

# DECLARATION OF EMERGENCY

## Department of Economic Development Office of the Secretary Office of Business Development and

## Louisiana Economic Development Corporation

Retention and Modernization Act  
(LAC 13:I.Chapter 35)

The Department of Economic Development, the Office of the Secretary, and the Office of Business Development, pursuant to the authority R.S. 36:104, 36:108, and 51:2382 and in accordance with the Administrative Procedure Act R.S. 49:950 et seq., hereby gives notice of its intent to adopt the following Emergency Rules of the Retention and Modernization Program.

Act 447 of the 2009 Regular Session provides for a modernization tax credit for projects placed in service after July 1, 2011, with a program cap of ten million dollars per year. The Department of Economic Development has found an imminent need to address the process for approval of such projects and the proposed allocation method of tax credits. This is necessary to provide certainty and assurance to investors. Without this Rule, the State of Louisiana may suffer the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

This Rule, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective October 20, 2009, and shall remain in effect for the maximum period allowed under the Act.

### Title 13

### ECONOMIC DEVELOPMENT

#### Part I. Financial Incentive Programs

#### Chapter 35. Retention and Modernization Program

##### §3501. Purpose and Application

A. The purpose of this Chapter is to implement the Retention and Modernization Act as established by R.S. 51:2399.1 et seq.

B. The Chapter shall be administered to achieve the following purposes:

1. to induce businesses to remain in the state and not relocate outside the state; and
2. to modernize existing business operations in Louisiana.

C. This Chapter shall apply to any employer:

1. seeking to become qualified to claim a credit; or
2. claiming a credit under this program.

D. An employer may earn a refundable tax credit on any income or franchise tax liability at the rate of 5 percent for qualified expenditures incurred for modernization.

E. Nothing herein shall be construed to constitute a guarantee or assumption by the state of any debt of any individual company, corporation, or association or to authorize the credit of the state to be given, pledged, or loaned to any individual, company, corporation, or association.

F. No agency shall incur monetary or personnel costs paid with federal funds for compliance with the provisions of this Chapter, when such use of the funds is prohibited by federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

##### §3503. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2399.1 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

*Department*—Department of Economic Development.

*Employer*—a legal person who is engaged in a lawful enterprise not excluded by this Chapter that executes a contract with the Department pursuant to the provisions of this Chapter.

a. Eligible Employers. To qualify for a contract pursuant to this Chapter, employers must be a manufacturer, as defined by North American Industry Classification System (NAICS) codes: 113310, 211, 213111, 541360, 311-339, 511-512 and 54171 as the employer's primary function.

b. Ineligible Employers. Employers engaged in the following professions or services, and identified by the following NAICS codes, shall not be eligible for any credits under this Chapter: retail employers (44 and 45); business associations and professional organizations (8139); state and local governmental enterprises; real estate agents, operators and lessors; automotive rental and leasing; local solid waste disposal, local sewer systems, and local water systems business; non-profit organizations; gaming industry (713219 and 721120); attorneys.

*Facility*—employer's manufacturing site that is the subject of the project.

*LEDC*—Louisiana Economic Development Corporation

*LDR*—Louisiana Department of Revenue

*LWC*—Louisiana Workforce Commission

*Modernization*—capitalized investment by an employer in technology, machinery, building and/or equipment that meets one of the following provisions:

a. an investment from a company with multi-state operations with an established competitive capital project program, which is approved by the department; or

b. an increase in the maximum capacity or "efficiency" of the facility of greater than 10 percent. The modernization must result in the facility adopting "best practices" technology for its industry and the company shall establish that without the investment that the facility would be high risk for closure in the foreseeable future. Modernization does not include the replacing of existing technology with the same or similar technology.

i. Increased "efficiency" claims must be supported by an independent third party analysis, such as an engineer's report, or by any other reasonable means.

ii. Best practices may be verified by objective data provided by independent third parties knowledgeable in the industry, or by any other reasonable means.

*Project*—the design, development, installation and construction of a technology, machinery, building and equipment that results in a modernization of an employer's product line, unit or entire operations that require at least \$5,000,000 of investment.

