parties. The department shall warrant the
20 validity of the information recorded in the registry for credits issued after January 1,
21 2014. A good faith transferee, as determined by the department at the time of
22 transfer, that relied on the validity of the credits recorded in the registry shall not be
23 subject to the provisions of this Subsection. For purposes of this Subsection, "good
24 faith" shall mean honesty in fact and the observance of reasonable commercial
25 standards of fair dealing.

26 (2) Notwithstanding any other provision of law, the department may
27 recapture any amounts and other damages from any individual or entity determined
28 not to be in good faith as provided for in Paragraph (1) of this Subsection.

1 C. Investor tax credit; specific productions and projects.

2 * * *

3 (4) Transferability of the credit. Any motion picture tax credits not
4 previously claimed by any taxpayer against its income tax may be transferred or sold
5 to another Louisiana taxpayer or to the office, subject to the following conditions:

6 * * *

7 (b) Transferors and transferees shall submit to the office, and to the
8 Department of Revenue in writing, a notification of any transfer or sale of tax credits
9 within ~~thirty~~ ten business days after the transfer or sale of such tax credits. The
10 notification shall include the transferor's tax credit balance prior to transfer, a copy
11 of any tax credit certification letter(s) issued by the office and the secretary of the
12 Department of Economic Development and, the transferor's remaining tax credit
13 balance after transfer, all tax identification numbers for both transferor and
14 transferee, the date of transfer, the amount transferred, a copy of the credit
15 certificate, price paid by the transferee to the transferor, in the case when the
16 transferor is a state-certified production, for the tax credits, and any other
17 information required by the office or the Department of Revenue. For the purpose
18 of reporting transfer prices, the term "transfer" shall include allocations pursuant to
19 Paragraph (2) of this Subsection as provided by rule. ~~The office may post on its~~
20 ~~website an average tax credit transfer value, as determined by the office and the~~
21 ~~secretary of the Department of Economic Development to reflect adequately the~~
22 ~~current average tax credit transfer value.~~ The tax credit transfer value means the
23 percentage as determined by the price paid by the transferee to the transferor divided
24 by the dollar value of the tax credits that were transferred in return. The notification
25 submitted to the ~~office~~ Department of Revenue shall include a processing fee of up
26 to two hundred dollars per transferee, and any pricing information submitted by a
27 transferor or transferee shall be treated by the office and the Department of Revenue
28 as proprietary to the entity reporting such information and therefore confidential.

1 credits. The notification shall include the transferor's tax credit balance prior to
 2 transfer, the credit identification number assigned by the state historic preservation
 3 office, the remaining balance after transfer, all federal and Louisiana tax
 4 identification numbers for both transferor and transferee, the date of transfer, the
 5 amount transferred, and any other information required by the state historic
 6 preservation office or the Department of Revenue. Failure to comply with this
 7 notification provision will result in the disallowance of the tax credit until the parties
 8 are in full compliance.

9 * * *

10 §6020. Angel Investor Tax Credit Program

11 * * *

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

15 * * *

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

29 * * *

1 §6021. Brownfields Investor Tax Credit

2 * * *

3 I. Transferability of the credit. Any tax credits provided for in this Section
4 not previously claimed by any taxpayer against its income tax may be transferred or
5 sold to another Louisiana taxpayer, subject to the following conditions:

6 * * *

7 (2) Transferors and transferees shall submit to the Department of Revenue
8 in writing, a notification of any transfer or sale of tax credits within ~~thirty~~ ten
9 business days after the transfer or sale of such tax credits. The notification shall
10 include the transferor's tax credit balance prior to transfer, a copy of any tax credit
11 certification letter(s) issued by the Department of Environmental Quality, the name
12 of the state-certified site, the transferor's remaining tax credit balance after transfer,
13 all tax identification numbers for both transferor and transferee, the date of transfer,
14 the amount transferred, a copy of the credit certificate, price paid by the transferee
15 to the transferor, for the tax credits, and any other information required by the
16 Department of Revenue. For the purpose of reporting transfer prices, the term
17 "transfer" shall include allocations pursuant to R.S. 47:6007(C)(3) as provided by
18 rule.

