

Regular Session, 2013

SENATE BILL NO. 122

BY SENATOR CHABERT

TAX/TAXATION. Makes changes to both the Investor Tax Credit and the Import Export Cargo Credit of the Ports of Louisiana Tax Credit Program and provides a new termination date for the credit. (8/1/13)

1 AN ACT

2 To amend and reenact R.S. 47:6036(B)(8) and (13), (C)(1)(b), (G), the introductory
3 paragraph of (I)(1), (I)(1)(c), and (2)(a), relative to the Ports of Louisiana tax credit;
4 to provide the term of the credit; to provide for the activities and projects to which
5 the credit applies; to provide with respect to certain determinations and certifications;
6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:6036(B)(8) and (13), (C)(1)(b), (G), the introductory paragraph
9 of (I)(1), (I)(1)(c), and (2)(a) are hereby amended and reenacted to read as follows:

10 §6036. Ports of Louisiana tax credits

11 * * *

12 B. Definitions.

13 For purposes of this Section, the following words shall have the following
14 meanings unless the context clearly indicates otherwise:

15 * * *

16 (8) "Port or port and harbor activity" shall mean and include **any activity**
17 **when the trade or business is conducted on premises in which a duly recognized**

1 port authority has an ownership, leasehold, or other possessory interest and
2 such premises are used as part of the operations of a duly recognized port
3 authority including, but not limited to any trade or business described in the 1997
4 North American Industry Classification System (NAICS) within Subsector 493
5 (Warehousing and Storage), Industry Number 488310 (Port and Harbor Operations),
6 or Industry Number 488320 (Marine Cargo Handling), **Industry Number 336611**
7 **(Ship Building and Repair), Industry Number 213112 (Support Activities for**
8 **Oil and Gas Operations)**, ~~when the trade or business is conducted on premises in~~
9 ~~which a duly recognized port authority has an ownership, leasehold, or other~~
10 ~~possessory interest and such premises are used as part of the operations of a duly~~
11 ~~recognized port authority, including the above trades and businesses as they may~~
12 hereafter be reclassified in any subsequent publication of the NAICS or similar
13 classification system developed in conjunction with the United States Department
14 of Commerce and Office of Management and Budget.

15 * * *

16 (13) "Qualifying project" shall mean and include a project to be sponsored
17 or undertaken by a public port and one or more investing companies that ~~have~~ **has**
18 a capital cost of not less than ~~five~~ **one and one-half** million dollars and at which the
19 predominant trade or business activity conducted will constitute industrial,
20 warehousing, or port and harbor operations and cargo handling, including any port
21 or port and harbor activity.

22 * * *

23 C. Investor tax credit.

24 (1) * * *

25 (b) The Investor Tax Credit provided for in this Subsection shall be issued
26 by the Department of Economic Development for a qualifying project if the
27 commissioner of administration, after approval of the Joint Legislative Committee
28 on the Budget, ~~and the state bond commission~~ certifies to the secretary of the
29 department that ~~there will be sufficient revenue received by the state to offset the~~

1 effect to the state of the tax credits provided for the capital costs of the project,
 2 whether from increased port or port and harbor activity because of the grant of the
 3 tax credit or otherwise **securing the project will result in a significant positive**
 4 **economic benefit to the state. "Significant positive economic benefit" means net**
 5 **positive tax revenue that shall be determined by taking into account direct,**
 6 **indirect, and induced impacts of the project based on a standard economic**
 7 **impact methodology utilized by the commissioner, and the value of the credit,**
 8 **and any other state tax and financial incentives that are used by the department**
 9 **to secure the project.** If the commissioner with the approval of the committee so
 10 certifies, then the Department of Economic Development ~~may~~ **shall** grant a tax credit
 11 equal to the total capital costs of a **such** qualifying project to be taken at five percent
 12 per tax year; **or shall grant such other amount of tax credit to be taken at such**
 13 **other percentage which is warranted by the significant positive economic benefit**
 14 **determined by the commissioner.** However, the total amount of tax credits granted
 15 on a qualifying project shall not exceed the total cost of the project.

