

b. no criminal charges are currently pending, associated with the incident, or criminal conviction for any offense listed in R.S. 15:587.1; and

c. there have been no subsequent justified/valid determinations involving the individual as a perpetrator of child abuse or neglect.

F.2. -G.11....

**AUTHORITY NOTE:** Promulgated in accordance with the Children's Code, title VI, articles 615 and 616 and title XII, article 1173, R.S. 14:403(H), R.S. 46:51.2(A), R.S. 46:56, R.S. 46:1414.1, 42 USC 15601 et seq., 28 CFR 115.6., and 42 USC 9858f.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Community Services, LR 18:79 (January 1992), amended LR 20:198 (February 1994), LR 21:583 (June 1995), LR 23:590 (May 1997), LR 26:790 (April 2000), LR 31:1609 (July 2005), LR 36:838 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Child Welfare Section, LR 42:862 (June 2016), amended by the Department of Children and Family Services, Division of Child Welfare, LR 44:998 (June 2018), amended LR 45:217 (February 2019).

**§1105. Maintenance and Disclosure of Information on Reports and Investigations on the State Repository**

A. - L.7. ...

M. Any person whose name is included on the SCR prior to August 1, 2018 with a justified/valid determination may file a rule to show cause against DCFS in the court exercising juvenile jurisdiction in the parish in which the investigation was conducted to show why the information on file should not be expunged. DCFS will expunge the petitioner's name and other identifying information from the SCR upon receipt of a court order to do so. Any expungement order issued by a court shall not take effect as to non-identifying statistical information on file until the three-year record retention period required by federal law for audit purposes has expired, counting from the month and year of the determination. During the three-year record retention period, such records bearing the non-identifying statistical information shall be sealed and accessible only to the financial auditors.

N. - O. ...

**AUTHORITY NOTE:** Promulgated in accordance with Louisiana Children's Code Article 616.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Community Services, LR 26:96 (January 2000), amended LR 31:1608 (July 2005), LR 36:840 (April 2010), amended by the Department of Children and Family Services, Division of Child Welfare, LR 44:1000 (June 2018), amended LR 45:218 (February 2019).

**§1111. Child Protective Services Administrative Appeal**

A. ...

B. Individuals with justified/valid findings in an investigation prior to August 1, 2018, will have the right to an administrative appeal of any/all of their DCFS findings of justified/valid. When a request for an SCR clearance is received by DCFS, or DCFS verifies that an individual has a justified/valid finding, and the individual is listed as a perpetrator with a justified/valid finding of abuse or neglect in an investigation prior to August 1, 2018; the individual will be notified in writing of their right to an administrative appeal. The individual will have 30 calendar days from the date of the written notification to request an appeal through DAL.

Any individual notified of a DCFS justified/valid finding in an investigation subsequent to August 1, 2018, will have the right to an administrative appeal of any/all of their DCFS findings of justified/valid. The individual will have 30 calendar days from the date of the written notification to request an appeal through the DAL.

D. - K. ...

**AUTHORITY NOTE:** Promulgated in accordance with Act 348 of 2017 and Children's Code Article 616.1.1.

**HISTORICAL NOTE:** Promulgated by the Department of Children and Family Services, Division of Child Welfare, LR 44:1002 (June 2018), amended LR 45:218 (February 2019).

Marketa Garner Walters  
Secretary

1902#027

**RULE**

**Department of Economic Development  
Office of the Secretary**

**Research and Development Tax Credit Program  
(LAC 13:I.Chapter 29)**

Under the authority of R.S. 47:6015 and R.S. 36:104, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development has amended LAC 13:I.2901 relative to the administration of the research and development tax credit program.

The purpose of this regulation is to implement legislative changes to the research and development tax credit program under R.S. 47:6015 as enacted by Act 336 of the 2017 Regular Session of the Legislature. This Rule is hereby adopted on the day of promulgation.

**Title 13**

**ECONOMIC DEVELOPMENT**

**Part I. Financial Incentive Programs**

**Chapter 29. Research and Development Tax Credit**

**§2903. Definitions**

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6015 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.

\* \* \*

**Base Amount—**

a. If the taxpayer is an entity that employs fifty or more persons, the base amount shall be eighty percent of the average annual qualified research expenses within Louisiana during the three years preceding the taxable years.

b. If the taxpayer is an entity that employs less than fifty persons, the base amount shall be fifty percent of the average annual qualified research expenses within Louisiana during the three preceding taxable years.

