

Regular Session, 2011

HOUSE BILL NO. 269

BY REPRESENTATIVE HINES

TAX CREDITS: Provides for the taxable periods in which angel investor tax credits may be granted and provides relative to the amount of the tax credit

1 AN ACT

2 To amend and reenact R.S. 47:6020.1(A), (B)(2)(a) and (c), and (C)(1)(introductory

3 paragraph), 6020.2(A)(1) and (2)(a), (b), and (c), and 6020.3 and to enact R.S.

4 47:6020.1(D), relative to tax credits; to provide relative to the Angel Investor Tax

5 Credit Program; to provide for the amount of the tax credit; to provide for the

6 maximum amount of tax credits which may be granted in a year; to authorize the

7 Department of Economic Development to determine the method of awarding tax

8 credits; to provide for the taxable periods in which the credit may be granted; to

9 provide relative to the repayment, recapture, or recovery of tax credits under certain

10 circumstances; to authorize the collection of interest under certain circumstances; to

11 provide for an effective date; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 47:6020.1(A), (B)(2)(a) and (c), and (C)(1)(introductory paragraph),

14 6020.2(A)(1) and (2)(a), (b), and (c), and 6020.3 are hereby amended and reenacted and R.S.

15 47:6020.1(D) is hereby enacted to read as follows:

16 §6020.1. Angel Investor Tax Credit Program; establishment; qualifications;

17 administration

18 A. Qualifying individuals or entities that invest in a Louisiana

19 Entrepreneurial Business as defined by R.S. 51:2303(5) may ~~earn, apply for, and be~~

20 granted a refundable tax credit on any Louisiana income or corporation franchise tax

1 liability. Such credits shall be earned and granted for a period of five tax years as
2 provided in this Part. The administration of applications for these credits and the
3 provision of these credits shall be called the Angel Investor Tax Credit Program.

4 B.

5 * * *

6 (2) In providing for the implementation and administration of the program,
7 the department shall work closely with the secretary of the Department of Revenue
8 in order to promulgate rules. Such rules shall include provisions for:

9 (a) The Department of Economic Development to certify the eligibility of
10 any taxpayer applicant for receipt of the tax credit provided for in this Part ~~and the~~
11 ~~qualification of any taxpayer claimant to claim the credit against state tax liability.~~

12 * * *

13 (c) ~~Provide for~~ The presentation by the applicant or claimant of an annual
14 report of the Louisiana Entrepreneurial Business regarding the use of proceeds,
15 number of employees, amount of payroll, annual revenue, and any other information
16 requested by the Department of Economic Development.

17 C.(1) To qualify for an angel investor tax credit ~~for five tax years~~ all of the
18 following qualifications shall be required by each applicant:

19 * * *

20 D. The Angel Investor Tax Credit Program shall be applicable for all taxable
21 periods beginning on and after January 1, 2012, through all taxable periods ending
22 on December 31, 2016. This program shall become null and void on January 1,
23 2017.

24 §6020.2. Angel Investor Tax Credit; amount; duration; forfeit

25 A.(1) Except as provided in Subsection B of this Section, the taxpayer may
26 ~~earn and apply for and, if qualified,~~ be granted a refundable credit on any income or
27 corporation franchise tax liability owed to the state by the taxpayer seeking to claim
28 the credit, in the amount approved by the secretary of the Department of Economic
29 Development ~~for~~ based on the amount of money invested by the taxpayer in the

1 Louisiana Entrepreneurial Business, ~~which.~~ Tax credits granted pursuant to the
2 provisions of this Section shall not exceed one million dollars per year per business
3 and two million dollars total per business. ~~Except as otherwise provided in this~~
4 ~~Paragraph, the refundable credit shall be allowed against the income tax for the~~
5 ~~taxable period in which the credit is earned and the franchise tax for the taxable~~
6 ~~period following the period in which the credit is earned. However, credits earned~~
7 ~~on or before December 31, 2005, shall not be allowed until the income tax period~~
8 ~~beginning January 1, 2006, and the franchise tax due January 1, 2007. All tax credits~~
9 ~~shall be divided into equal portions to be applied over five consecutive tax years~~
10 ~~beginning with the taxable period in which the credit is granted for individual or~~
11 ~~corporation income tax purposes, and the taxable period following the period in~~
12 ~~which the credit is granted for franchise tax purposes.~~