16 (c) The tax credit shall be earned by investors at the time expenditures are
 17 made by an investing company; however, tax credits shall not be applied against a
 18 tax liability until the project is approved by the department after certification from
 19 the commissioner with the approval of the committee ~~and the state bond commission~~
 20 and capital cost expenditures are certified by the department. The Department of
 21 Economic Development shall certify capital cost expenditures no less than twice
 22 during the duration of the qualifying project unless the investing company agrees,
 23 in writing, to reimburse the Department of Economic Development for the costs of
 24 any additional certifications.

25 * * *

26 G. Termination of Investor **and Import Export Cargo** Tax Credits.

27 The provisions of Subsection C **and I** of this Section shall be effective until
 28 ~~January 1, 2017~~ **January 1, 2020**, and no investor tax credit **or import export cargo**
 29 **credit** pursuant to the provisions of this Section shall be granted after such date.

1 * * *

2 I. Import Export Cargo Credit.

3 (1) Certification of taxpayer. Only those taxpayers who have received
4 certification from the secretary of the Department of Economic Development shall
5 be eligible to take the tax credits provided for by this Subsection and then only for
6 the taxable year or years and for the amount provided for in the commissioner of
7 administration's certification, approved by the Joint Legislative Committee on the
8 Budget ~~and the state bond commission~~, provided for in Item (2)(a)(ii) of this
9 Subsection as allocated by the secretary. The secretary shall promulgate rules in
10 accordance with the Administrative Procedure Act which establish the process by
11 which a taxpayer shall apply for certification.

12 * * *

13 (c) The secretary shall provide a statement of certification to each taxpayer
14 which he has certified as eligible to take the tax credit after approval of the Joint
15 Legislative Committee on the Budget ~~and the state bond commission~~, which shall
16 contain the taxable year or years for which the taxpayer is allowed the tax credit and
17 the amount of tax credit allocated for such taxable year or years. The secretary shall
18 also transmit a copy of such statement to the secretary of the Department of
19 Revenue.

20 * * *

21 (2)(a)(i) ~~For taxable years beginning on and after January 1, 2009,~~ There shall
22 be allowed a credit against the individual income, corporation income, and
23 corporation franchise tax liability of a taxpayer who has received certification
24 pursuant to the provisions of Paragraph (1) of this Subsection. The amount of the
25 credit shall be equal to the product of multiplying five dollars by the taxpayer's
26 number of tons of qualified cargo for the taxable year ~~but only for the total amount~~
27 ~~of the allocation provided to the taxpayer by the secretary of the Department of~~
28 ~~Economic Development for such taxable year~~ **or the product of multiplying the**
29 **number of dollars by the taxpayer's number of tons of qualified cargo for the**

1 **taxable year or portion of a taxable year which is warranted by the significant**
2 **positive economic benefit determined by the commissioner pursuant to Item (ii)**
3 **of this Subparagraph.**

4 (ii) The tax credit provided for in this Subsection shall ~~only~~ be allowed for
5 ~~all or a portion of a fiscal year~~ if the commissioner of administration certifies to the
6 secretary of the Department of Economic Development that ~~there will be sufficient~~
7 ~~revenue received by the state to offset the effect to the state of the tax credits~~
8 ~~provided for in this Subsection whether from~~ **the** increased utilization of public port
9 facilities **and other activity in Louisiana associated with the import or export of**
10 **the international business entities qualified cargo will result in a significant**
11 **positive economic benefit to the state. "Significant positive economic benefit"**
12 **means net positive tax revenue that shall be determined by taking into account**
13 **direct, indirect, and induced impacts of the port and state activity based on a**
14 **standard economic impact methodology utilized by the commissioner, and the**
15 **value of the credit, and any other state tax and financial incentives that are used**
16 **by the department to secure the port and state activity** because of the tax credit
17 ~~or otherwise~~, and such certification is approved by the Joint Legislative Committee
18 on the Budget ~~and the state bond commission.~~

19 * * *

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Riley Boudreaux.

DIGEST

Present law authorizes the Department of Economic Development (DED) to grant a credit against corporate income and franchise tax liability equal to the total capital costs of a "qualifying project", to be taken at 5% per tax year, limited to the total cost of the project.

"Qualifying project" is defined as a project sponsored or undertaken by a public port and one or more investing companies that has a capital cost of not less than \$5 million and at which the predominant trade or business activity conducted will constitute industrial, warehousing, or port and harbor operations and cargo handling, including any "port or port and harbor activity".