19 * * *

20 §6022. Digital interactive media and software tax credit

21 * * *

22 E. Use of tax credits

23 (1) For tax credits earned for expenditures made on or before December 31,
24 2011:

25 * * *

26 (e) Any tax credits allocated to a person and not previously claimed by any
27 taxpayer against his Louisiana state income or franchise tax may be transferred or
28 sold by such person to another person, subject to the following conditions:

29 * * *

1 (ii) Transferors and transferees shall submit to the office and Department of
 2 Revenue in writing, a notification of any transfer or sale of tax credits within ~~thirty~~
 3 ten business days after the transfer or sale of such tax credits. The notification shall
 4 include the transferor's tax credit balance prior to transfer, the state-certified
 5 production number, the name of the state-certified production, the transferor's
 6 remaining tax credit balance after transfer, all tax identification numbers for both
 7 transferor and transferee, the date of transfer, the amount transferred, a copy of the
 8 tax credit certificate, and any other information required by the office or the
 9 Department of Revenue.

10 * * *

11 §6034. Musical and theatrical production income tax credit

12 * * *

13 D.(1) The credit shall be allowed against individual or corporate income tax
 14 of the companies or financiers of the production or infrastructure project in
 15 accordance with their share of the credit as provided for in the application for
 16 certification for the production or infrastructure project. A company or financier
 17 may on a one-time basis, transfer the credit, ~~and/or~~ or any refund of an overpayment,
 18 to an individual or other entity including without limitation a bank or other lender,
 19 provided that the transfer shall not be effective until receipt by the Department of
 20 Revenue of written notice of such transfer. Transferors and transferees shall submit
 21 to the Department of Revenue in writing, a notification of any transfer of the tax
 22 credit within ten business days after the transfer. The credit shall be allowed for the
 23 taxable period in which expenditures eligible for a credit are expended. Any excess
 24 of the credit over the income tax liability against which the credit may be applied
 25 shall constitute an overpayment, as defined in R.S. 47:1621(A), and the secretary of
 26 the Department of Revenue shall make a refund of such overpayment from the
 27 current collections of the taxes imposed by Chapter 1 of Subtitle II of this Title, as

1 amended. The right to a refund of any such overpayment shall not be subject to the
2 requirements of R.S. 47:1621(B).

3 * * *

4 Section 2. R.S. 44:4.1(B)(32) is hereby amended and reenacted to read as follows:

5 §4.1. Exceptions

6 * * *

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

12 * * *

13 (32) R.S. 47:15, 349, 633.6, 1508, 1515.3, 1516, 1524(G), 1837, 2130, 2327,
14 2605, 6026, 9006

15 * * *

16 Section 3. This Act shall become effective upon signature by the governor or, if not
17 signed by the governor, upon expiration of the time for bills to become law without signature
18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
19 vetoed by the governor and subsequently approved by the legislature, this Act shall become
20 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)]

Leger HB No. 377

Abstract: Requires the Dept. of Revenue to establish a tax credit registry to track transfers, claims, and refunds of tax credits and changes the time for reporting transfers of various tax credits from 30 days to 10 business days.

Proposed law provides for the establishment of a central tax credit registry within the Department of Revenue (DOR) for the registration and recordation of tax credits granted, issued, and authorized by the state and any subsequent transfers.

Proposed law provides definitions for "identification number", "tax credit certificate", "transfer", and "transferor".

Proposed law requires that, beginning Jan. 1, 2014, all state agencies issuing tax credits to promptly send a copy of any newly granted, issued, or authorized tax credit certificates to the DOR. Upon receipt of this information, DOR shall assign an identifying number to each tax credit, and shall record the tax credit into the registry along with the name of the individual or entity issued the tax credit, the amount of the tax credit, and any other information deemed necessary by the secretary.

Proposed law requires any state agency that issues or authorizes tax credits to remit an electronic report no later than Jan. 31, 2014, of all tax credit certificates issued prior to Jan. 1, 2014. Further requires the department to endeavor to record all tax credit transfers which occurred prior to Jan. 1, 2014, into the registry.