**Credit Certification—**a certification by LED of the amount of the research and development tax credit earned by a person for a particular tax year.

**Custom Manufacturing or Custom Fabricating—**the business of companies (custom fabricators and/or manufacturers) that assemble, fabricate, or manufacturer

parts, equipment, assemblies, vessels, software or other products ("specified item") in response to specific design criteria and delivery schedule provided by the customer/client.

a. The typical business model acquisition process utilized by custom fabricators and/or manufacturers is as follows:

i. the customer/client providing the custom fabricator and/or manufacturer with the detail specific design criteria for the specified item in a document generally referred to as a "request for proposal";

ii. after review and analysis, the custom fabricator and/or manufacturer submits a "proposal" to the customer/client in which they commit to a specific price and delivery schedule to assemble, fabricate, or manufacturer the specified item requested by the customer/client in their request for proposal;

iii. if the proposal is acceptable, the customer/client will generally issue a "purchase order" commitment document to the custom fabricator and/or manufacturer agreeing to the terms of their proposal, and authorizing the custom fabricator or manufacturer to begin work per their proposal; and

iv. although the custom fabricator or manufacturer generally commits to a fixed price to produce the requested item, they have effectively negated most, if not all, material or unusual commercial transaction risks by their ability to analyze the required design criteria before committing to a specific price and delivery schedule within their proposal.

\*\*\*

**Professional Services Firm**—a firm who is primarily engaged in work which requires specialized education, knowledge, labor, judgment or is predominantly mental or intellectual in nature; and which may require the holding of a professional license. These types of firms engage in activities which include, but are not limited to, architecture, engineering, legal services and accounting.

**Qualified Research Expenses in the State**—expenses for qualified research as defined under 26 U.S.C. §41(d) ("qualified research") that are qualified research expenses under 26 U.S.C. §41(b) ("qualified research expenses") and meet the following requirements:

a. - d. ...

e. 26 U.S.C. §41(d) also excludes expenditures associated with certain activities from the definition of qualified research. These activities include:

i. - vi. ...

**Research and Development Tax Credits**—credits against Louisiana income or corporation franchise taxes that are earned by a person pursuant to the provisions of the Research and Development Tax Credit Program provided by R.S. 47:6015.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:6015.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by the Office of the Secretary, LR 38:351 (February 2012), amended by the Office of Business Development, LR 40:49 (January 2014), LR 40:1525 (August 2014), amended by the Department of Economic Development, Office of the Secretary, LR 45:218 (February 2019).

#### §2904. Type, Amount and Duration of Credit

A. Type. Any taxpayer meeting the following criteria shall be allowed a tax credit to be applied against income and corporation franchise taxes due:

1. employs 50 or more persons (including affiliates) and claims for the taxable year a federal income tax credit under 26 U.S.C. §41(a) for increasing research activities;

2. employs less than 50 persons (including affiliates), and claims for the taxable year a federal income tax credit under 26 U.S.C. 41(a) for the taxable year, or incurs qualified research expenses for the taxable year, as defined in 26 U.S.C. §41(b); and

3. receives a small business innovation research grant, as defined in R.S. 47:6015(D).

B. Amount. The amount of the credit authorized shall be equal to:

1. 5 percent of the difference between the qualified in-state research expenses in the state for the taxable year minus the base amount, if the applicant is an entity that employs 100 or more persons (including affiliates); or

2. 10 percent of the difference, between the Louisiana qualified in-state research expenses in the state for the taxable year minus the base amount, if the applicant is an entity that employs 50 to 99 persons (including affiliates); or

3. 30 percent of the difference, between the qualified in-state research expenses in the state for taxable year minus the base amount if the applicant is an entity that employs fewer than 50 persons (including affiliates); or

4. 30 percent of the small business innovation research grant award or small business technology transfer program funding received during the tax year.

C. Duration. No credit shall be allowed for research expenditures incurred, small business technology transfer program funds received, or small business innovation research grant funds received after December 31, 2021.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:6015.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development, LR 36:1768 (August 2010), amended by the Office of the Secretary, LR 38:351 (February 2012), amended by the Office of Business Development, LR 40:50 (January 2014), LR 40:1526 (August 2014), amended Office of the Secretary, LR 42:42 (January 2016), LR 45:219 (February 2019).

