

Regular Session, 2013

HOUSE BILL NO. 563

BY REPRESENTATIVE THIBAUT

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 income  
17 tax credit under 26 U.S.C. §41(ba); for the taxable year, or meets the requirements of  
18 Subparagraph (3)(i) of this Subsection, shall be allowed a refundable tax credit to be  
19 applied against income and corporation franchise taxes due.

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

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

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

10          (c) The total number of persons employed in Louisiana by the taxpayer and  
11 the number of those persons employed in Louisiana directly engaged in research and  
12 development.

13          (d) The average wages of the persons employed in Louisiana not directly  
14 engaged in research and development and the average wages of the persons  
15 employed in Louisiana directly engaged in research and development.

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

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

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

23          (h) Any other information required by the Department of Economic  
24 Development.

25          (i) A taxpayer who employs less than fifty employees may apply for credits  
26 without providing a federal income tax return as required by Subparagraph (a) of this  
27 Paragraph if all of the following criteria are met:

28            (i) Unless waived by the secretary of the department, the taxpayer provides  
29 the department with a report from a certified public accountant authorized to practice  
30 in the state of Louisiana. The report shall be rendered based upon procedures and

1 regulations developed by the department in accordance with the Administrative  
2 Procedure Act.

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

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

8 (5) The following types of businesses that do not have a pending or issued  
9 United States patent directly related to the qualified research expenditures claimed  
10 under this Section are ineligible to apply for or receive benefits under this Section,  
11 unless specifically invited by the secretary of the department to do so:

12 (a) Professional services firms as defined by departmental rule.

13 (b) Businesses primarily engaged in custom manufacturing and custom  
14 fabricating as defined by departmental rule.

15 C.

16 \* \* \*

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

19 \* \* \*

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

22 \* \* \*

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

28 (2) If a taxpayer's application is selected for examination, the taxpayer shall  
29 submit all supporting documentation required by the department. The department

1           shall use this evidence to verify that the amount of the qualified research expenses  
 2           incurred in Louisiana for the taxable year support the corresponding tax credit.

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

6           (4) The applicant bears the burden of proving that its activities meet the  
 7           definition of qualified research provided in 26 U.S.C. §41(d).

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

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

21          (2) The provisions of this Subsection are in addition to and shall not limit the  
 22          authority of the secretary of the Department of Revenue to assess or to collect under  
 23          any other provision of law. This includes the disallowance of any disallowed credit  
 24          claimed by a taxpayer who received the credit through purchase or through a  
 25          distribution by an entity not taxed as a corporation.

26          H: I. A taxpayer shall not receive any other incentive administered by the  
 27          Department of Economic Development for any expenditures for which the taxpayer  
 28          has received a credit pursuant to this Section.

1                    † J. No credit shall be allowed pursuant to this Section for research  
 2                    expenditures incurred or Small Business Innovation Research Grant funds received  
 3                    after December 31, 2019.

4                    Section 2. This Act shall be applicable to tax years beginning on or after January 1,  
 5                    2013. This Act shall become effective on July 1, 2013; if vetoed by the governor and  
 6                    subsequently approved by the legislature, this Act shall become effective on July 1, 2013,  
 7                    or on the day following such approval by the legislature, whichever is later.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_