

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.

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AN ACT

To amend and reenact 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) and to enact R.S. 47:1508(B)(33) and 1524, relative to tax credits; to establish a registry for certain tax credits; to provide relative to agencies required to submit information to the registry; to provide relative to the information which shall be recorded in the registry; to provide for certain requirements and limitations; to provide relative to access to information in the registry; to provide with respect to the confidentiality of certain tax records; to authorize the secretary of the Department of Revenue to share certain tax credit transfer information; to provide relative to the transferability of certain tax credits; to provide relative to the notification of the transfer or sale of certain tax credits; to provide that certain records are private; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6007(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) are hereby amended and reenacted and R.S. 47:1508(B)(33) and 1524 are hereby enacted to read as follows:

§1508. Confidential character of tax records

* * *

B. Nothing herein contained shall be construed to prevent:

* * *

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

* * *

1 §1524. Tax credit registry; requirements; limitations

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

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

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

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

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

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

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

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

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

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

28 C. Administration. There is hereby established a central tax credit registry,
29 hereinafter referred to as "registry", within the department for the registration and

1 recordation of tax credits granted, issued, and authorized by the state and any
2 subsequent transfers.

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

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

15 D. Transfers.

16 (1) Joint notice from the transferor and the transferee of all tax credit
17 transfers shall be submitted to the department, including additional information that
18 the secretary deems necessary and appropriate. Upon receipt of the applicable tax
19 credit information, the department shall record the transfer of the tax credit by
20 recording the applicable identification numbers, the name of the transferor and
21 transferee, the amount of the tax credits being transferred, and any other information
22 deemed necessary by the secretary.

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

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

1 E. Disallowance and recapture of tax credits. A tax credit shall be
2 disallowed and recaptured if the department or state agency issuing the tax credit
3 finds that an individual or entity obtained a tax credit in violation of the provisions
4 of the statute authorizing issuance of the tax credit, including but not limited to fraud
5 or misrepresentation. Any tax credit previously granted to an individual or entity but
6 later disallowed may be recovered by the secretary pursuant to the provisions of R.S.
7 47:1561. The provisions of this Subsection are in addition to and shall not limit the
8 authority of the secretary of the department to assess, collect, or recapture under any
9 other provision of law.

10 (1) If the transferor of a tax credit did not have the right to claim or use the
11 tax credit at the time of the transfer, the transferee's recourse shall be against the
12 transferor, as provided by agreement of the parties. The department shall warrant the
13 validity of the information recorded in the registry for credits issued after January 1,
14 2014. A good faith transferee, as determined by the department at the time of
15 transfer, that relied on the validity of the credits recorded in the registry shall not be
16 subject to the provisions of this Subsection. For purposes of this Subsection, "good
17 faith" shall mean honesty in fact and the observance of reasonable commercial
18 standards of fair dealing.

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

22 F. Prescription. (1) In case of disputed title to tax credits, prescription
23 against assessment shall be suspended by any of the following:

24 (a) The filing of a summary proceeding in any state or federal court.

25 (b) A written agreement between all interested taxpayers and the secretary.

26 (c) The filing of any pleading, either by the secretary or any taxpayer, with
27 the Board of Tax Appeals.

28 (2) Prescription shall begin to run again upon the issuance of a final
29 administrative decision or a judgment that has become final and nonappealable.

1 G. Registry access. Information contained in the registry and in the
2 possession of the department regarding the ownership of tax credits, all transfers of
3 tax credits, and the amount of tax credits shall be deemed privileged and confidential
4 under the provisions of R.S. 47:1508 and shall not be available to the public;
5 however, the provisions of this Subsection shall not be construed to prevent
6 information relative to the entity or individual initially issued the tax credit, the
7 initial amount of the tax credit, and any information regarding any transfer of the tax
8 credit from being released to the public pursuant to a public records request
9 submitted to the state agency administering the tax credit program pursuant to the
10 Public Records Law, R.S. 44:1 et seq. The data compiled in the registry shall be
11 available for cross-referencing by other state agencies; however, state agencies shall
12 apply to the department for access to the registry and shall be subject to any
13 permissions, restrictions, and conditions as determined by the department. Upon
14 application by a transferor, on a form prescribed by the secretary, the department
15 shall provide information sufficient to certify the transferor is the record owner of
16 tax credits issued on or after January 1, 2014, which are registered in the transferor's
17 name in the registry. The secretary shall prescribe the application required by the
18 provisions of this Subsection to be submitted by a transferor to certify the record
19 owner of tax credits.

20 H. Rules. The secretary of the department may promulgate rules and
21 regulations in accordance with the Administrative Procedure Act as may be
22 necessary to implement the provisions of this Section.