#### §2905. Certification of Amount of Credit

A. Prior to claiming a research and development tax credit on any tax return or selling any research and development tax credit, a person must apply for and obtain a credit certification from LED.

B. The application for a credit certification shall be submitted on a form provided by the LED and shall include, but not be limited to the following information:

1. an application fee equal to 0.5 percent of the amount of the tax credits applied for, with a minimum of \$500 and a maximum of \$15,000, payable to Louisiana Department of Economic Development;

2. appropriate supporting documentation:

a. for taxpayers employing 50 or more residents, a federal income tax return and evidence of the amount of federal research credit for the same taxable year;

b. for taxpayers employing up to 50 residents:

i. either:

(a). a federal income tax return and evidence of the amount of federal research credit for the same taxable year; or

(b). a request that LED enter into an attest engagement with a certified public accountant (“CPA”) authorized to practice in Louisiana or a tax attorney who is selected by LED for a report that focuses on verification of the applicant’s expenditures and claimed qualified research activities as well as pay the deposit for such report in accordance with R.S. 36:104.1 and 47:6015; and

ii. evidence of the amount of qualified research expenses for the same taxable year;

c. for taxpayers claiming credits based upon the federal small business innovation research grant, evidence of the amount of such grant;

d. the LED may also require documentation, including but not limited to the following, as proof of an expenditure prior to certification:

i. wages:

(a). copy of W-2 for each employee who participates in qualifying research and development activities;

(b). percentage of each employee’s salary that is dedicated to qualifying research and development activities; and

(c). Louisiana Workforce Commission quarterly report of wages paid for the company for the third and fourth quarter of the tax year in question;

ii. supplies:

(a). invoices with date of purchase included;

iii. contracted research:

(a). invoices with applicable dates or periods of work; and

(b). contracts for the research to be performed;

e. in order for any research and development project to qualify, the requesting company must identify:

i. the business component that was developed or improved;

ii. the uncertainty that existed in the capability, method or design related to such business component;

iii. how the research was technological in nature; and

iv. the process of experimentation undertaken;

3. the total amount of qualified research expenses and the qualified research expenses in the state;

4. the total number of Louisiana residents employed by the taxpayer and the number of those Louisiana residents directly engaged in research and development;

5. the average wages of the Louisiana resident employees not directly engaged in research and development and the average wages of the Louisiana resident employees directly engaged in research and development;

6. the average value of benefits received by all Louisiana resident employees;

7. the cost of health insurance coverage offered to all Louisiana resident employees;

8. any other information required by LED.

C. Taxpayers qualifying for tax credit transfers under §2915 may apply for up to two credit certifications per calendar year. All other taxpayers shall be limited to one credit certification per calendar year.

D. LED shall review the application and issue a credit certification in the amount determined to be eligible and provide a copy to the Department of Revenue. The credit certification and the amount of such certification shall be considered preliminary and shall be subject in all respects to audit by the Louisiana Department of Revenue.

E. In order for credits to be awarded, a taxpayer must claim the expenditures within one year after December 31 of the year in which the expenditure was incurred. For example, company A buys a piece of equipment that would qualify for the research and development tax credit on May 15, 2011. In order for company A to receive a credit on that expenditure, the application for credit on that expense must be received by December 31, 2012.

F. Each year LED shall perform a detailed examination of at least 10 percent of all applications received prior to the issuance of credits on such applications.

1. LED shall select applications for examination based on one or more of the following:

a. a random sampling;

b. applicant’s business sector; and

c. other selection criteria as determined by LED.

2. Upon notice that their application has been selected for examination, the applicant shall provide all supporting documentation requested by LED to show the amount of qualified research expenses for such taxable year.

3. The applicant bears the burden of proving that its activities meet the definition of qualified research under 26 U.S.C. §41(d).

4. LED still retains the right to examine a taxpayer’s application after the issuance of credits and any credits disallowed following such examination shall be subject to recovery, recapture or offset.

G. If LED reviews a submission and determines that an applicant is not eligible for tax credits for a tax year, the company shall have six months from the date of disallowance to resubmit additional documentation for reconsideration. LED will not consider any additional documentation after this six-month period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by the Office of Business Development, LR 36:1768 (August 2010), LR 38:351 (February 2012), LR 40:51 (January 2014), LR 40:1526 (August 2014), amended by the Office of the Secretary, LR 42:42 (January 2016), amended the Department of Economic Development, Office of the Secretary, LR 45:219 (February 2019).

