SLS 23RS-339 **ORIGINAL**

2023 Regular Session

SENATE BILL NO. 170

BY SENATOR CARTER

TAX/TAXATION. Establishes a tax credit pilot program for certain Louisiana-based manufacturing industries. (gov sig)

AN ACT

To enact R.S. 47:6043, relative to tax credits; to establish a tax credit pilot program for certain manufacturing industries; to provide for the amount of the credit; to establish eligibility requirements for tax credit applicants; to provide for application and certification requirements; to provide for the administration of the credit; to authorize the promulgation of rules and regulations; to require submission of certain reports; to authorize the recovery of tax credits under certain circumstances; to provide for implementation of the tax credit pilot program; to provide for certain limitations and requirements; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

§6043. Louisiana-based manufacturing tax credit; pilot program; applications; limitations

A. Purpose. The primary purpose of this Section is to encourage private investment in and provide incentives for businesses to further manufacture products and component parts of products into marketable products in Louisiana rather than shipping their products for further processing to other states and countries using Louisiana's port, rail, trucking, and other multi

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modal methods. It is in the best interest of this state to promote the development of businesses that manufacture products such as steel, rubber, aluminum, forestry products, coffee, and other food products into marketable products in this state prior to being shipped into intrastate and interstate commerce. Because public funding sources for business investment have not kept pace with the need to expand our economy, it is determined that private investment and public-private partnerships should be encouraged as a means to assist the state in financing investment in manufacturing establishments in our state and in our citizens. The development of unique business investment and opportunities are essential to Louisiana's economic health and the ability of business and industry associated with manufacturing establishments to compete cost effectively on a regional, national, and global scale.

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

(1) "Department" shall mean the Department of Economic Development.

(2) "Eligible expenditures" shall mean and include any land, building, or other improvement, and all movable and immovable properties deemed necessary or useful in connection therewith. "Eligible expenditures" shall also include machinery, equipment, materials, products, or commodities owned by a manufacturing establishment or fabrication, assembly, distribution, processing, or warehousing facility located in Louisiana and classified as capital expenditures for federal income tax purposes.

(3) "Qualifying project" shall mean and include a project to be undertaken by a manufacturing establishment that has a maximum capital cost of not more than five million dollars and at which the predominant trade or business activity conducted will constitute manufacturing products or assembling raw materials imported through waterborne commerce into a marketable product in this state. However, "qualifying product" shall not mean or include manufacturing of chemicals, bulk liquid, oil, or gas.

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C. Tax credit.

(1) There is hereby authorized an income tax credit for eligible expenditures associated with construction of a qualifying project in this state. The maximum amount of the credit shall be equal to fifty percent of the eligible expenditures of the qualifying project, not to exceed fifty thousand dollars per project. The total aggregate amount of credits which may be certified and granted by the department in accordance with the provisions of this Section shall not exceed five hundred thousand dollars per year and one million dollars over the two-year life of the pilot program.

(2) Tax credits certified and granted by the department may be structured over time depending on the applicant and the nature of the business.

(3) Department of Revenue taxpayer claim cap.

(a) Claims against state income tax allowed on returns for tax credits to the Department of Revenue as provided for in Paragraph (D)(1) of this Section shall be limited to an aggregate total of two hundred and fifty thousand dollars each fiscal year. If less than two hundred and fifty thousand dollars of such tax credits are claimed in a fiscal year, the remaining amount, plus any amounts remaining from previous fiscal years, shall be added to the two hundred and fifty thousand dollar limit of subsequent fiscal years until that amount of tax credits are claimed and allowed by the Department of Revenue.

(b)(i) Claims for tax credits to the Department of Revenue shall be allowed on a first-come, first-served basis. Any taxpayer whose claim for such tax credits is disallowed because the fiscal year cap has been reached may use the tax credits against state income tax due on an original return filed in the next fiscal year, and his claim shall have priority over other claims filed after the date of his original claim.

(ii) If a claim against state income tax for a tax credit is disallowed because the fiscal year cap has been reached, the Department of Revenue may provide for an abatement of interest pursuant to R.S. 47:1601 and a waiver of

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delinquent payment penalties pursuant to R.S. 47:1603.

