

Regular Session, 2013

SENATE BILL NO. 122

BY SENATORS CHABERT, JOHNS, LONG, MURRAY, TARVER AND WHITE

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) and (c), (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) and (c), (G), the introductory
9 paragraph of (I)(1), (I)(1)(c), and (2)(a) are hereby amended and reenacted to read as
10 follows:

11 §6036. Ports of Louisiana tax credits

12 * * *

13 B. Definitions.

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

16 * * *

17 (8) "Port or port and harbor activity" ~~shall mean and include~~ **means trade or**

1 business activity conducted on premises in which a duly recognized port
 2 authority has an ownership, leasehold, or other possessory interest and such
 3 premises are used as part of the operations of a duly recognized port authority,
 4 which is a any trade or business described in the ~~1997~~ 2012 North American
 5 Industry Classification System (NAICS) within Subsector 493 (Warehousing and
 6 Storage), Industry Number 488310 (Port and Harbor Operations), or Industry
 7 Number 488320 (Marine Cargo Handling), Industry Number 336611 (Ship
 8 Building and Repair), Industry Number 213112 (Support Activities for Oil and
 9 Gas Operations), ~~when the trade or business is conducted on premises in which a~~
 10 ~~duly recognized port authority has an ownership, leasehold, or other possessory~~
 11 ~~interest and such premises are used as part of the operations of a duly recognized~~
 12 ~~port authority,~~ including the above trades and businesses as they may hereafter be
 13 reclassified in any subsequent publication of the NAICS or similar classification
 14 system developed in conjunction with the United States Department of Commerce
 15 and Office of Management and Budget.

* * *

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

* * *

C. Investor tax credit.

(1) * * *

27 (b) The Investor Tax Credit provided for in this Subsection shall be issued
 28 by the Department of Economic Development for a qualifying project if the
 29 commissioner of administration, after approval of the Joint Legislative Committee

1 on the Budget, **which approval shall not be granted earlier than July 1, 2014,** and
2 the state bond commission, certifies to the secretary of the department that ~~there will~~
3 ~~be sufficient revenue received by the state to offset the effect to the state of the tax~~
4 ~~credits provided for the capital costs of the project, whether from increased port or~~
5 ~~port and harbor activity because of the grant of the tax credit or otherwise~~ **securing**
6 **the project will result in a significant positive economic benefit to the state.**
7 **"Significant positive economic benefit" means net positive tax revenue that shall**
8 **be determined by taking into account direct, indirect, and induced impacts of**
9 **the project based on a standard economic impact methodology utilized by the**
10 **commissioner, and the value of the credit, and any other state tax and financial**
11 **incentives that are used by the department to secure the project.** If the
12 commissioner with the approval of the committee so certifies, then the Department
13 of Economic Development may grant a tax credit equal to the total capital costs of
14 a **such** qualifying project to be taken at five percent per tax year; **or shall grant such**
15 **other amount of tax credit to be taken at such other percentage which is**
16 **warranted by the significant positive economic benefit determined by the**
17 **commissioner, but no tax credit granted for a qualifying project shall exceed**
18 **two million five hundred thousand dollars per tax year.** However, the total
19 amount of tax credits granted on a qualifying project shall not exceed the total cost
20 of the project. **In addition, the total amount of the Investor Tax Credits which**
21 **may be granted by the department for all qualifying projects in any fiscal year**
22 **pursuant to this Paragraph shall not exceed twelve million five hundred**
23 **thousand dollars per fiscal year.**

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

1 during the duration of the qualifying project unless the investing company agrees,
2 in writing, to reimburse the Department of Economic Development for the costs of
3 any additional certifications.

