

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.

TAX CREDITS: Establishes a registry for tax credits and provides relative to the period of time to report claims or a transfer to the registry

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(32) and R.S. 47:6007(C)(4)(b), 6016(F)(1)(b),
3 6019(A)(3)(b)(i)(cc), 6020(F)(2), 6021(I)(2), 6022(E)(1)(e)(ii), and 6034(D)(1) and
4 to enact R.S. 47:1524, relative to tax credits; to establish a registry for certain tax
5 credits; to provide relative to agencies required to submit information to the registry;
6 to provide relative to the information which shall be recorded in the registry; to
7 provide for certain requirements and limitations; to provide relative to access to
8 information in the registry; to provide relative to the transferability of certain tax
9 credits; to provide relative to the notification of the transfer or sale of certain tax
10 credits; to provide that certain records are private; to provide for an effective date;
11 and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 47:6007(C)(4)(b), 6016(F)(1)(b), 6019(A)(3)(b)(i)(cc), 6020(F)(2),
14 6021(I)(2), 6022(E)(1)(e)(ii), and 6034(D)(1) are hereby amended and reenacted and R.S.
15 47:1524 is hereby enacted to read as follows:

16 §1524. Tax credit registry; requirements; limitations

17 A. The secretary of the Department of Revenue, hereinafter "department",
18 shall establish a centralized electronic tax credit registry to compile information
19 provided by state agencies which administer tax credits and shall maintain all
20 information provided from all sources concerning names and addresses of the party

1 issued the tax credit, the amount of the tax credit, the amount of a tax credit claimed
2 by a taxpayer, the tax credit's balance prior to the claim, the taxpayer's remaining tax
3 credit balance after a claim, a transferor's tax credit balance prior to transfer, the
4 transferor's remaining tax credit balance after transfer, all tax identification numbers
5 for both transferor and transferee, the date of transfer, the amount transferred, price
6 paid by the transferee to the transferor, and any other information useful in assisting
7 the department in registering tax credits in the centralized registry.

8 B. Each tax credit issued by a state agency shall be assigned a unique
9 identifying number when inputted in the registry. This number shall remain
10 associated with the tax credit from the time the tax credit is originally entered into
11 the registry, through any claim, transfer, or refund associated with the credit, until
12 the time the tax credit is fully redeemed. All transfers of the tax credit and all claims
13 against the tax credit shall be recorded and tracked through the registry. The
14 department shall be the only authorized party to enter information into the registry
15 and shall be the only party authorized to make changes in the registry to any new or
16 existing tax credits.

17 C.(1) Beginning September 1, 2013, in order for any tax credit issued on or
18 after such date to be eligible for use by a taxpayer or transfer by the taxpayer it shall
19 be entered into the registry. Any transfer or claim against a tax credit shall be
20 registered no later than ten business days from the date of transfer, claim, or refund
21 of the tax credit. Only properly registered credits shall be eligible for transfer. It
22 shall be the responsibility of the transferor to ensure that credits are properly
23 registered prior to transfer.

24 (2)(a) Any state agency which issued tax credits prior to September 1, 2013,
25 shall remit any and all information the agency retained regarding the owner of the
26 tax credit, the amount of the tax credit, and any information regarding subsequent
27 owners, claims, or transfers of the tax credit to the department for entry into the
28 registry.

1 (b) The owner of any tax credit issued prior to September 1, 2013, shall be
2 required to remit all necessary information to the department or to the state agency
3 which issued the original credit for entry into the centralized registry established
4 pursuant to the provisions of this Section. Any state agency which receives
5 information from the owner of a tax credit shall remit such information to the
6 department within ten business days of receipt of such information. Failure of an
7 owner to remit such information to the department or to the state agency which
8 issued the original credit shall result in the credit being deemed ineligible for transfer
9 and shall be subject to recapture by the department.

10 D. Notwithstanding any other provision of law to the contrary, the data
11 compiled in the registry shall be available for cross-referencing by other state
12 agencies; however, state agencies shall apply for access to the registry from the
13 department and shall be subject to permissions granted by the department.
14 Information contained in the registry regarding the ownership of a tax credit and the
15 value of a tax credit shall be deemed personal and confidential under the provisions
16 of R.S. 47:1508 and shall not be available for public viewing.