13 (2)(a) ~~The credits approved by the Department of Economic Development~~
14 ~~shall be granted at the rate of fifty percent of the amount of money invested by the~~
15 ~~taxpayer in the Louisiana Entrepreneurial Business, with the credit divided in equal~~
16 ~~portions for five years, subject to the limitations provided for in Paragraph (1) of this~~
17 ~~Subsection. Tax credits may be granted in an amount equal to a percentage of the~~
18 ~~amount of money invested by the taxpayer in a Louisiana Entrepreneurial Business~~
19 ~~as follows:~~

- 20 (i) From January 1, 2012, through December 31, 2012, fifty percent.
- 21 (ii) From January 1, 2013, through December 31, 2013, forty-five percent.
- 22 (iii) From January 1, 2014, through December 31, 2014, forty percent.
- 23 (iv) From January 1, 2015, through December 31, 2015, thirty-five percent.
- 24 (v) From January 1, 2016, through December 31, 2016, thirty percent.
- 25 (b) The total angel investor tax credits granted by the Department of
26 Economic Development ~~in any calendar year~~ shall not exceed five million dollars per
27 calendar year. The department shall by rule establish the method of allocating
28 available tax credits to applicants, including but not limited to a first-come first-
29 served system, reservation of tax credits for a specified time period, or other method

1 which the department, in its discretion, may find beneficial to the program. In the
2 event the total amount of credits granted in any calendar year is less than five million
3 dollars, any residual amount of unused credits shall carry forward for use in
4 subsequent years and may be granted in subsequent years in addition to the annual
5 five million dollar limit; however, no tax credit shall be granted after December 31,
6 2016.

7 (c) After certifying the eligibility of the investor, the Louisiana
8 Entrepreneurial Business, and the amount of the investment, the Department of
9 Economic Development shall issue a tax credit certificate, a copy of which is to be
10 attached to the tax return of the angel investor. The tax credit certificate shall
11 contain the taxpayer's name, address, tax identification number, the amount of credit,
12 the name of the qualifying business, and other information required by the
13 Department of Revenue. The tax credit certificate, unless rescinded by the
14 Department of Economic Development, shall be accepted by the Department of
15 Revenue as proof of the credit.

16 * * *

17 §6020.3. False or fraudulent information in making application, claim for credit, or
18 other instrument; repayment, recapture, or recovery of credits; penalties

19 A. Any person making an application, claim for an angel investor tax credit,
20 or any report, return, statement, or other instrument or providing any other
21 information pursuant to the provisions of the Angel Investor Tax Credit Program
22 who willfully makes a false or fraudulent application, claim, report, return,
23 statement, invoice, or other instrument or who willfully provides any false or
24 fraudulent information, any person who willfully aids or abets another in making
25 such false or fraudulent application, claim, report, return, statement, invoice, or other
26 instrument, or any person who willfully aids or abets another in providing any false
27 or fraudulent information, shall be guilty, upon conviction, of a felony and shall be
28 punished by the imposition of a fine of not less than one thousand dollars and not

1 more than fifty thousand dollars or imprisoned for not less than two years and not
2 more than five years, or both.

3 B. At any time within the two tax years after the last tax year in which tax
4 credits are issued with respect to a business, if the business is no longer domiciled
5 in Louisiana, the business and its owners shall repay to the Department of Revenue,
6 the total amount of angel investor tax credits issued with respect to the business, and
7 investment in the business shall no longer be eligible for tax credits.

8 C. At any time within the three tax years after the year of investment, if the
9 investment is repaid or used for any other unauthorized use as determined by the
10 Department of Economic Development, tax credits issued with respect to the
11 business shall be subject to recapture or repayment by the business or investor, or
12 both, as determined by the Department of Economic Development and the
13 Department of Revenue, and investment in the business shall no longer be eligible
14 for tax credits.

15 D. Tax credits granted according to the provisions of this Section but later
16 disallowed in whole or in part, or subject to recapture or repayment may be
17 recovered by the Department of Revenue from the taxpayer applicant through any
18 collection remedy authorized by R.S. 47:1561 and initiated within three years from
19 December thirty-first of the year in which the tax credit was originally granted.
20 Interest may be assessed and collected on these recovered tax credits, but the rate of
21 interest shall be limited to a rate three percentage points above the rate provided for
22 in R.S. 9:3500(B)(1), which shall be computed from the original due date of the
23 return which the disallowed credit was taken.

