

2021 Regular Session

HOUSE BILL NO. 424

BY REPRESENTATIVES MCFARLAND, ADAMS, BACALA, BUTLER, CARRIER, ROBBY CARTER, CORMIER, COX, DAVIS, ECHOLS, EDMONDS, FIRMENT, GADBERRY, HARRIS, HOLLIS, HORTON, JEFFERSON, LANDRY, LARVADAIN, LYONS, MARCELLE, MCMAHEN, RISER, ROMERO, SCHAMERHORN, STAGNI, THOMPSON, WHITE, AND WRIGHT

TAX/INCOME TAX: Establishes income tax incentives for taxpayers related to fostering and adopting certain infants and children

1 AN ACT

2 To enact R.S. 47:293(9)(a)(xx) and (xxi), 297.16, 297.17, and 6042, relative to income tax
3 incentives; to provide for an individual income tax deduction for the adoption of a
4 child or youth from foster care; to provide for a deduction for the private adoption
5 of certain infants; to provide for the amount of the deduction; to provide for
6 limitations and requirements; to establish an income tax credit for donations to
7 certain foster care organizations; to provide for definitions; to provide for the amount
8 of the credit; to provide for the application for and granting of the credit; to provide
9 for certain requirements; to authorize the promulgation of rules; to provide for
10 applicability; to provide for an effective date; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 47:293(9)(a)(xx) and (xxi), 297.16, 297.17, and 6042 are hereby
13 enacted to read as follows:

14 §293. Definitions

15 The following definitions shall apply throughout this Part, unless the context
16 requires otherwise:

17 * * *

1 (9)(a) "Tax table income", for resident individuals, means adjusted gross
2 income plus interest on obligations of a state or political subdivision thereof, other
3 than Louisiana and its municipalities, title to which obligations vested with the
4 resident individual on or subsequent to January 1, 1980, and less:

5 * * *

6 (xx) The deduction for adopting a child or youth from foster care as provided
7 in R.S. 47:297.16.

8 (xxi) The deduction for the private adoption of certain infants as provided
9 for in R.S. 47:297.17.

10 * * *

11 §297.16. Tax deduction; adoption from foster care

12 A.(1) There shall be allowed a deduction from tax table income for a
13 taxpayer who adopts a child who is in foster care, as defined in Children's Code
14 Article 603, or a youth receiving extended foster care services pursuant to the
15 Extended Foster Care Program Act. The amount of the deduction authorized by this
16 Section shall be equal to five thousand dollars and shall be applicable in the year the
17 adoption becomes final. The amount of the deduction authorized by this Section
18 shall not exceed the total taxable income of the taxpayer claiming the deduction.

19 (2) The deduction authorized pursuant to the provisions of this Section shall
20 be in lieu of the dependency deduction authorized in R.S. 47:294.

21 B. The taxpayer claiming the deduction authorized pursuant to the provisions
22 of this Section shall maintain all records necessary to verify the adoption and if
23 requested, shall provide the records to the Department of Revenue when filing the
24 taxpayer's tax return.

25 C. The secretary of the Department of Revenue may promulgate rules in
26 accordance with the Administrative Procedure Act to implement the provisions of
27 this Section, including rules related to the submission of documentation when
28 claiming the deduction.

1 §297.17. Tax deduction; private adoption of certain infants

2 A.(1) There shall be allowed a deduction from tax table income for a
3 taxpayer who adopts an infant who is unrelated to the taxpayer and who is less than
4 one year of age through a private agency as defined in Children's Code Article
5 1169(1) or adopts an infant who is unrelated to the taxpayer and who is less than one
6 year of age through an attorney. For purposes of this Section, the age of the infant
7 shall be determined at the time of the adoption placement. The amount of the
8 deduction authorized by this Section shall be equal to five thousand dollars and shall
9 be applicable in the year the adoption becomes final. The amount of the deduction
10 authorized by this Section shall not exceed the total taxable income of the taxpayer.

