

ACT No. 414

HOUSE BILL NO. 597

BY REPRESENTATIVES MICHAEL JACKSON, AUBERT, BOBBY BADON, BALDONE, BARRAS, HENRY BURNS, BURRELL, CARMODY, CARTER, CHANEY, CROMER, FOIL, GALLOT, GISCLAIR, GREENE, HARDY, HARRISON, HAZEL, HENRY, HUTTER, GIROD JACKSON, JOHNSON, ROSALIND JONES, SAM JONES, KATZ, LEGER, MONTOUCET, RICHARD, RITCHIE, ROBIDEAUX, GARY SMITH, JANE SMITH, PATRICIA SMITH, AND TEMPLET AND SENATORS APPEL, BROOME, CHEEK, CLAITOR, DORSEY, KOSTELKA, LONG, MARTINY, MICHOT, MORRISH, MURRAY, NEVERS, QUINN, WALSWORTH, AND WILLARD-LEWIS

1 AN ACT

2 To amend and reenact R.S. 47:6020 and to repeal R.S. 47:6020.1, 6020.2, and 6020.3,
3 relative to tax credits; to provide for the amount of the tax credit; to provide for the
4 maximum amount of tax credits which may be granted in a year; to authorize the
5 Department of Economic Development to administer the program; to provide relative
6 to the repayment, recapture, or recovery of tax credits under certain circumstances;
7 to authorize the collection of interest under certain circumstances; to provide for an
8 effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:6020 is hereby amended and reenacted to read as follows:

11 §6020. ~~Legislative findings and purposes~~ Angel Investor Tax Credit Program

12 A. Purpose. The legislature finds that the welfare of the state is enhanced
13 by a healthy entrepreneurial business environment and that ready sources of capital
14 necessary to support this environment are not currently available.

15 B. ~~This Act*~~ The Angel Investor Tax Credit Program is intended to achieve
16 the following purposes:

17 (1) ~~To create the Angel Investor Tax Credit Program to~~ encourage third
18 parties to invest in early stage wealth-creating businesses in the state.

19 (2) To expand the economy of the state by enlarging its base of ~~wealth~~
20 ~~creating~~ wealth-creating businesses.

1 (3) To enlarge the number of quality jobs available to retain the presence of
 2 young people educated in Louisiana.

3 ~~§6020.1. Angel Investor Tax Credit Program; establishment; qualifications;~~
 4 ~~administration~~

5 ~~A. Qualifying~~ B. Administration. (1) Program. Investments made on or
 6 after January 1, 2011, by qualifying individuals or entities that invest in a Louisiana
 7 Entrepreneurial Business as defined by R.S. 51:2303(5) may earn, apply for, and if
 8 qualified, be granted a rebate tax credit. Such credits shall be earned and granted for
 9 a period of five tax years as provided in this Part. The administration of tax credit
 10 applications for these credits, certification of eligibility and qualification of
 11 applicants for tax credits, and the provision of for these credits shall be called known
 12 as the Angel Investor Tax Credit Program, hereinafter referred to as "program".

13 ~~B.(1)~~ (2) Rules. ~~The Angel Investor Tax Credit Program program~~ shall be
 14 implemented and administered by the Department of Economic Development,
 15 hereinafter referred to as "department". In compliance with the Administrative
 16 Procedure Act ~~and this Part~~, the department shall adopt and promulgate ~~such~~ rules
 17 as are necessary for the efficient and effective administration of this program in
 18 keeping with the purposes for which it is enacted.

19 ~~(2) In providing for the implementation and administration of the program,~~
 20 ~~the~~ The department shall work closely with the secretary of the Department of
 21 Revenue ~~in order to promulgate in the development and promulgation of rules. Such~~
 22 The rules shall include provisions for:

23 (a) ~~The Department of Economic Development to~~ An application process
 24 through which the department may certify the eligibility of any taxpayer an investor
 25 applicant for receipt of the tax credit provided for in this Part and the qualification
 26 of any taxpayer claimant an investor to claim the credit against state tax liability.

27 (b) The presentation of a ~~taxpayer's~~ an investor's eligibility certification and
 28 any other documentation required in order ~~to be applied for to~~ earn or claim a credit.

