

2023 Regular Session

HOUSE BILL NO. 617

BY REPRESENTATIVE EDMONDS

TAX CREDITS: Establishes the Life Sciences Investment Tax Credit Program which consists of a Life Sciences Investment Tax Credit and a Life Sciences FDA Medical Device User Fee tax credit

1 AN ACT

2 To enact R.S. 47:6043, relative to income and franchise tax credits; to provide for an income
3 or corporation franchise tax credit for certain life sciences investments and user fees;
4 to provide for definitions; to provide for the amount of the credit; to provide for the
5 administration of the credit; to provide for application and claiming of the credit; to
6 authorize the recovery of credits under certain circumstances; to provide for
7 limitations and requirements; to authorize the promulgation of rules; to provide for
8 applicability; to provide for an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:6043 is hereby enacted to read as follows:

11 §6043. Life Sciences Tax Credit Incentive Program

12 A. Purpose. It is hereby found that Louisiana has low representation in the
13 life sciences sector of its economy. The purpose of this tax incentive program is to
14 promote health-related innovations by supporting research, development,
15 manufacturing, and commercialization in the life sciences sector.

16 B. Definitions. For purposes of this Section, the following words shall have
17 the following meanings unless the context clearly indicates otherwise:

18 (1) "Department" means the Department of Economic Development.

19 (2) "FDA" means the United States Food and Drug Administration.

1 (3) "IRC" means the Internal Revenue Code.

2 (4) "Life Sciences" means advanced and applied sciences that expand the
3 understanding of human physiology and have the potential to lead to medical
4 advances or therapeutic applications and is specifically limited to agricultural
5 biotechnology, biogenerics, bioinformatics, biomedical engineering,
6 biopharmaceuticals, biotechnology, chemical synthesis, chemistry technology,
7 diagnostics, genomics, image analysis, marine biology, marine technology, medical
8 devices, nanotechnology, natural product pharmaceuticals, proteomics, regenerative
9 medicine, RNA interference, stem cell research, and veterinary science.

10 (5) "Medical device" means a "device" as defined in section 201(h) of the
11 Federal Food, Drug, and Cosmetic Act.

12 (6) "Qualifying property" means tangible personal property and other
13 tangible property including buildings and structural components of buildings
14 acquired by purchase as defined in IRC §179(d) and used for research, development,
15 manufacturing, or commercialization in the life sciences sector.

16 (7) "Secretary" means the secretary of the Department of Economic
17 Development.

18 C. Administration of the credits. (1) There shall be allowed a tax credit
19 against income and corporation franchise taxes for either of the following:

20 (a) The Life Sciences Investment tax credit, hereinafter "life sciences tax
21 credit". The amount of the life sciences tax credit shall be equal to ten percent of the
22 cost of the acquisition or construction of qualifying property and shall be earned in
23 the year in which the qualifying property is placed in service.

24 (b)(i) The Life Sciences FDA Medical Device User Fee tax credit, hereinafter
25 "FDA medical device tax credit". The amount of the FDA medical device tax credit
26 shall be equal to the amount of the user fee actually paid by the applicant to the FDA
27 for a medical device and shall be earned in the year in which the application for
28 licensure of a medical device is approved by the FDA. In order to be eligible for the

1 FDA medical device tax credit, more than fifty percent of the research and
2 development costs for the medical device must have been incurred in Louisiana.

3 (ii) A life sciences company claiming the FDA medical device tax credit
4 shall not also deduct the FDA user fee on its income tax return.

5 (2) A taxpayer who seeks a tax credit authorized pursuant to the provisions
6 of this Section shall apply to the department through an application process
7 established by the department. The department may require that all applications
8 include documentation to substantiate the credit claim. The department shall
9 approve or disapprove each application and shall certify the amount of the credit
10 approved. Once the department approves an application and certifies the credit
11 amount, the department shall notify the Department of Revenue and shall provide the
12 Department of Revenue with a copy of the approval and certification of credits for
13 each taxpayer.

14 (3) No credits shall be granted to a taxpayer or claimed on a tax return unless
15 the credit is approved and certified by the department.

16 D. Application of the credits. (1) The credits shall be allowed against the
17 income or corporation franchise tax due from a taxpayer for the taxable period in
18 which the credit is earned. If the tax credit allowed pursuant to this Section exceeds
19 the taxpayer's tax liability for that year, the taxpayer may carry forward any unused
20 portion of the credit as a credit against subsequent tax liability for a period not to
21 exceed five years. However, in no event shall the amount of the tax credit applied
22 by a taxpayer in a taxable period exceed the amount of taxes due from the taxpayer
23 for that taxable period.

24 (2) All entities taxed as corporations for Louisiana income tax purposes shall
25 claim any credit on their corporation income and franchise tax return.

26 (3) Individuals, estates, and trusts shall claim their share of any credit on
27 their income tax return.