17 E. The secretary of the department may promulgate rules and regulations in
18 accordance with the Administrative Procedure Act as are necessary to implement the
19 provisions of this Section, including but not limited to rules and regulations
20 regarding the information required for registering tax credits, information required
21 for transferring tax credits, establishing access privileges to information in the
22 registry for other state agencies and third parties, and information which shall be
23 deemed public and information which shall be deemed private.

24 * * *

25 §6007. Motion picture investor tax credit

26 * * *

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

28 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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 shall include a processing fee of up to two hundred dollars per
24 transferee, and any pricing information submitted by a transferor or transferee shall
25 be treated by the office and the Department of Revenue as proprietary to the entity
26 reporting such information and therefore confidential. However, this shall not
27 prevent the publication of summary data that includes no fewer than three
28 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 certificate
13 price paid by the transferee to the transferor, and any other information required by
14 the Department of Revenue. The notification submitted shall include a processing
15 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

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

6 * * *

7 §6020. Angel Investor Tax Credit Program

8 * * *

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

12 * * *

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

26 * * *

27 §6021. Brownfields Investor Tax Credit

28 * * *

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
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 in writing, a notification of any transfer or sale of tax credits within ~~thirty~~

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

* * *

9 §6034. Musical and theatrical production income tax credit

* * *

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

* * *

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

2 §4.1. Exceptions

3 * * *

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

9 * * *

10 (32) R.S. 47:15, 349, 633.6, 1508, 1515.3, 1516, 1524(D), 1837, 2130, 2327,
11 2605, 6026, 9006

12 * * *

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

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)]

Leger

HB No. 377

Abstract: Requires the Dept. of Revenue to establish a tax credit registry to track transfers, claims, and refunds of tax credits and changes the time for reporting transfers of various tax credits from 30 days to 10 business days.

Proposed law requires the secretary of the Dept. of Revenue, hereinafter "department", to establish a centralized electronic tax credit registry to compile information provided by state agencies which administer tax credits and to maintain all information provided for the registry.

Proposed law requires each tax credit to be assigned a unique identifying number when inputted in the registry. This number shall remain associated with the tax credit from the time the tax credit is originally entered into the registry, through any claim, transfer, or refund associated with the credit, until the time the tax credit is fully redeemed. Proposed law requires all transfers of the tax credit and all claims against the tax credit to be recorded and tracked through the registry.

Proposed law provides that the department is the only authorized party to enter information into the registry or to make changes in the registry to any new or existing tax credits.

Proposed law provides that in order for any tax credit issued on or after Sept. 1, 2013, to be eligible for transfer by a taxpayer it shall be entered into the registry. Further requires transfers or claims against tax credits to be registered no later than 10 business days within the date of transfer, claim, or refund of the tax credit. Proposed law provides that only properly registered credits shall be eligible for transfer.

Proposed law requires any state agency which issued tax credits prior to Sept. 1, 2013, to remit any and all information the agency retained regarding the tax credit to the department for entry into the registry. The owner of a tax credit issued prior to Sept. 1, 2013, shall be required to remit all necessary information to the department or to the state agency which issued the original credit for entry into the centralized registry. Failure of an owner to remit such information shall result in the credit being deemed ineligible for transfer and shall be subject to recapture by the department.

Proposed law authorizes information compiled in the registry to be available for cross-referencing by other state agencies; however, state agencies shall apply for access to the registry from the department and shall be subject to permissions granted by the department. Information contained in the registry regarding the ownership of a tax credit and the value of a tax credit shall be deemed personal and confidential and shall not be available for public viewing, including a public records request.

Proposed law authorizes the department to promulgate rules and regulations as are necessary to implement the provisions of proposed law.

Present law provides for various tax credit programs including but not limited to the motion picture investor, new markets, rehabilitation of historic structures, Angel Investor, Brownfields Investor, digital interactive media and software, and musical and theatrical production tax credits. Present law requires, in cases of transferable tax credits, for the transferor and the transferee to submit to the agency administering the tax credit and the department written notification of the transfer or sale of the tax credit within 30 days of the transfer. Proposed law retains present law but changes the period of written notification from 30 days of the transfer or sale of the credit to 10 business days of the transfer or sale of the credit.

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

(Amends 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); Adds R.S. 47:1524)