29 (c) ~~Provide for an annual report of~~ The submission of annual reports by the
 30 Louisiana Entrepreneurial Business regarding the use of proceeds, number of

1 employees, amount of payroll, annual revenue, and any other information requested
 2 by the ~~Department of Economic Development~~ department.

3 C. Qualifications. (1) To qualify for ~~an angel investor tax credit for five tax~~
 4 ~~years a rebate~~ tax credit, the investor and the investment shall meet all of the
 5 following ~~qualifications shall be required by each applicant~~ requirements:

6 (a) The investment in the Louisiana Entrepreneurial Business must be an
 7 investment that is at risk and not secured or guaranteed. "At risk" means that the
 8 repayment of the investment is entirely dependent on the success of the Louisiana
 9 Entrepreneurial Business.

10 ~~(b)~~ The funds invested by the applicant cannot have been raised as a result
 11 of ~~other Louisiana tax incentive programs, funds pooled or organized through capital~~
 12 ~~placement agreements for the purpose of equity and venture capital investing unless~~
 13 ~~approved by the Department of Economic Development, or as the result of illegal~~
 14 activity.

15 ~~(b)(c)~~ For the purposes of ~~this Angel Investor Tax Credit Program~~ the
 16 program, an angel investor or investors cannot be the principal owner or owners of
 17 the business who are involved in the operation of the business as a full-time
 18 professional activity, nor can their spouses and relatives within the third degree of
 19 consanguinity or affinity. A principal owner means one or more persons who own
 20 an aggregate of fifty percent or more of the Louisiana Entrepreneurial Business.

21 ~~(d)~~ (c) The use of proceeds from the investment must be used for capital
 22 improvements, plant equipment, research and development, working capital for the
 23 business, or other business activity as may be approved by the ~~Department of~~
 24 ~~Economic Development~~ department. The proceeds cannot be used to pay dividends,
 25 repay shareholder's loans, redeem shares, or repay debt unless approved by the
 26 ~~Department of Economic Development~~ department.

27 ~~(e)~~ (d) The investor applicant shall meet the definition of accredited investor
 28 established by ~~the Department of Economic Development~~ Rule 501 in Regulation
 29 D of the General Rules and Regulations promulgated under the Securities Act of
 30 1933.

1 ~~(f)~~ (e) The investment in the Louisiana Entrepreneurial Business by the
 2 applicant must be maintained for three years unless otherwise approved by the
 3 Department of Economic Development.

4 (2) To qualify for an angel investor tax credit, the Louisiana Entrepreneurial
 5 Business in which the investment is made shall meet all the following requirements:

6 (a) The principal business operations of the business are located in
 7 Louisiana.

8 (b) ~~Prior to the investment by the taxpayer, the business has received~~
 9 ~~approval as qualified to receive angel investor tax credits by the Department of~~
 10 ~~Economic Development, the department has approved the business as one which~~
 11 may receive investments which may qualify for a tax credit under the program.

12 (c) ~~The Louisiana Entrepreneurial Business~~ business must demonstrate that
 13 it will be a wealth-creating business for Louisiana by demonstrating in its business
 14 plan that it will have more than fifty percent of its sales from outside Louisiana.

15 (d) The business is not a business engaged primarily in retail sales, real
 16 estate, professional services, gaming or gambling, natural resource extraction or
 17 exploration, or financial services including venture capital funds.

18 ~~§6020.2. Angel Investor Tax Credit, amount, duration, forfeit~~

19 ~~A.(1) Except as provided in Subsection B of this Section, the taxpayer~~

20 D. Tax Credits (1) The total amount of tax credits granted by the
 21 department in any calendar year shall not exceed five million dollars. The
 22 department shall by rule establish the method of allocating available tax credits to
 23 investors including but not limited to a first-come, first-served system, reservation
 24 of tax credits for a specific time period, or other method which the department, in its
 25 discretion, may find beneficial to the program. If the department does not grant the
 26 entire five million dollars in tax credits in any calendar year, the amount of residual
 27 unused tax credits shall carry forward to subsequent calendar years and may be
 28 granted in any year without regard to the five million dollar per year limitation.
 29 After the approval of an investor pool, the department shall issue a letter identifying
 30 the amount of tax credits that are available to that pool; however, no tax credit shall

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 be granted to an investor until the investment has been made in the Louisiana
2 Entrepreneurial Business.

