

2018 Second Extraordinary Session

SENATE BILL NO. 18

BY SENATOR MORRELL

TAX/TAXATION. Creates a tax credit registry for tax credits with carryover provisions.
(Item #21) (gov sig)

1 AN ACT

2 To enact R.S. 47:1524.1, relative to tax credits; to create a registry for tax credits with
3 carryforwards; to provide for administration of the registry; and to provide for
4 related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 47:1524.1 is hereby enacted to read as follows:

7 **§1524.1. Tax credit carryforward registry; requirements; limitations**

8 **A. Purpose. The intent of this Section is to provide for a centralized**
9 **recordation system for outstanding carryforwards of tax credits granted, issued,**
10 **and authorized by the state of Louisiana to provide certainty to the state**
11 **regarding the amount of outstanding tax credits.**

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

14 **(1) "Department" means the Department of Revenue.**

15 **(2) "Secretary" means the secretary of the Department of Revenue.**

16 **(3) "Tax credit" means any tax credit granted, issued, or authorized by**
17 **the state applied against income or corporation franchise taxes collected by the**

1 department that has a carryforward balance that will not be fully utilized on a
2 tax return filed for an income tax period beginning before January 1, 2018, or
3 for a franchise tax period beginning before January 1, 2019. For purposes of
4 this Section, "tax credit" shall include only credits receiving priority pursuant
5 to R.S. 47:1675(B)(3) and (4) and shall not include credits allowed to be carried
6 forward pursuant to R.S. 47:297.4(B)(2) or R.S. 47:6104(C).

7 (4) "Tax credit carryforward schedule" means the schedule that will be
8 assigned to each tax credit recorded in the registry. A tax credit's carryforward
9 schedule shall remain associated with the tax credit from the time the credit is
10 originally entered into the registry through any claim of the credit until such
11 time as the tax credit is fully utilized.

12 (5) "Tax credit certificate" means any document granting tax credits
13 issued by a state agency administering a tax credit program that provides for
14 carryforward of credits that are not refundable, including but not limited to tax
15 credit certification letters which shall include the name of the individual or
16 entity issued the tax credit, the amount of the tax credit, and any other
17 identifying information regarding the tax credit.

18 C. Administration. (1) There is hereby established a tax credit registry,
19 referred to in this Section as "registry", within the department for the
20 recordation of tax credits granted, issued, or authorized by the state that have
21 a carryforward balance that will not be fully utilized in the year in which the
22 credit is earned.

23 (2) Beginning January 1, 2019, all state agencies issuing tax credits with
24 a carryforward provision in the statute authorizing the credit and which are to
25 be applied against taxes collected by the department shall promptly send a copy
26 of any newly granted, issued, or authorized tax credit certificates to the
27 department. Upon receipt of this information, the department shall record the
28 tax credit into the registry along with the name of the individual or entity issued
29 the tax credit, the amount of the tax credit, and any other information deemed

1 necessary by the secretary.

2 (3)(a) Any taxpayer who earned a tax credit before January 1, 2018, that
3 is not granted by contract or for which no tax credit certificate is issued and for
4 which there is a carryforward balance and time remaining in the carryforward
5 period, shall claim the remaining tax credit balance on a return for the income
6 tax period beginning on or after January 1, 2018, and before January 1, 2019,
7 or the franchise tax period beginning on or after January 1, 2019, and before
8 January 1, 2020. If the tax credit carryforward balance is not claimed as
9 provided in this Subparagraph, the carryforward shall not be available to be
10 claimed on a subsequent tax return without an express exception provided by
11 administrative rules promulgated by the department. The secretary shall not
12 grant an exception unless the exception is first approved by the Joint Legislative
13 Committee on the Budget.

14 (b) Any taxpayer who earns a tax credit on or after January 1, 2018, that
15 is not granted by contract or for which no tax credit certificate is issued, shall
16 claim the full tax credit balance on a return for the income tax period beginning
17 on or after January 1, 2018, and before January 1, 2019, or the franchise tax
18 period beginning on or after January 1, 2019, and before January 1, 2020. If the
19 tax credit carryforward balance is not claimed as provided in this
20 Subparagraph, the carryforward shall not be available to be claimed on a
21 subsequent tax return without an express exception provided by administrative
22 rules promulgated by the department. The secretary shall not grant an
23 exception unless the exception is first approved by the Joint Legislative
24 Committee on the Budget.

25 (4) The secretary shall prescribe the form required by the provisions of
26 this Subsection to be submitted by a tax credit holder to certify the record
27 owner of tax credits and the remaining amount of tax credits available for
28 carrying forward.

29 D. A tax credit shall be disallowed and recaptured if the department or

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

9 E. Registry access. (1) Information contained in the registry and in the
10 possession of the department regarding the ownership of tax credits and the
11 amount of tax credits shall be deemed privileged and confidential under the
12 provisions of R.S. 47:1508 and shall not be available to the public.

13 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection,
14 the secretary shall include in the tax exemption budget the following
15 information:

16 (a) The number of businesses which receive each tax credit.