11 (2) The deduction authorized pursuant to the provisions of this Section shall
12 be in lieu of the dependency deduction authorized in R.S. 47:294.

13 B. The taxpayer shall maintain all records necessary to verify the adoption
14 and if requested, shall provide the records to the Department of Revenue when filing
15 the taxpayer's tax return.

16 C. The secretary of the Department of Revenue may promulgate rules in
17 accordance with the Administrative Procedure Act to implement the provisions of
18 this Section, including rules related to the submission of documentation when
19 claiming the deduction.

20 * * *

21 §6042. Credits; qualifying foster care charitable organizations

22 A.(1)(a) There shall be allowed a nonrefundable income tax credit for
23 donations a Louisiana taxpayer makes during a taxable year to a qualifying foster
24 care charitable organization. The amount of the credit shall be equal to the actual
25 amount of the donation used by the foster care organization to provide services to
26 qualified individuals, or fifty thousand dollars, whichever is less.

27 (b) The total amount of credits granted by the department pursuant to the
28 provisions of this Section shall not exceed five hundred thousand dollars per calendar
29 year. The granting of credits shall be on a first-come, first-served basis. If the total

1 amount of credits claimed in any particular calendar year exceeds the amount of tax
2 credits authorized for that year, the excess shall be treated as having been applied for
3 on the first day of the subsequent year. All requests received on the same business
4 day shall be treated as received at the same time, and if the aggregate amount of the
5 requests received on a single business day exceeds the total amount of available tax
6 credits, tax credits shall be approved on a pro rata basis.

7 (c) The credit may be used in addition to any federal tax credit or deduction
8 earned for the same donation. However, a taxpayer shall not receive any other state
9 tax credit, exemption, exclusion, deduction, rebate, or any other state tax benefit for
10 a donation for which the taxpayer has received a tax credit pursuant to this Section.

11 (2) If the tax credit earned pursuant to this Section exceeds the total tax
12 liability of a taxpayer in the taxable year, the amount of the credit not used as an
13 offset against the taxpayer's tax liability in the taxable year may be carried forward
14 as a credit against subsequent income tax liabilities for a period not to exceed five
15 taxable years.

16 B. An organization that seeks to become a qualifying foster care charitable
17 organization shall apply to the department and provide the following:

18 (1) A statement, signed by an officer of the organization under penalty of
19 perjury, that the organization meets all of the criteria provided in Paragraph (F)(4)
20 of this Section.

21 (2) A copy of the exemption letter from the Internal Revenue Service
22 verifying the organization is exempt from federal income tax pursuant to Section
23 501(c)(3) of the Internal Revenue Code.

24 (3) A copy of the organization's operating budget for the prior operating year
25 and the amount of the budget spent on providing services to qualified individuals.

26 (4) A copy of any federal income tax return filed by the organization for the
27 prior year.

28 (5) A copy of the financial statements and detailed schedule of expenses for
29 the organization from the prior year.

1 (6) A schedule detailing how the organization calculated the percentage of
2 its budget spent on providing services to qualified individuals.

3 (7) A statement that the organization intends to continue spending at least
4 seventy-five percent of its total budget on providing services to qualified individuals
5 or intends to continue spending at least seventy-five percent of its funds budgeted for
6 Louisiana on providing services to qualified individuals and that one hundred percent
7 of the donations it receives from Louisiana residents will be spent on providing
8 services to qualified individuals.

9 (8) Any other information required by the department.

10 C.(1) No later than the next January thirty-first following approval by the
11 department and annually thereafter no later than January thirty-first, each foster care
12 organization shall file a report with the department prepared by an independent
13 certified public accountant who is not related to a donor or affiliated with the foster
14 care organization.

15 (2) Each report required pursuant to Paragraph (1) of this Subsection shall
16 contain the following:

17 (a) A certification that the organization continues to meet the requirements
18 of this Section.

19 (b) The name, social security number, address, and Louisiana and federal
20 taxpayer identification numbers of each person who made a donation to the foster
21 care organization during the prior calendar year.

22 (c) The amount of each donation received during the prior calendar year.