D. Certification and administration.

(1) The credit provided for in this Section shall be granted by the department for a qualifying project if the commissioner of administration, after approval of the Joint Legislative Committee on the Budget, certifies that securing the project will result in a significant positive economic benefit to the state. "Significant positive economic benefit" means net positive tax revenue that shall be determined by taking into account direct, indirect, and induced impacts of the project based on a standard economic impact methodology utilized by the secretary of the department, and the value of the credit, and any other state tax and financial incentives that are used by the department to secure the project. If the commissioner, with the approval of the committee, certifies the qualifying project, then the department may grant a tax credit equal to fifty percent of the eligible expenditures of the qualifying project, or may grant a credit in a lesser amount which is warranted by the significant positive economic benefit determined by the commissioner; however, no tax credit granted for a qualifying project shall exceed fifty thousand dollars. The total amount of tax credits granted on a qualifying project shall not exceed the total cost of the project.

(2) Tax credits granted pursuant to this Section shall be earned by the applicant at the time expenditures are made by an applicant; however, tax credits granted pursuant to the provisions of this Section shall only be claimed for those periods beginning on and after January 1, 2024, and shall not be claimed until project cost expenditures are certified by the department. The department shall certify project cost expenditures no less than twice during the duration of the qualifying project unless the applicant agrees, in writing, to reimburse the department for the costs of any additional certifications.

(3) If the tax credit allowed pursuant to this Section exceeds the amount of taxes due for such tax period, then any unused credit may be carried forward

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as a credit against subsequent tax liability for a period not to exceed five years.

(4)(a) Application. An applicant for the tax credit authorized pursuant to the provisions of this Section shall submit an application for initial certification of the qualifying project to the department that includes the following information:

(i) A preliminary budget including the actual or, if not known, the estimated capital costs of the qualifying project and the qualifying project's estimated Louisiana payroll.

(ii) A detailed description of the qualifying project.

(iii) A statement that the proposed project will qualify as a qualifying project.

(iv) Estimated start and completion dates. The estimated start date shall include the estimated date on which the acquisition, construction, installation, or equipping of the qualifying project was commenced or is expected to commence.

(v) The name of each company, or the name or names of its shareholders, partners, members, owners, or beneficiaries to become entitled to the tax credit.

(vi) Any other information required by the department.

(b) If the application is incomplete, additional information may be requested prior to further action by the department.

(c) Prior to final certification of a qualifying project, the applicant shall submit to the department a cost report of project expenditures which the department shall require to be prepared by an independent certified public accountant. The department shall review the expenditures and shall issue a tax credit certification letter to the applicant and to the Department of Revenue indicating the amount of tax credits certified for the qualifying project and the amount of the tax credit to be taken each tax year.

(5) The secretary of the department, in consultation with the Department of Revenue, may promulgate rules and regulations in accordance with the

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Administrative Procedure Act as are necessary to carry out the intent and purposes of this Section.

(6) Any taxpayer applying for the credit shall be required to reimburse the department for any audit required in relation to granting the credit.

E. Recapture of credits. If the department finds that funds for which an applicant received credits according to the provisions of this Section are not invested in and expended with respect to capital costs of a qualifying investment, the department shall notify the Department of Revenue who shall disallow the credits on the return and recapture the credits in accordance with Subsection F of this Section.

F. Recovery of credits by the Department of Revenue.

(1) Tax credits previously granted to a taxpayer, but later disallowed, pursuant to the provisions of Subsection E of this Section, may be recovered by the secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated within the later of any of the following:

(a) Two years from December thirty-first in the year in which the tax credit was claimed.

(b) Three years from December thirty-first of the year in which the taxes for the filing period were due.

(c) Three years from December thirty-first of the year in which the final tax credit certification letter was issued.

(d) The time period for which prescription has been extended, as provided by R.S. 47:1580.