Proposed law requires joint notice from the transferor and the transferee of all tax credit transfers to be submitted to the DOR. Upon receipt of the applicable tax credit information, DOR shall record the transfer of the tax in the registry. Further provides that no issuance or transfer of tax credits after Jan. 1, 2014, shall be effective as to third parties nor recognized by DOR until it has been recorded in the registry.

Proposed law provides for the disallowance and recapture of tax credits if DOR or the agency issuing the tax credit finds that an individual or entity obtained a tax credit in violation of present law, including but not limited to fraud or misrepresentation.

Proposed law provides that if the transferor of a tax credit did not have the right to claim or use the tax credit at the time of the transfer, the transferee's recourse shall be against the transferor, as provided by agreement of the parties. Further provides that DOR shall warrant the validity of the information recorded in the registry for credits issued after Jan. 1, 2014.

Proposed law provides that in case of disputed title to tax credits, prescription against assessment shall be suspended by the filing of a summary proceeding in any state or federal court, the filing of a written agreement between all interested taxpayers and the secretary, or the filing of any pleading with the Board of Tax Appeals.

Proposed law provides that information in the registry regarding the ownership and value of tax credits and all transfers of tax credits shall be deemed personal and confidential and shall not be available to the public. Further provides that data compiled in the registry shall be available for cross-referencing by other state agencies; however, state agencies shall apply for access to the registry from the department and shall be subject to any permissions, restrictions, and conditions as determined by the department.

Proposed law authorizes the department to promulgate rules and regulations as are necessary to implement the provisions of proposed law.

Present law provides for various tax credit programs, including but not limited to the motion picture investor, new markets, rehabilitation of historic structures, Angel Investor, Brownfields Investor, digital interactive media and software, and musical and theatrical production tax credits. Present law requires, in cases of transferable tax credits, for the transferor and the transferee to submit to the agency administering the tax credit and the department written notification of the transfer or sale of the tax credit within 30 days of the transfer. Proposed law retains present law but changes the period of written notification from 30 days of the transfer or sale of the credit to 10 business days of the transfer or sale of the credit.

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

(Amends R.S. 44:4.1(B)(32) and R.S. 47:6007(C)(4)(b), 6016(F)(1)(b), 6019(A)(3)(b)(i)(cc), 6020(F)(2), 6021(I)(2), 6022(E)(1)(e)(ii), and 6034(D)(1); Adds R.S. 47:1508(B)(33) and 1524)

Summary of Amendments Adopted by House

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

1. Provided for an exception to the confidentiality of tax records for the furnishing of information as requested by a transferor of tax credits.
2. Changed the date from Sept. 1, 2013, to Jan. 1, 2014, that tax credits must be registered in order to be eligible for transfer.
3. Deleted requirements that transfers or claims against tax credits be registered no later than 10 business days within the date of transfer, claim, or refund of the tax credit and that only properly registered tax credits shall be eligible for transfer.
4. Added provision that no issuance or transfer of tax credits after Jan. 1, 2014, shall be effective as to third parties nor recognized by the DOR until it has been recorded in the registry.
5. Deleted requirement that state agencies which issued tax credits prior to Sept. 1, 2013, remit all information the agency retained regarding the tax credit to the department for entry into the registry. Additionally, deletes requirement that the owner of a tax credit issued prior to Sept. 1, 2013, remit all necessary information to the department or state agency which issued the original credit for entry into the centralized registry.
6. Added provision that makes it the responsibility of the state agency which issued tax credits to report the issuance of the credit to DOR for input in the registry. Further requires state agencies to report to DOR no later than Jan. 31, 2014, all tax credit certificates issued by such agency prior to Jan. 1, 2014.
7. Added requirement that DOR warrant the validity of the information recorded in the registry for credits issued after Jan. 1, 2014.
8. Added provisions for the disallowance and recapture of tax credits and for when prescription begins to run in the case of disputed title of tax credits.