23 * * *

24 §6007. Motion picture investor tax credit

25 * * *

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

27 * * *

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

4 * * *

5 (b) Transferors and transferees shall submit to the ~~office, and to the~~
 6 Department of Revenue in writing, a notification of any transfer or sale of tax credits
 7 within ~~thirty~~ ten business days after the transfer or sale of such tax credits. The
 8 notification shall include the transferor's tax credit balance prior to transfer, a copy
 9 of any tax credit certification letter(s) issued by the office and the secretary of the
 10 Department of Economic Development ~~and~~; the transferor's remaining tax credit
 11 balance after transfer, all tax identification numbers for both transferor and
 12 transferee, the date of transfer, the amount transferred, a copy of the credit
 13 certificate, price paid by the transferee to the transferor, in the case when the
 14 transferor is a state-certified production, for the tax credits, and any other
 15 information required by the office or the Department of Revenue. For the purpose
 16 of reporting transfer prices, the term "transfer" shall include allocations pursuant to
 17 Paragraph (2) of this Subsection as provided by rule. ~~The office may post on its~~
 18 ~~website an average tax credit transfer value, as determined by the office and the~~
 19 ~~secretary of the Department of Economic Development to reflect adequately the~~
 20 ~~current average tax credit transfer value.~~ The tax credit transfer value means the
 21 percentage as determined by the price paid by the transferee to the transferor divided
 22 by the dollar value of the tax credits that were transferred in return. The notification
 23 submitted to the ~~office~~ Department of Revenue shall include a processing fee of up
 24 to two hundred dollars per transferee, and any ~~pricing~~ information submitted by a
 25 transferor or transferee shall be treated by the office and the Department of Revenue
 26 as proprietary to the entity reporting such information and therefore confidential.
 27 However, this shall not prevent the publication of summary data that includes no
 28 fewer than three transactions.

29 * * *

1 §6016. New markets tax credit

2 * * *

3 F.(1) Any tax credits not previously claimed by any taxpayer against its
4 income or franchise tax may be transferred or sold to another Louisiana taxpayer,
5 subject to the following conditions:

6 * * *

7 (b) 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, the transferor's remaining
11 tax credit balance after transfer, all tax identification numbers for both transferor and
12 transferee, the date of transfer, the amount transferred, a copy of the credit
13 certificate, price paid by the transferee to the transferor, and any other information
14 required by the Department of Revenue. The notification submitted shall include a
15 processing fee of up to two hundred dollars per transferee.

16 * * *

17 §6019. Tax credit; rehabilitation of historic structures

18 A.

19 * * *

20 (3)

21 * * *

22 (b)(i)

23 * * *

24 (cc) Transferors and transferees shall submit to the state historic preservation
25 office and to the Department of Revenue in writing a notification of any transfer or
26 sale of tax credits within ~~thirty~~ ten business days after the transfer or sale of such tax
27 credits. The notification shall include the transferor's tax credit balance prior to
28 transfer, the credit identification number assigned by the state historic preservation
29 office, the remaining balance after transfer, all federal and Louisiana tax
30 identification numbers for both transferor and transferee, the date of transfer, the

1 amount transferred, and any other information required by the state historic
2 preservation office or the Department of Revenue. Failure to comply with this
3 notification provision will result in the disallowance of the tax credit until the parties
4 are in full compliance.

5 * * *

6 §6020. Angel Investor Tax Credit Program

7 * * *

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

11 * * *

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

25 * * *

26 §6021. Brownfields Investor Tax Credit

27 * * *

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

4 * * *

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

17 * * *

18 §6022. Digital interactive media and software tax credit

19 * * *

20 E. Use of tax credits

21 (1) For tax credits earned for expenditures made on or before December 31,
22 2011:

23 * * *

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

27 * * *

28 (ii) Transferors and transferees shall submit to the ~~office and~~ Department of
29 Revenue,² in writing, a notification of any transfer or sale of tax credits within ~~thirty~~
30 ten business days after the transfer or sale of such tax credits. The notification shall

1 include the transferor's tax credit balance prior to transfer, the state-certified
 2 production number, the name of the state-certified production, the transferor's
 3 remaining tax credit balance after transfer, all tax identification numbers for both
 4 transferor and transferee, the date of transfer, the amount transferred, a copy of the
 5 tax credit certificate, and any other information required by the office or the
 6 Department of Revenue.

7 * * *

8 §6034. Musical and theatrical production income tax credit

9 * * *

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

27 * * *

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

29 §4.1. Exceptions

30 * * *

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

6 * * *

7 (32) R.S. 47:15, 349, 633.6, 1508, 1515.3, 1516, 1524(G), 1837, 2130, 2327,
8 2605, 6026, 9006

9 * * *

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____