23 (d) The amount of each donation utilized during the prior calendar year to
24 provide services to qualified individuals and the services provided.

25 (e) Any other information or documentation required by the department.

26 D.(1) A qualified foster care charitable organization shall issue a receipt to
27 each person from whom the foster care organization receives a donation. The receipt
28 shall indicate the actual amount of the donation that was used by the foster care
29 organization to provide services to qualified individuals. A taxpayer shall provide

1 a copy of the receipt to the department when claiming the credit authorized by this
2 Section.

3 (2) The department shall provide a standardized format for the receipt
4 required pursuant to this Subsection.

5 E. The secretary of the department may promulgate rules in accordance with
6 the provisions of the Administrative Procedure Act to implement the provisions of
7 this Section.

8 F. For purposes of this Section, the following words shall have the following
9 meanings unless the context clearly indicates otherwise:

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

11 (2) "Louisiana taxpayer" or "taxpayer" means a person who is required to file
12 a Louisiana income tax return.

13 (3) "Qualified individual" means a child in a foster care placement program
14 established by the Department of Children and Family Services.

15 (4) "Qualifying foster care charitable organization" or "foster care
16 organization" means an organization that meets all of the following criteria:

17 (a) Is exempt from federal income tax pursuant to Section 501(c)(3) of the
18 Internal Revenue Code.

19 (b) Provides services to at least twenty-five qualified individuals each
20 operating year.

21 (c) Spends at least seventy-five percent of its total budget on providing
22 services to qualified individuals or spends at least seventy-five percent of its funds
23 budgeted for Louisiana on providing services to qualified individuals and the
24 organization certifies to the department that one hundred percent of the donations it
25 receives from Louisiana residents will be spent on providing services to qualified
26 individuals.

27 (d) Is approved by the department after applying as provided in Subsection
28 B of this Section.

1 (5) "Services" means cash assistance, medical care, child care, food,
 2 clothing, shelter, job placement, and job-training services or any other assistance
 3 reasonably necessary to meet immediate basic needs that are provided to a qualified
 4 individual and used in Louisiana.

5 Section 2. The provisions of this Act shall be applicable to adoptions finalized on
 6 or after January 1, 2022 and to donations made by taxpayers to qualifying foster care
 7 charitable organizations on or after January 1, 2022.

8 Section 3. This Act shall become effective on January 1, 2022.

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)]

HB 424 Reengrossed

2021 Regular Session

McFarland

Abstract: Establishes \$5,000 income tax deductions for a taxpayer who adopts a child who is in foster care, a youth receiving extended foster care services, or certain infants who are less than one year of age and establishes a nonrefundable income tax credit for donations a La. taxpayer makes during a taxable year to qualifying foster care charitable organizations.

Proposed law provides for the establishment of an income tax deduction for a taxpayer who adopts a child who is in foster care, as defined in present law (Children's Code Art. 603), or a youth receiving extended foster care services pursuant to present law (R.S. 46:288.1 et seq.—Extended Foster Care Program Act).

Proposed law provides for the establishment of an income tax deduction for a taxpayer who adopts an infant who is unrelated to the taxpayer and who is less than one year of age through a private agency or who adopts an infant who is unrelated to the taxpayer and who is less than one year of age through an attorney. For purposes of proposed law, the age of the infant shall be determined at the time of the adoption placement.

Proposed law provides that the amount of these deductions shall equal \$5,000 and shall be applicable in the year the adoption of the child becomes final. Prohibits the amount of the deduction from exceeding the total taxable income of the taxpayer claiming the deduction and provides that the deductions established in proposed law shall be in lieu of the dependency deduction authorized in present law (R.S. 47:294).

Proposed law requires taxpayers claiming these deductions to maintain all records necessary to verify the adoption and if requested, to provide the records to the Dept. of Revenue when filing the taxpayer's tax return.

Proposed law authorizes the promulgation of rules in accordance with present law (Administrative Procedure Act) to implement the provisions of proposed law, including rules related to the submission of documentation when claiming these deductions.

