

Regular Session, 2013

HOUSE BILL NO. 563

BY REPRESENTATIVE THIBAUT

TAX CREDITS: Changes eligibility and provides for administrative changes for the Research and Development Tax Credit

1 AN ACT

2 To amend and reenact R.S. 47:6015(B), (C)(2)(c), (G), (H), and (I) and to enact R.S.  
3 47:6015(J), relative to the research and development tax credit; to provide for  
4 eligibility for the credit; to provide with respect to administration of the credit; to  
5 provide for the examination of certain records; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:6015(B), (C)(2)(c), (G), (H), and (I) are hereby amended and  
8 reenacted and R.S. 47:6015(J) is hereby enacted to read as follows:

9 §6015. Research and development tax credit

10 \* \* \*

11 B.(1) Any taxpayer who employs fifty or more ~~than fifty~~ persons and claims  
12 for the taxable year a federal income tax credit under 26 U.S.C. §41(a) for increasing  
13 research activities shall be allowed a refundable tax credit to be applied against  
14 income and corporation franchise taxes due.

15 (2) Any taxpayer who employs ~~up to fifty~~ less than fifty persons and ~~incurs~~  
16 ~~qualified research expenses as defined in~~ claims, for the taxable year, a federal  
17 income tax credit under 26 U.S.C. §41(~~ba~~), for the taxable year, or meets the  
18 requirements of Subparagraph (3)(i) of this Subsection, shall be allowed a refundable  
19 tax credit to be applied against income and corporation franchise taxes due.

1           (3) Each taxpayer seeking the credits authorized in this Section shall apply  
2 to the Department of Economic Development for the credits. The taxpayer shall  
3 remit an application fee of two hundred fifty dollars with the application. The  
4 application shall include all of the following:

5           (a) ~~In cases where the taxpayer employs more than fifty persons, a~~ A federal  
6 income tax return and supporting documentation that shows the amount of the  
7 federal research credit for the same taxable year. ~~The supporting documentation for~~  
8 ~~a taxpayer who employs up to fifty persons shall show the amount of the qualified~~  
9 ~~research expenses for the same taxable year.~~ If claiming the credit under Subsection  
10 D of this Section, the taxpayer shall also remit supporting documentation for the  
11 federal Small Business Innovation Research Grant.

12           (b) The total amount of qualified research expenses and the qualified  
13 research expenses in this state.

14           (c) The total number of persons employed in Louisiana by the taxpayer and  
15 the number of those persons employed in Louisiana directly engaged in research and  
16 development.

17           (d) The average wages of the persons employed in Louisiana not directly  
18 engaged in research and development and the average wages of the persons  
19 employed in Louisiana directly engaged in research and development.

20           (e) The average value of benefits received by all persons employed in  
21 Louisiana.

22           (f) The cost of health insurance coverage offered to all persons employed in  
23 Louisiana.

24           (g) At the department's request, the taxpayer shall provide federal income tax  
25 information related to the research and development credit. This information shall  
26 include but shall not be limited to IRS forms 8821 and 4506.

27           (h) Any other information required by the Department of Economic  
28 Development.

1           (i) A taxpayer who employees less than fifty employees may apply for  
 2           credits under this Section if all of the following criteria are met:

3           (i) The taxpayer provides the department with a report from an independent  
 4           certified public accountant licensed in the state of Louisiana finding that:

5           (aa) The taxpayer would not financially benefit from claiming the federal  
 6           income tax credit for increasing research activities under 26 U.S.C. §41(a); and

7           (bb) The taxpayer is in compliance with the procedures as defined by the  
 8           department.

9           (ii) The taxpayer provides all supporting documentation required by the  
 10          department to show the amount of qualified research expenses for such taxable year.

11          (4) The Department of Economic Development shall approve or disapprove  
 12          each application. No credits shall be granted to a taxpayer under this Section unless  
 13          the credit is approved by the Department of Economic Development.

14          (5) The following types of businesses are ineligible to apply for or receive  
 15          benefits under this Section, unless specifically invited by the secretary of the  
 16          department to do so:

- 17          (a) Professional services firms as defined by departmental rule; and  
 18          (b) Businesses primarily engaged in custom manufacturing and custom  
 19          fabricating as defined by departmental rule.