28 (4) Entities not taxed as corporations shall claim their share of any credit on
29 the returns of the partners or members as follows:

1 (a) Corporate partners or members shall claim their share of any credit on
2 their corporation income tax returns.

3 (b) Individual partners or members shall claim their share of any credit on
4 their individual income tax returns.

5 (c) Partners or members that are estates or trusts shall claim their share of
6 any credit on their fiduciary income tax returns.

7 E. Recovery of credits by the Department of Revenue. Credits previously
8 granted to a taxpayer, but later disallowed, may be recovered by the secretary
9 through any collection remedy authorized by R.S. 47:1561.3.

10 F. Rules. The secretary of the department may promulgate rules in
11 accordance with the Administrative Procedure Act as are necessary to establish the
12 policies and criteria regarding program eligibility and any other matter necessary to
13 carry out the intent and purposes of this Section. The rules shall be subject to
14 oversight by the House Committee on Ways and Means and the Senate Committee
15 on Revenue and Fiscal Affairs.

16 G. Limitations. A taxpayer shall not receive any other incentive
17 administered by the department for any expenditures for which the taxpayer has
18 received a tax credit pursuant to the provisions of this Section.

19 H. Termination. No credit shall be earned pursuant to the provisions of this
20 Section after December 31, 2029.

21 Section 2. The provisions of this Act shall be applicable to taxable years beginning
22 on or after January 1, 2024.

23 Section 3. This Act shall become effective on January 1, 2024.

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)]

HB 617 Original

2023 Regular Session

Edmonds

Abstract: Establishes the Life Sciences Investment Tax Credit Program, which consists of the life sciences investment tax credit and the life sciences Food and Drug

Administration (FDA) medical device user fee tax credit for investments in life sciences.

Proposed law establishes the Life Sciences Investment Tax Credit Program which consists of the life sciences investment tax credit, hereinafter "life sciences tax credit" and the life sciences Food and Drug Administration (FDA) medical device user fee tax credit, hereinafter "FDA medical device tax credit" for investments in life sciences.

Proposed law defines "life sciences" as advanced and applied sciences that expand the understanding of human physiology and have the potential to lead to medical advances or therapeutic applications, limited to agricultural biotechnology, biogenetics, bioinformatics, biomedical engineering, biopharmaceuticals, biotechnology, chemical synthesis, chemistry technology, diagnostics, genomics, image analysis, marine biology, marine technology, medical devices, nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research, and veterinary science.

Proposed law provides that the life sciences income or corporation franchise tax credit shall apply towards the cost of the acquisition or construction of qualifying property and shall be earned in the year in which the qualifying property is placed in service. The amount of the credit shall be equal to 10% of the cost of qualifying property. Proposed law defines "qualifying property" as tangible personal property and other tangible property including buildings and structural components of buildings acquired by purchase as defined in federal law and used for research, development, manufacturing, or commercialization in the life sciences sector.

Proposed law provides that the FDA medical device income or corporation income tax credit shall apply to user fees paid by the tax credit applicant to the FDA for a medical device and shall be earned in the year in which the application for licensure of a medical device is approved by the FDA. The amount of the credit shall be equal to the actual amount of user fees paid by the applicant to the FDA for a medical device. Proposed law further provides that in order to be eligible for this tax credit, more than 50% of the research and development costs for the medical device must have been incurred in La.

Proposed law prohibits a life sciences company claiming the FDA medical device tax credit from also deducting the FDA user fees on its income tax return.

Proposed law requires the Dept. of Economic Development (DED) to establish an application and application process for taxpayers to apply for these credits. Further requires DED to either approve or disapprove each application and to certify the approved amount of the credit. Once DED approves an application and certifies the credit amount, the department is required to notify the Dept. of Revenue (DOR) and provide DOR with a copy of the approval and certification of credits for each taxpayer.

Proposed law authorizes DED to require that applications include documentation to substantiate the credit claim.

Proposed law prohibits credits from being granted to a taxpayer or claimed on a tax return unless the credit is approved and certified by DED.

Proposed law provides for the claiming of tax credits on tax returns and for the recovery of tax credits disallowed by DOR. If the amount of the tax credit exceeds a taxpayer's tax liability for that year, the taxpayer may carry forward any unused portion of the credit as a credit against subsequent tax liability for a period not to exceed five years. However, the amount of the tax credit applied by a taxpayer in a taxable period shall not exceed the amount of taxes due from the taxpayer for that taxable period.

Proposed law authorizes the secretary of DED to promulgate rules in accordance with present law (Administrative Procedure Act) as are necessary to implement the provisions of

proposed law. The rules shall be subject to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Proposed law prohibits a taxpayer from receiving any other incentive administered by DED for any expenditures for which the taxpayer has received a tax credit pursuant to proposed law.

Proposed law prohibits credits from being earned after Dec. 31, 2029.

Proposed law is applicable to taxable years beginning on or after Jan. 1, 2024.

Effective Jan. 1, 2024.

(Adds R.S. 47:6043)