*Qualified Expenditures*—amounts classified as capital expenditures for federal income tax purposes plus exclusions from capitalization provided for in Internal Revenue Code Section 263(a)(1)(A) through (L), minus the capitalized cost of land, capitalized leases of land, capitalized interest, and the capitalized cost for the purchase of an existing building. When an employer purchases an existing building and capital expenditures are used to rehabilitate the building, only the costs of the rehabilitation shall be considered qualified expenditures. Additionally, an employer shall be allowed to increase his qualified expenditures to the extent an employer's capitalized basis is properly reduced by claiming a federal credit.

*Secretary*—Secretary of the Department of Economic Development, who is, by law, also the president of the Louisiana Economic Development Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

### **§3505. Eligibility Requirements**

A. An employer must meet two sets of requirements.

1. Qualifying Manufacturer

a. Eligible Employers. To qualify for a contract pursuant to this Chapter, employers must be a manufacturer, as defined by North American Industry Classification System (NAICS) codes: 113310, 211, 213111, 541360, 311-339, 511-512 and 54171 as the employer's primary function.

b. Ineligible Employers. Employers engaged in the following professions or services, and identified by the following NAICS codes, shall not be eligible for any credits under this Chapter: retail employers (44 and 45); business associations and professional organizations (8139); state and local governmental enterprises; real estate agents, operators and lessors; automotive rental and leasing; local solid waste disposal, local sewer systems, and local water systems business; non-profit organizations; gaming industry (713219 and 721120); attorneys.

c. The department may promulgate rules annually listing other employers, professions or service industries which are eligible and not eligible for any credit pursuant to this Chapter, and such rules shall not take effect unless presented to LEDC and approved by both the House Ways and Means Committee and the Senate Committee on Revenue and Fiscal Affairs in a public meeting held for such purpose.

2. Qualifying Event

a. Efficiency. The employer must establish an increase of greater than ten percent in the maximum capacity or efficiency of the facility; or

b. Investment. An employer with multi-state operations and an established competitive capital project must make an approved investment of at least five million dollars in the facility.

B. No contract or certification shall be executed with an employer who:

1. has defaulted on or otherwise not repaid any loan or other obligation involving public funds, nor with any employer who has ever declared bankruptcy under which an obligation of the employer to pay or repay public funds or monies was discharged as part of such bankruptcy; or

2. is in default on any filing or payment with or to the state or any of its agencies or political subdivisions and in which an assessment or judgment that is final and non-appealable has been rendered, and remains outstanding, in favor of the state, or any of its agencies, or political subdivisions.

C. No project placed in service before July 1, 2011 shall be eligible for the tax credits authorized pursuant to this program.

D. If approved and subsequently issued a tax credit allocation letter, an applicant shall commit to continue business operations in the state for at least the five year period of the tax credit allocation.

1. If an applicant fails to continue business operations in the state, it may retain credits already granted, but the department reserves the right to withhold previously reserved, but not yet granted tax credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

### **§3507. Amount, Allocation and Limitations upon Tax Credits**

A. An employer earns tax credits in the calendar year in which the project is placed in service.

B. Certified tax credits shall be granted by the department at a rate of 1 percent of the amount of certified expenditures annually over a five year period, for a total of 5 percent of the amount of certified expenditures, subject to the limitations outlined in this section.

C. The Retention and Modernization Tax Credit Program has a program cap of ten million dollars, in tax credits granted per calendar year.

1. The department shall allocate tax credits in accordance with the terms of the tax credit allocation letter.

2. The department shall certify and grant tax credits based upon verification of actual expenditures and in accordance with terms of the tax credit allocation letter.

a. In the event that the total amount of credits granted in any calendar year is less than ten million dollars, any residual amount of unused credits shall carry forward for use in subsequent years and may be granted in addition to the ten million dollar limit for each year.

b. In the event that the total amount of credits granted in any calendar year meets the ten million dollar cap, any excess credits applied for will be treated as having been applied for on the first day of the subsequent calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

### **§3509. Application Procedures**

A. Beginning January 1, 2010, an applicant may apply for this program by submitting the following information to the department:

1. a written application;

2. supporting data as requested by the Department, including but not limited to: independent third party reports verifying efficiency improvements or investments made;

3. a statement verifying that the applicant meets the eligibility requirements or criteria as specified in R.S. 51:2399.1 et seq.; and

4. an application fee of 0.2 percent of the estimated tax credits, with a minimum application fee of \$200 and a maximum fee of \$5,000.

