

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. (7/1/13)

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** any trade or business described in the ~~1997~~ **2012** North
4 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.

* * *

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. **However, "qualifying project" shall not mean bulk**
22 **liquid/gas facilities.**

* * *

C. Investor tax credit.

(1) * * *

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

1 department that ~~there will be sufficient revenue received by the state to offset the~~
2 ~~effect to the state of the tax credits provided for the capital costs of the project,~~
3 ~~whether from increased port or port and harbor activity because of the grant of the~~
4 ~~tax credit or otherwise~~ **securing the project will result in a significant positive**
5 **economic benefit to the state. "Significant positive economic benefit" means net**
6 **positive tax revenue that shall be determined by taking into account direct,**
7 **indirect, and induced impacts of the project based on a standard economic**
8 **impact methodology utilized by the commissioner, and the value of the credit,**
9 **and any other state tax and financial incentives that are used by the department**
10 **to secure the project.** If the commissioner with the approval of the committee so
11 certifies, then the Department of Economic Development may grant a tax credit
12 equal to the total capital costs of a **such** qualifying project to be taken at five percent
13 per tax year; **or shall grant such other amount of tax credit to be taken at such**
14 **other percentage which is warranted by the significant positive economic benefit**
15 **determined by the commissioner, but no tax credit granted for a qualifying**
16 **project shall exceed two million five hundred thousand dollars per tax year.**
17 However, the total amount of tax credits granted on a qualifying project shall not
18 exceed the total cost of the project. **In addition, the total amount of the Investor**
19 **Tax Credits which may be granted by the department for all qualifying projects**
20 **in any fiscal year pursuant to this Paragraph shall not exceed twelve million five**
21 **hundred thousand dollars per fiscal year.**

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

1 any additional certifications.

2 * * *

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

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

7 * * *

8 I. Import Export Cargo Credit.

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

18 * * *

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

26 * * *

27 (2)(a)(i) ~~For taxable years beginning on and after January 1, 2009, there~~
28 **There** shall be allowed a credit against the individual income, corporation income,
29 and corporation franchise tax liability of a taxpayer who has received certification

1 pursuant to the provisions of Paragraph (1) of this Subsection; **provided that the**
 2 **credit shall be allowed only against the tax liability of the international business**
 3 **entity which receives the certification.** The amount of the credit shall be equal to
 4 the product of multiplying five dollars by the taxpayer's number of tons of qualified
 5 cargo for the taxable year ~~but only for the total amount of the allocation provided to~~
 6 ~~the taxpayer by the secretary of the Department of Economic Development for such~~
 7 ~~taxable year~~ **or the product of multiplying the number of dollars by the**
 8 **taxpayer's number of tons of qualified cargo for the taxable year or portion of**
 9 **a taxable year which is warranted by the significant positive economic benefit**
 10 **determined by the commissioner pursuant to Item (ii) of this Subparagraph,**
 11 **whichever is less.**

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

27 * * *

28 Section 2. This Act shall become effective on July 1, 2013; if vetoed by the governor
 29 and subsequently approved by the legislature, this Act shall become effective on July 1,

1 2013, or on the day following such approval by the legislature, whichever is later.

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

DIGEST

Chabert (SB 122)

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. Excludes projects at which the predominant trade or business activity conducted will constitute industrial operations and bulk liquid/gas facilities from the definition of "qualifying project".

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, NAICS 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 authorizes 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 authorizes DED to issue the Investor Tax Credit if the commissioner of administration certifies, after approval of the Joint Legislative Committee on the Budget, 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 requires DED 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.

Proposed law provides that no tax credit may be granted for a qualifying project which exceeds \$2.5 million per tax year. In addition, the total amount of the Investor Tax Credits

which may be granted by DED for all qualifying projects in any fiscal year cannot exceed \$12.5 million per fiscal year.

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 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 and the state bond commission 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, a credit equal to 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, if it is less than \$5.

Proposed law specifies that the credit can be allowed only against the tax liability of the international business entity which receives the certification.

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 July 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))

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Caps the Investor Tax Credit for a "qualifying project" at \$2.5 million per tax year and places an overall cap of \$12.5 million for tax credits granted for all qualifying projects in a fiscal year.
2. Limits DED's option to grant a per-ton Import Export Cargo Tax Credit equal to the number of dollars per ton which is warranted by the "significant positive economic benefit" determined by the commissioner to less than \$5 per ton.
3. For purposes of the Investor Tax Credit, deletes the clause "but not limited to" from the provision defining "port or port and harbor activity" as any activity when the trade or business is conducted on port authority premises "including" the NAICS Code-described businesses.
4. Excludes from the Investor Tax Credit "qualifying projects" projects at which the predominant trade or business activity conducted will constitute industrial operations and bulk liquid/gas facilities.
5. Restores the commissioner of administration's discretion in present law to grant an Investor Tax Credit of 5% per tax year.
6. Restores the approvals needed for both credits from the state bond commission in present law.