"Port or port and harbor activity" is defined as any trade or business described in the 1997 North American Industry Classification System (NAICS) within Subsector 493 (Warehousing and Storage), Industry Number 488310 (Port and Harbor Operations), or Industry Number 488320 (Marine Cargo Handling).

Proposed law reduces the capital cost of a "qualifying project" from \$5 million to one and one-half million dollars.

Proposed law expands the definition of "port or port and harbor activity" to any activity when the trade or business is conducted on port authority premises including, but not limited to the NAISC Code-described businesses set forth in present law (above) and adds Industry Number 336611 (Ship Building and Repair) and Industry Number 213112 (Support Activities for Oil and Gas Operations).

Present law requires DED to issue the Investor Tax Credit for a "qualifying project" if the commissioner of administration, after approval of the Joint Legislative Committee on the Budget and the state bond commission certifies to the secretary of DED that there will be sufficient revenue received by the state to offset the effect to the state of the tax credits provided, whether from increased port or port and harbor activity because of the grant of the tax credit or otherwise.

Proposed law removes the need for certification approval from the state bond commission.

Proposed law requires DED to issue the Investor Tax Credit if the commissioner of administration certifies, 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" is defined as net positive tax revenue that must be determined by taking into account direct, indirect, and induced impacts of the project based on a standard economic impact methodology utilized by the commissioner, and the value of the credit, and any other state tax and financial incentives that are used by DED to secure the project.

Proposed law authorizes DED the option to grant, in lieu of a credit equal to the total capital costs of the project taken at 5% per tax year, another amount of tax credit to be taken at such other percentage which is warranted by the "significant positive economic benefit" determined by the commissioner. However, the total amount credits still cannot exceed the total cost of the project.

Present law authorizes the secretary of DED to certify "international business entities" for an Import Export Cargo Credit against the individual and corporate income and corporate franchise tax equal to the product of multiplying \$5 by the "international business entity's" number of tons of "qualified cargo" for the taxable year, but only for all or a portion of a fiscal year if the commissioner of administration certifies to the secretary of DED that there will be sufficient revenue received by the state to offset the effect to the state of the tax credits provided whether from increased utilization of public port facilities because of the tax credit or otherwise, and the certification is approved by the Joint Legislative Committee on the Budget and the state bond commission.

"International business entity" is defined as a taxpayer entity, all or a portion of whose activities involve the import or export of breakbulk or containerized cargo to or from manufacturing, fabrication, assembly, distribution, processing, or warehousing facilities located within Louisiana.

"Qualified cargo" is defined as any breakbulk or containerized machinery, equipment, materials, products, or commodities owned by an "international business entity" which are imported or exported to or from a manufacturing, fabrication, assembly, distribution, processing, or warehouse facility located in Louisiana and which are so moved by way of an oceangoing vessel berthed at a public port facility during the taxable year.

Proposed law removes the need for certification approval from the state bond commission.

Proposed law authorizes the secretary of DED to certify the credit for an international business entity if the commissioner of administration certifies to the secretary that the

increased utilization of public port facilities and other activity in Louisiana associated with the import or export of the international business entities qualified cargo will result in a "significant positive economic benefit to the state." "Significant positive economic benefit" is defined as net positive tax revenue that shall be determined by taking into account direct, indirect, and induced impacts of the port and state activity based on a standard economic impact methodology utilized by the commissioner, and the value of the credit, and any other state tax and financial incentives that are used by DED to secure the port and state activity. Approval of the certification by the Joint Legislative Committee on the Budget is still required.

Proposed law authorizes DED the option to grant, in lieu of a credit equal to the product of multiplying \$5 by the number of tons of cargo for the taxable year or a portion of a fiscal year the product of multiplying the number of dollars by the taxpayer's number of tons of qualified cargo for the taxable year or portion of a taxable year which is warranted by the "significant positive economic benefit" determined by the commissioner.

Proposed law extends the termination date of the Investor Tax Credit from January 1, 2017 to January 1, 2020 and terminates the Import Export Credit on that same date.

Effective August 1, 2013.

(Amends R.S. 47:6036(B)(8) and (13), (C)(1)(b), (G), (I)(1)(intro para), (I)(1)(c), and (2)(a))