B. The department shall review the application and supporting information, and if it is found to be incomplete or if further information is needed shall contact the applicant business and request such information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

### **§3511. Tax Credit Allocation Letter**

A. The department shall review the application and supporting information and determine whether to allocate tax credits.

1. Evaluation. When determining allocation of available tax credits the department shall take the following factors into consideration:

a. The impact of the project on the objectives of the Retention and Modernization Program;

b. The impact of the project on the employment of Louisiana residents;

c. The impact of the project on the overall economy of the state;

d. The availability of tax credits relative to the annual program cap and tax credits being requested by the applicant; and

e. The total financial impact from an applicant's involvement with any program administered by the Department.

B. Beginning March 31, 2010, tax credit allocation letters may be issued quarterly: by March 31, June 30, September 30 and December 31 of each calendar year.

1. All complete applications received in the same quarter shall be treated and evaluated as if received on the same day, according to the following schedule:

a. applications received by February 28 shall be considered for allocation on March 31;

b. applications received by May 31 shall be considered for allocation on June 30;

c. applications received by August 31 shall be considered for allocation on September 30;

d. applications received by November 30 shall be considered for allocation on December 31;

C. The tax credit allocation letter shall:

1. contain the employer's name, address and tax identification number;

2. identify the proposed efficiency improvements or investments;

3. identify a timeline for completion;

4. provide for possible extensions for good cause;

5. provide for possible revocation in case of bad faith or unreasonable delays; and

6. provide for a reservation of tax credits, to be allocated in equal portions for five years;

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business

Development and the Louisiana Economic Development Corporation LR 35:

### **§3513. Certification of Tax Credits**

A. Beginning July 31, 2011, employers seeking final certification of tax credits must submit to the department:

1. evidence of qualified expenditures incurred by the employer for modernization;

a. qualified expenditures that could improve efficiency may include but not be limited to: new automation equipment, computer-driven instrumentation upgrades, air emission and water affluent reduction equipment;

b. investment in new equipment for a new production unit making a new or similar product may be a qualified expenditure, if an employer is competing for a new production line as part of a consolidation through competitive capital budget within family of plants either domestically or internationally;

2. evidence of continued business operation; and

3. any other information as reasonably requested by the department.

B. The department shall review requests for certification of tax credits, and upon verification of expenditures, and consultation with the Executive Director of LWC and the Secretary of LDR, shall issue a tax credit certification letter granting tax credits to an employer.

C. The final certification letter shall contain the employer's name, address and tax identification number and be accepted by LDR as proof of the credit.

D. The department shall maintain a list of the tax credit certificates issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

### **§3515. Claiming of Tax Credits**

A. After receiving a final certification letter from the department, an employer may claim his refundable tax credit from LDR as follows:

1. All entities taxed as corporations for Louisiana income or corporation franchise tax purpose shall claim any credit on their corporation income or corporation franchise tax return.

2. Individuals shall claim any credit on their individual income tax return.

3. Estates or trust shall claim any credit on their fiduciary income tax return.

4. Entities not taxed as corporation shall claim any credit on the returns of the partners or members as follows:

a. Corporate partners or members shall claim their share of the credit on their corporation income or corporation franchise tax returns.

b. Individual partners or members shall claim their share of any credit on their fiduciary income tax returns.

B. A Retention and Modernization tax credit shall expire and have no value or effect on tax liability beginning with the eleventh year after the tax year in which it was originally granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

**§3517. False or Fraudulent Claims**

A. Any person making an application, claim for a tax credit, or any report, return statement, invoice or other instrument or providing any other information pursuant to this program who willfully makes or who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice or other instrument, 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.

B. Any person convicted of a violation shall be liable for the repayment of all credits which were granted to the employer. Interest shall be due on such credits at the rate of 15 percent per annum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

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