24 B.E. Any person convicted of a violation of this Section shall be liable for
25 the repayment of all credits which were granted to that person. ~~Interest shall be due~~
26 ~~on such repayments at the rate of fifteen percent per annum.~~

27 Section 2. The provisions of this Act shall become effective on January 1, 2012.

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)]

Hines

HB No. 269

Abstract: Authorizes issuance of the angel investor tax credit for all taxable periods beginning on and after Jan. 1, 2012, through all taxable periods ending on Dec. 31, 2016. Requires the tax credit amount to be based on the percentage of money invested by the taxpayer in a La. Entrepreneurial Business.

Present law authorizes a credit against La. income and corporation franchise tax liability for qualifying individuals or entities which invest in a "La. Entrepreneurial Businesses", which has been approved by the Dept. of Economic Development (hereinafter department).

Present law authorizes credits for up to \$1 million per year per business, not to exceed \$2 million per business. The amount of the credit is 50% of the amount of money invested, to be divided into equal portions over five years.

Present law limits the total amount of credits which the department may grant each calendar year to \$5 million.

Proposed law retains present law with respect to the \$5 million annual limit, and provides that, in the event the total amount of credits granted by the department in any year is less than \$5 million, any residual amount of unused credits shall be carried forward for use in subsequent years and may be granted in addition to the \$5 million annual limit.

Proposed law provides that the amount of the tax credit may be equal to a percentage of the amount of money invested by the taxpayer in a La. Entrepreneurial Business as follows:

- (1) From Jan. 1, 2012, through Dec. 31, 2012, 50%.
- (2) From Jan. 1, 2013, through Dec. 31, 2013, 45%.
- (3) From Jan. 1, 2014, through Dec. 31, 2014, 40%.
- (4) From Jan. 1, 2015, through Dec. 31, 2015, 35%.
- (5) From Jan. 1, 2016, through Dec. 31, 2016, 30%.

Proposed law authorizes the department to establish by rule the method of allocating available tax credits to applicants, which may include a first-come first-served system, reservation of tax credits for a specified time period, or other method which the department deems appropriate.

Present law provided for the sunset of the Angel Investor Tax Credit Program on Dec. 31, 2009.

Proposed law provides that the provisions of the Angel Investor Tax Credit Program shall be applicable for all tax periods beginning on and after Jan. 1, 2012, through all tax periods ending on Dec. 31, 2016. Further provides that the program shall become null and void on Jan. 1, 2017.

Present law provides that any person who willfully makes a false or fraudulent application, claim, report, return, statement, invoice, or other instrument or who willfully provides any

false or fraudulent information, any person who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice, or other instrument, or any person who willfully aids or abets another in providing any false or fraudulent information, shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than \$1,000 and not more than \$50,000 or imprisoned for not less than two years and not more than five years, or both.

Present law further provides that any person convicted of a violation of present law shall be liable for the repayment of all credits which were granted to that person. Further provides that interest shall be due at the rate of 15% per annum.

Proposed law retains present law but deletes the provision authorizing the collection of interest on the repayment of credits at 15% per annum.

Proposed law adds that at any time within the two tax years after the last tax year in which credits are issued with respect to a business, if the business is no longer domiciled in La., the business and its owners shall repay the total amount of angel investor tax credits issued to the business, and investment in the business shall no longer be eligible for credits.

Proposed law provides that at any time within the three tax years after the year of investment, if the investment is repaid or used for any other unauthorized use as determined by the department, credits issued with respect to the business shall be subject to recapture or repayment by the business or investor, or both, as determined by the department and the Dept. of Revenue, and investment in the business shall no longer be eligible for credits.

Proposed law provides that credits granted but later disallowed in whole or in part, or subject to recapture or repayment, may be recovered by the Dept. of Revenue from the taxpayer applicant through any collection remedy authorized by present law and initiated within three years from Dec. 31st of the year in which the credit was originally granted. Interest may be assessed and collected on recovered credits, but the rate shall be limited to three percentage points above the rate provided for in present law, computed from the original due date of the return on which the disallowed credit was taken.

Effective Jan. 1, 2012.

(Amends R.S. 47:6020.1(A), (B)(2)(a) and (c), and (C)(1)(intro. para.), 6020.2(A)(1) and (2)(a), (b), and (c), and 6020.3; Adds R.S. 47:6020.1(D))