3 (2)(a) An investor may ~~earn and~~ apply for and, if qualified, be granted a
4 ~~refundable~~ credit on any income or corporation franchise tax liability owed to the
5 state by the taxpayer seeking to claim the credit in the amount approved by the
6 secretary of the ~~Department of Economic Development~~ department. ~~for~~ The amount
7 of the tax credit shall be based upon the amount of money invested by the ~~taxpayer~~
8 investor in the Louisiana Entrepreneurial Business, which investment shall not
9 exceed one million dollars per year per business and two million dollars total per
10 business. Except as otherwise provided in Subparagraph (b) of this Paragraph, the
11 ~~refundable~~ credit shall be allowed against the income tax for the taxable period in
12 which the credit is earned and the franchise tax for the taxable period following the
13 period in which the credit is earned. ~~However, credits earned on or before December~~
14 ~~31, 2005, shall not be allowed until the income tax period beginning January 1, 2006,~~
15 ~~and the franchise tax due January 1, 2007.~~

16 (2)(a) The credits approved by the ~~Department of Economic Development~~
17 department shall be granted at the rate of ~~fifty~~ thirty-five percent of the amount of
18 ~~money invested by the taxpayer in the Louisiana Entrepreneurial Business, with the~~
19 ~~credit~~ amount of the investment with the credit divided in equal portions for five
20 years, ~~subject to the limitations provided for in Paragraph (1) of this Subsection.~~

21 (b) ~~The total angel investor tax credits granted by the Department of~~
22 ~~Economic Development in any calendar year shall not exceed five million dollars.~~

23 (c) After certifying the eligibility of the Louisiana Entrepreneurial Business
24 and the amount of the investment, the secretary of the ~~Department of Economic~~
25 ~~Development~~ department shall issue a tax credit certificate, a copy of which is to be
26 attached to the tax return of the angel investor. The tax credit available in the first
27 year shall become deductible from tax liability in the taxpayer's income tax year
28 which occurs twenty-four months from the date the department certifies the amount
29 of the investment.

1 (c) The tax credit certificate shall contain the ~~taxpayer's~~ investor's name,
 2 address, tax identification number, the amount of credit, the name of the qualifying
 3 ~~business~~ Louisiana Entrepreneurial Business, a statement certifying that the
 4 Louisiana Entrepreneurial Business was domiciled in Louisiana at the close of the
 5 previous calendar year, and other information which may be required by the
 6 Department of Revenue. The tax credit certificate, unless rescinded by the
 7 ~~Department of Economic Development~~ department, shall be accepted by the
 8 Department of Revenue as proof of the credit.

9 (d) The ~~Department of Economic Development~~ department shall maintain
 10 a list of the tax credit certificates issued.

11 (3)(a) All entities taxed as corporations for Louisiana income or corporation
 12 franchise tax purposes shall claim any credit allowed under this Section on their
 13 corporation income and corporation franchise tax return.

14 (b) Individuals shall claim any credit allowed under this Section on their
 15 individual income tax return.

16 (c) Estates or trusts shall claim any credit allowed under this Section on their
 17 fiduciary income tax returns.

18 (d) Entities not taxed as corporations shall claim any credit allowed under
 19 this Section on the returns of the partners or members as follows:

20 (i) Corporate partners or members shall claim their share of the credit on
 21 their corporation income or corporation franchise tax returns.

22 (ii) Individual partners or members shall claim their share of the credit on
 23 their individual income tax returns.

24 (iii) Partners or members that are estates or trusts shall claim their share of
 25 the credit on their fiduciary income tax returns.

26 ~~B.(4)~~ A tax credit granted pursuant to the Angel Investor Program shall
 27 expire and have no value or effect on tax liability beginning with the eleventh tax
 28 year after the tax year in which it was originally granted.