#### §2911. Recapture of Credits

A. An application for credit certification shall constitute:

1. a consent by the taxpayer that credits granted under this Section, but later disallowed in whole or in part, may be recovered by the secretary of the Department of Revenue from the taxpayer applicant through any collection remedy authorized by the provisions of R.S. 47:6015(H); and

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:978 (May 2004), amended by the Office of the Secretary, LR 38:352 (February 2012), amended

by the Office of Business Development, LR 40:52 (January 2014), LR 40:1527 (August 2014), amended by the Department of Economic Development, Office of the Secretary, LR 45:220 (February 2019).

**§2913. Ineligible Businesses**

A. - A.1. ...

2. businesses primarily engaged in custom manufacturing or custom fabricating that do not have a pending or issued United States patent related to the qualified research expenditures claimed.

B. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:6015.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development, LR 40:52 (January 2014), amended LR 40:1527 (August 2014), amended by the Department of Economic Development, Office of the Secretary, LR 45:221 (February 2019).

**§2915. Transfer of Certain Research and Development Credits**

A. For tax years 2018 and later, credits based upon participation in either the Small Business Technology Transfer Program or the Small Business Innovation Research Grant not previously claimed by a taxpayer shall be transferable in accordance with the following provisions.

1. A single transfer or sale may involve one or more transferees.

2. Notice of the credit transfer shall be submitted by the applicant to the Louisiana Department of Revenue in writing within 10 business days of the transfer or sale of credits.

a. No transfer or sale of credits shall be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.

b. The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter issued by the Department of Economic Development, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of the transfer, the amount transferred, a copy of the credit certificate, the price paid by the transferee to the transferor, and any other information required by the Department of Revenue.

c. The notification submitted to the Department of Revenue shall include a transfer processing fee of two hundred dollars per transferee.

d. Failure to comply with this Paragraph shall result in the disallowance of the tax credit until the taxpayers are in full compliance.

3. The transfer or sale of credits does not extend the time in which the credits can be used. The carryforward period for a credit that is transferred or sold begins on the date on which the credit was earned.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:6015.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development, LR 45:221 (February 2019).

Anne Villa  
Undersecretary

1902#061

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 111—The Louisiana School, District, and State Accountability System—English Language Proficiency Measure of Progress (LAC 28:XI.405 and 409)**

Under the authority granted in R.S. 17:6 and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 111—The Louisiana School, District, and State Accountability System*. The amendments include a measure of progress to English language proficiency for English learners in the assessment index of the accountability formula. This Rule is hereby adopted on the day of promulgation.

**Title 28  
EDUCATION**

**Part XI. Accountability/Testing**

**Subpart 1. Bulletin 111—The Louisiana School, District, and State Accountability System**

**Chapter 4. Assessment and Dropout/Credit Accumulation Index Calculations**

**§405. Calculating a K-8 Assessment Index [Formerly LAC 28:LXXXIII.405]**

A. ...

\* \* \*

B. Beginning no earlier than the 2019-2020 school year, the kindergarten through eighth grade assessment index will also include a measure of progress to English language proficiency for English learners. The improvement of every English learner eligible to participate in ELPT counts in equal weight to all other exams.

1. The 2018-2019 school year will be a designated learning year.

a. English language proficiency progress results will be calculated but not included in 2018-2019 school performance scores.

b. As required by the federal Every Student Succeeds Act (ESSA), performance on the English language proficiency progress measure will be used for the purpose of identifying schools requiring comprehensive intervention in 2018-2019.

c. The Accountability Commission will review learning year results no later than August 2019.

2. For measuring progress on the ELPT assessment, the overall proficiency scores will be organized into the following levels:

a. emerging—all domain scores are one or two;

b. progressing 1—at least one domain score of three and the lowest domain score is one;

c. progressing 2—at least one domain score of three and the lowest domain score is two;

d. progressing 3—at least one domain score of three and the lowest domain score is three; and

e. transitioning—all domain scores are four or five.

3. Each English learner expected trajectory to proficiency will be determined as follows.

a. The initial proficiency level for each English learner will be determined based on the ELPT assessment