Present law defines "tax table income" for resident individuals as adjusted gross income plus interest on certain state or political subdivision obligations less items such as gratuitous

grants, loans, or other disaster benefits included in federal adjusted gross income, federal income tax liability, amounts deposited into medical or educational savings accounts, and excess personal exemptions and deductions.

Proposed law retains present law but adds to the list of income not included in "tax table income" the deduction for adopting a foster child and the deduction for the private adoption of infants less than one year of age.

Proposed law authorizes a nonrefundable income tax credit for donations a La. taxpayer makes during a taxable year to qualifying foster care charitable organizations, hereinafter "foster care organizations".

Proposed law provides that the amount of the credit is equal to the amount of the donation used by the foster care organization to provide services to a qualified individual, or \$50,000, whichever is less. The total amount of credits granted pursuant to proposed law shall not exceed \$500,000 per calendar year.

Proposed law requires the credits to be granted on a first-come, first-served basis. If the total amount of credits claimed in a calendar year exceeds the amount of tax credits authorized for that year, the excess shall be treated as having been claimed on the first day of the subsequent year.

Proposed law authorizes a taxpayer to carry forward the amount of the tax credit not used as an offset against the taxpayer's subsequent tax liability for a period not to exceed five taxable years.

Proposed law requires an organization that seeks to become a qualifying foster care charitable organization to apply to the Dept. of Revenue (DOR) and provide certain information. Requires a foster care organization to annually file a report with DOR.

Proposed law defines "Louisiana taxpayer" or "taxpayer" as a person who is required to file a La. income tax return.

Proposed law defines "qualifying foster care charitable organization" or "foster care organization" as an organization that meets all of the following criteria:

- (1) Is exempt from federal income tax pursuant to federal law.
- (2) Provides services to at least 25 qualified individuals each operating year.
- (3) Spends at least 75% of its total budget on providing services to qualified individuals or spends at least 75% of its funds budgeted for La. on providing services to qualified individuals and the organization certifies to DOR that 100% of the donations it receives from La. residents will be spent on providing services to qualified individuals.
- (4) Is approved by DOR after applying as provided in proposed law.

Proposed law defines a "qualified individual" as a child in a foster care placement program established by the Dept. of Children and Family Services.

Proposed law defines "services" as cash assistance, medical care, child care, food, clothing, shelter, job placement, and job-training services or any other assistance reasonably necessary to meet immediate basic needs that are provided for a qualified individual and used in La.

Proposed law requires a qualified foster care charitable organization to issue a receipt to each person from whom the foster care organization receives a donation. Requires the receipt to indicate the actual amount of the taxpayer's donation that was used by the foster care

organization to provide services to qualified individuals. Requires a taxpayer to provide a copy of the receipt to DOR when claiming the credit authorized by proposed law.

Proposed law is applicable to adoptions finalized on or after Jan. 1, 2022, and to donations made by taxpayers to qualifying foster care charitable organizations on or after Jan. 1, 2022.

Effective Jan. 1, 2022.

(Adds R.S. 47:293(9)(a)(xx) and (xxi), 297.16, 297.17, and 6042)

Summary of Amendments Adopted by House

The House Floor Amendments to the original bill:

1. Establish an income tax deduction equal to \$5,000 for a taxpayer who adopts an infant who is unrelated to the taxpayer and who is less than one year of age through a private agency or an attorney.
2. Authorize a nonrefundable income tax credit for donations a La. taxpayer makes during a taxable year to qualifying foster care organizations. Provides for the amount of the credit and the granting of credits on a first-come, first-served basis.
3. Establish requirements and limitations for applying for the credit, set forth information required to be submitted to the Dept. of Revenue, establish definitions, and authorize the Dept. of Revenue to promulgate rules to implement provisions of proposed law related to the tax credit.
4. Clarify that the provisions of proposed law related to the tax credit shall be applicable to donations made by taxpayers to qualifying foster care charitable organizations on or after Jan. 1, 2022.