(2) The only interest that may be assessed and collected on recovered credits is interest at a rate of three percentage points above the rate provided in R.S. 9:3500(B)(1), which shall be computed from the original due date of the return on which the credit was taken.

(3) The provisions of this Subsection are in addition to and shall not limit the authority of the secretary of the Department of Revenue to assess or

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to collect under any other provision of law.

G. Implementation of tax credits.

(1) No tax credit authorized pursuant to the provisions of this Section shall be certified prior to January 1, 2024, and the tax credits certified shall be claimed for tax periods beginning on or after January 1, 2024.

(2) No tax credit shall be issued pursuant to the provisions of this Section and no initial certification shall be granted by the secretary of the department on or after January 1, 2026.

Section 2. 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.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Danielle B. Clapinski.

DIGEST

SB 170 Original 2023 Regular Session Carter

Proposed law authorizes an income tax credit for expenses associated with construction of a qualifying project in this state. The maximum amount of the credit shall be equal to 50% of the eligible expenditures of the qualifying project, not to exceed $50,000 per project. The total aggregate amount of credits which may be certified and granted by the Department of Economic Development (DEQ) shall not exceed $1,000,000 over the life of the pilot program. Proposed law authorizes tax credits certified and granted by DEQ to be structured over time depending on the applicant and the nature of the business.

Proposed law provides that tax credits shall be earned at the time expenditures are made by an applicant; however, tax credits shall not be claimed until project's eligible expenditures are certified by DEQ, and cannot be claimed for tax periods prior to Jan. 1, 2024.

Proposed law defines "eligible expenditures" to include land, buildings, or other improvements, and all moveable and immovable properties deemed necessary or useful in connection therewith. The term also includes machinery equipment, materials, products or commodities owned by a manufacturing, fabrication, assembly, distribution, processing, or warehousing facility located in Louisiana that are classified as capital expenditures for federal income tax purposes.

Proposed law defines a "qualifying project" as a project undertaken by a manufacturing establishment that has a minimum capital cost of not more than $5,000,000 and at which the predominant trade or business activity will constitute manufacturing products or assembling raw materials into a marketable product in this state. Proposed law excludes manufacturing of chemicals or bulk liquid or gas facilities from the definition of a "qualifying project".

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Proposed law requires the credit to be granted for a qualifying project if the commissioner of administration, after approval of the Joint Legislative Committee on the Budget, certifies that securing the project will result in a significant positive economic benefit to the state.

Proposed law authorizes DEQ to grant a credit in a lesser amount if the lesser amount is warranted by the significant positive economic benefit determined by the commissioner. The total amount of credits granted on a project shall not exceed the total cost of the project.

Proposed law authorizes the carry forward of tax credit amounts against subsequent tax liability if the amount of the credit exceeds the applicant's tax liability for a period not to exceed five years.

Proposed law authorizes the secretary of DEQ, in consultation with the Department of Revenue, to determine which projects and expenditures qualify for tax credits.

Proposed law provides for an application process for initial certification of the qualifying project which includes submission of information such as a preliminary budget, the estimated capital costs of the project, the project's estimated La. payroll, and estimated start and completion dates.

Proposed law requires, prior to final certification of a qualifying project, an applicant to submit a cost report of project expenditures which DEQ shall require to be prepared by an independent certified public accountant prior to issuance of final certification. Further requires DEQ to review the expenditures and to issue a tax certification letter to the applicant and to the Department of Revenue indicating the amount of tax credits certified for the qualifying project and the amount of tax credits that may be taken each tax year.

Proposed law requires a taxpayer applying for the credit to reimburse DEQ for any audit required in relation to granting the credit.

Proposed law provides for the recapture and recovery of credits by the Department of Revenue through any collection remedy authorized by present law and sets forth specific prescriptive periods in which the proceedings to recover tax credits must be initiated. Further authorizes the assessment and collection of interest on recovered credits.

Proposed law prohibits tax credits from being certified or applied against tax liability before Jan. 1, 2024. Further prohibits tax credits from being issued or initial certifications from being granted by DEQ on or after Jan. 1, 2026.

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

(Adds R.S. 47:6043)