17 (b) The parish or location of each business which receives a tax credit;
18 provided, that if fewer than ten businesses receive a particular tax credit, the
19 tax exemption budget may group such tax credit with another tax credit which
20 also has fewer than ten businesses receiving it.

21 (c) The information shall be displayed in a manner that identifies:

22 (i) The industry group by North American Industry Classification
23 System sector.

24 (ii) The number of taxpayers by industry.

25 (iii) The total tax burden by industry group by individual tax before the
26 credit.

27 (iv) The total value to each industry group for each credit.

28 (v) The total tax value by each industry group by individual tax of the
29 tax collections after the credit.

1 **(3) The items contained in Paragraph (2) of this Subsection shall be**
 2 **published to the extent that the information is available to the department, on**
 3 **a schedule to be determined by the secretary of the department, and fully**
 4 **implemented by the date of publication of the Fiscal Year 2018-2019 tax**
 5 **exemption budget on or before March 1, 2020. The secretary shall ensure that**
 6 **the publication shall not include confidential information.**

7 **F. Rules. The secretary of the department may promulgate rules and**
 8 **regulations in accordance with the Administrative Procedure Act as may be**
 9 **necessary to implement the provisions of this Section. In addition to submitting**
 10 **the proposed rules to the appropriate standing committees of the legislature as**
 11 **required by the Administrative Procedure Act, the proposed rules shall be**
 12 **submitted to the Joint Legislative Committee on the Budget for approval prior**
 13 **to the rules being promulgated. The rules shall include a provision to provide**
 14 **for exceptions to Paragraph (C)(3) of this Section.**

15 Section 2. This Act shall become effective upon signature by the governor or, if not
 16 signed by the governor, upon expiration of the time for bills to become law without signature
 17 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 18 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 19 effective on the day following such approval.

The original instrument was prepared by Leonore F. Heavey. The following
 digest, which does not constitute a part of the legislative instrument, was
 prepared by Martha Hess.

DIGEST

SB 18 Reengrossed

2018 Second Extraordinary Session

Morrell

Present law provides for tax credits that include a carryforward provision that may be used if the taxpayer is unable to use the entire credit against tax for the year the tax credit was earned.

Present law provides for a tax credit registry for transferrable tax credits.

Proposed law provides for a tax credit registry for tax credits that are issued or earned for which the statute authorizing the tax credit provides for the carryforward of any tax credit balance that the taxpayer cannot use to offset tax on the return for the year in which the credit is earned.

Proposed law requires agencies issuing tax credits with carryforward provisions to remit

information about the credit to the Department of Revenue when the credits are issued beginning January 1, 2019.

Proposed law requires taxpayers holding tax credits issued before January 1, 2018, that have a remaining carryforward balance and that were not granted by contract or for which no tax credit certificate was issued to register their tax credits on a return for the income tax period beginning on or after January 1, 2018 and before January 1, 2019, or the franchise tax period beginning on or after January 1, 2019 and before January 1, 2020, or the remaining tax credit carryforward balance will no longer be available to be claimed.

Proposed law requires taxpayers holding tax credits issued on or after January 1, 2018, that were not granted by contract or for which no tax credit certificate was issued shall claim the full tax credit balance on a return for the income tax period beginning on or after January 1, 2018 and before January 1, 2019, or the franchise tax period beginning on or after January 1, 2019 and before January 1, 2020.

Proposed law authorizes the Department of Revenue to make exceptions to the taxpayer registration requirements, provided that the secretary obtain the approval of the Joint Legislative Committee on the Budget before granting the exception.

Proposed law provides that the information in the tax credit registry is confidential. Further provides that the secretary shall include in the tax exemption budget information regarding the number, parish, industry group, and value of the entities which receive each tax credit, provided that the publication shall not include confidential information.

Proposed law authorizes the Department of Revenue to issue rules pursuant to the Administrative Procedure Act. Requires that the Joint Legislative Committee on the Budget, in addition to the appropriate standing committees, approve the rules prior to being promulgated.

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

(Adds R.S. 47:1524.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Finance to the engrossed bill

1. Removes provision that requires agencies issuing tax credits to remit information regarding credits issued in prior years by January 31, 2019.
2. Clarifies the periods that taxpayers holding tax credits issued before January 1, 2018, have to claim the remaining tax credit balance.
3. Provides that taxpayers holding tax credits issued on or after January 1, 2018, that were not granted by contract or for which no tax credit certificate was issued shall claim the full tax credit balance on a return for the income tax period beginning on or after January 1, 2018, and before January 1, 2019, or the franchise tax period beginning on or after January 1, 2019, and before January 1, 2020.
4. Provides for the approval of the Joint Legislative Committee on the Budget before granting the secretary can grant an exception to the taxpayer registration requirements.
5. Provides that the secretary shall include in the tax exemption budget information regarding the number, parish, industry group, and value of the

entities which receive each tax credit, provided that the publication shall not include confidential information.

6. Requires that the Joint Legislative Committee on the Budget, in addition to the appropriate standing committees, approve any rules prior to their being promulgated.