4 * * *

5 G. Termination of Investor and Import Export Cargo Tax Credits.

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

9 * * *

10 I. Import Export Cargo Credit.

11 (1) Certification of taxpayer. Only those taxpayers who have received
12 certification from the secretary of the Department of Economic Development shall
13 be eligible to take the tax credits provided for by this Subsection and then only for
14 the taxable year or years and for the amount provided for in the commissioner of
15 administration's certification, approved by the Joint Legislative Committee on the
16 Budget and the state bond commission, provided for in Item (2)(a)(ii) of this
17 Subsection as allocated by the secretary. The No later than March 31, 2014, the
18 secretary shall promulgate rules in accordance with the Administrative Procedure
19 Act which establish the process by which a taxpayer shall apply for certification.

20 * * *

21 (c) The secretary shall provide a statement of certification to each taxpayer
22 which he has certified as eligible to take the tax credit after approval of the Joint
23 Legislative Committee on the Budget, which approval shall not be granted earlier
24 than July 1, 2014, and the state bond commission, which shall contain the taxable
25 year or years for which the taxpayer is allowed the tax credit and the amount of tax
26 credit allocated for such taxable year or years. The secretary shall also transmit a
27 copy of such statement to the secretary of the Department of Revenue.

28 * * *

29 (2)(a)(i) ~~For taxable years beginning on and after January 1, 2009, there~~

1 **There** shall be allowed a credit against the individual income, corporation income,
2 and corporation franchise tax liability of a taxpayer who has received certification
3 pursuant to the provisions of Paragraph (1) of this Subsection; **provided that the**
4 **credit shall be allowed only against the tax liability of the international business**
5 **entity which receives the certification.** The amount of the credit shall be equal to
6 the product of multiplying five dollars by the taxpayer's number of tons of qualified
7 cargo for the taxable year ~~but only for the total amount of the allocation provided to~~
8 ~~the taxpayer by the secretary of the Department of Economic Development for such~~
9 ~~taxable year~~ **or the product of multiplying the number of dollars by the**
10 **taxpayer's number of tons of qualified cargo for the taxable year or portion of**
11 **a taxable year which is warranted by the significant positive economic benefit**
12 **determined by the commissioner pursuant to Item (ii) of this Subparagraph,**
13 **whichever is less. However, each tax credit granted to a taxpayer shall be**
14 **subject to the same limit as is provided for a qualifying project pursuant to**
15 **Subparagraph (C)(1)(b) of this Section, and the total amount of credits which**
16 **may be granted by the department in any fiscal year pursuant to this Item shall**
17 **not exceed the fiscal year limit provided for in such Subparagraph.**

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

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, which approval shall not be granted earlier than July 1, 2014, and the state bond commission.

Requires that the Import Export Cargo Credit shall be subject to the same limits as is provided for a qualifying project as the Investor Tax Credit. Requires the promulgation of rules no later than March 31, 2014.

"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, which approval shall not be granted earlier than July 1, 2014, 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) and (c), (G), (I)(1)(intro para), (I)(1)(c), and (2)(a))

Summary of Amendments Adopted by Senate

Committee 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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Finance to the engrossed bill

1. Technical amendment.
2. Modifies definition of port or port and harbor activity.
3. Provides that the date which Joint Legislative Committee on the Budget

approves any Investor Tax Credit qualifying project issued by the Department of Economic Development shall not be granted earlier than July 1, 2014.

4. Provides that no later than March 31, 2014, the secretary of the Department of Economic Development shall promulgate rules in accordance with the APA which establish the process by which a taxpayer shall apply for certification for the Import Export Cargo Credit.
5. Provides that the date which Joint Legislative Committee on the Budget approves any Import Export Cargo Credit qualifying project issued by the Department of Economic Development shall not be granted earlier than July 1, 2014.
6. Requires that the Import Export Cargo Credit shall be subject to the same limits as is provided for a qualifying project for the Investor Tax Credit.
7. Provides that the date which Joint Legislative Committee on the Budget approves the certification by the commissioner of administration of significant positive economic benefit of a qualifying Import Export Cargo Credit project issued by the Department of Economic Development shall not be earlier than July 1, 2014.