29 (5)(a) If at the close of any calendar year in the five-year period beginning
 30 with the first year in which a tax credit certificate was issued to an investor, the

1 Louisiana Entrepreneurial Business is no longer domiciled in Louisiana, the tax
 2 credit shall be recaptured from the investor unless change of domicile is the result
 3 of a merger, consolidation, or other acquisition of such business with or by a party
 4 not affiliated with the business.

5 (b) If at the close of any calendar year in the three-year period beginning
 6 with the first year a tax credit certificate was issued to an investor, the investor
 7 transfers the equity received in connection with the qualified investment, the tax
 8 credit shall be recaptured from the investor unless the transfer results from any of the
 9 following circumstances:

10 (i) The liquidation of the business issuing the equity;

11 (ii) The merger, consolidation, or other acquisition of such business with or
 12 by a party not affiliated with the business; or

13 (iii) The death of the investor.

14 ~~§6020.3. False or fraudulent information in making application, claim for credit~~
 15 ~~rebate, or other instrument; penalties~~

16 ~~A. E.(1)~~ Any person making an application, claim for ~~an angel investor tax~~
 17 credit, or any report, return, statement, or other instrument or providing any other
 18 information pursuant to the provisions of the Angel Investor Tax Credit Program
 19 who willfully makes a false or fraudulent application, claim, report, return,
 20 statement, invoice, or other instrument or who willfully provides any false or
 21 fraudulent information, any person who willfully aids or abets another in making
 22 ~~such a~~ false or fraudulent application, claim, report, return, statement, invoice, or
 23 other instrument, or any person who willfully aids or abets another in providing any
 24 false or fraudulent information, shall be guilty, upon conviction, of a felony and shall
 25 be punished by the imposition of a fine of not less than one thousand dollars and not
 26 more than fifty thousand dollars or imprisoned for not less than two years and not
 27 more than five years, or both.

28 ~~B.(2)~~ Any person convicted of a violation of this Section shall be liable for
 29 the repayment of all ~~rebate~~ tax credits amounts which were granted to that person.
 30 Interest shall be due on such repayments at the rate of fifteen percent per annum.

1 F. Transferability of the credit. Any Angel Investor Tax Credits not
2 previously claimed by any taxpayer against its tax may be transferred or sold to
3 another Louisiana taxpayer, subject to the following conditions:

4 (1) A single transfer or sale may involve one or more transferees. The
5 transferee of the tax credits may transfer or sell such tax credits subject to the
6 conditions of this Subsection.

7 (2) Transferors and transferees shall submit to the department and the
8 Department of Revenue in writing, a notification of any transfer or sale of tax credits
9 within thirty days after the transfer or sale of such tax credits. The notification shall
10 include the transferor's tax credit balance prior to transfer, a copy of any tax credit
11 certificate issued by the secretary of the Department of Economic Development and,
12 the transferor's remaining tax credit balance after transfer, all tax identification
13 numbers for both transferor and transferee, the date of transfer, the amount
14 transferred, the price paid by the transferee to the transferor, and any other
15 information required by the department or the Department of Revenue. Any pricing
16 information submitted by a transferor or transferee shall be treated by the department
17 and the Department of Revenue as proprietary to the entity reporting such
18 information and therefore confidential. However, this shall not prevent the
19 publication of summary data that includes no fewer than three transactions.

20 (3) Failure to comply with this Subsection will result in the disallowance of
21 the tax credit until the taxpayers are in full compliance.

22 (4) The transfer or sale of this credit does not extend the time in which the
23 credit can be used. The carryforward period for credit that is transferred or sold
24 begins on the date on which the credit was earned.

25 (5) To the extent that the transferor did not have rights to claim or use the
26 credit at the time of the transfer, the Department of Revenue shall either disallow the
27 credit claimed by the transferee or recapture the credit from the transferee through
28 any collection method authorized by this Section or R.S. 47:1561. The transferee's
29 recourse is against the transferor.

30 Section 2. R.S. 47:6020.1, 6020.2, and 6020.3 are hereby repealed in their entirety.

1 Section 3. The provisions of this Act shall be null and void and of no effect on and
2 after July 1, 2015.

3 Section 4. This Act shall become effective upon signature by the governor or, if not
4 signed by the governor, upon expiration of the time for bills to become law without signature
5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become
7 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____