20          C.

21                         \*       \*       \*

22          (2) The amount of the credit authorized in this Section shall be equal to  
 23          either:

24                         \*       \*       \*

25          (c) Forty percent of the Louisiana qualified research expenses for the taxable  
 26          year, if the taxpayer is an entity that employs ~~fewer~~ less than fifty persons.

27                         \*       \*       \*

1           G.(1) Each year, prior to the issuance of credits, the department shall  
2           perform a detailed examination of at least ten percent of all applications received.  
3           The department shall select applications for examination based on one or more of the  
4           following: a random sampling of applications, the applicant's business sector, and/or  
5           other selection criteria as determined by the department.

6           (2) If a taxpayer's application is selected for examination, the taxpayer shall  
7           submit all supporting documentation required by the department. The department  
8           shall use this evidence to verify that the amount of the qualified research expenses  
9           incurred in Louisiana for the taxable year support the corresponding tax credit.

10           (3) Upon examination, the department will disallow any credits that are not  
11           substantiated by supporting documentation to include Internal Revenue Service  
12           documents.

13           (4) The applicant bears the burden of proving that its activities meet the  
14           Internal Revenue Code Section 41(d) definition of qualified research.

15           (5) Nothing in this Subsection shall preclude the department from examining  
16           a taxpayer's application for research and development credits after the issuance of  
17           credits. Credits disallowed following an examination conducted after the issuance  
18           of credits will be subject to recovery, recapture, or offset.

19           H.(1) Recovery of credits by Department of Revenue. Credits granted under  
20           this Section, but later disallowed in whole or in part, may be recovered by the  
21           secretary of the Department of Revenue from the taxpayer applicant through any  
22           collection remedy authorized by R.S. 47:1561 that is initiated within three years from  
23           December thirty-first of the year in which the credit was originally granted. The  
24           only interest that may be assessed and collected on these recovered credits is interest  
25           at a rate three percentage points above the rate provided in R.S. 9:3500(B)(1), which  
26           shall be computed from the original due date of the return on which the disallowed  
27           credit was taken.

28           (2) The provisions of this Subsection are in addition to and shall not limit the  
29           authority of the secretary of the Department of Revenue to assess or to collect under

1 any other provision of law. This includes the disallowance of any disallowed credit  
2 claimed by a taxpayer who received the credit through purchase or through a  
3 distribution by an entity not taxed as a corporation.

4 ~~H. I.~~ A taxpayer shall not receive any other incentive administered by the  
5 Department of Economic Development for any expenditures for which the taxpayer  
6 has received a credit pursuant to this Section.

7 ~~E. J.~~ No credit shall be allowed pursuant to this Section for research  
8 expenditures incurred or Small Business Innovation Research Grant funds received  
9 after December 31, 2019.

10 \* \* \*

11 Section 2. This Act shall be applicable to tax years beginning on or after January 1,  
12 2012. This Act shall become effective on July 1, 2013; if vetoed by the governor and  
13 subsequently approved by the legislature, this Act shall become effective on July 1, 2013,  
14 or on the day following such approval by the legislature, whichever is later.

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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)]

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Thibaut

HB No. 563

**Abstract:** Amends the research and development tax credit and provides for eligibility for the credit, administration of the credit, and for the examination of documents which support the credit.

Present law provides for research and development state tax credits for taxpayers who employ a certain number of people and who are eligible for federal tax credits for qualified expenditures.

Proposed law retains present law and provides that taxpayers seeking the tax credit shall provide certain federal income tax information that is requested by the Department of Economic Development. Proposed law also provides that taxpayers who can provide an independent certified public accountant's report showing that the taxpayer would not benefit from the federal tax credit may now be eligible for the state tax credit. Proposed law further provides that professional services firms and businesses primarily engaged in custom manufacturing and custom fabricating are not eligible for the tax credit.

Proposed law requires the Department of Economic Development to perform a detailed examination of at least ten percent of the tax credit applications, including a review and verification of documents to support qualified research expenditures.

Proposed law provides that the applicant shall bear the burden of proofing that its research activities meet federal guidelines.

Proposed law provides that the department shall disallow tax credits not supported by documentation and may recover, recapture, or offset tax credits previously issued but subsequently found to be disallowed after examination.

Effective on July 1, 2013.

(Amends R.S. 47:6015(B), (C)(2)(c), (G), (H), and (I); Adds R.S. 47:6015(J))