Louisiana Department of Revenue - Tax Credits and Other Exemptions

Informational Report
Performance Audit Services
Issued February 29, 2012

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

February 29, 2012

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Charles E. "Chuck" Kleckley,
Speaker of the House of Representatives

Dear Senator Alario and Representative Kleckley:

This report provides the results of our informational review of tax credits and other exemptions in Louisiana, including the impact of credits on tax collections administered by the Louisiana Department of Revenue (LDR). I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of LDR for their assistance during this audit.

Sincerely,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/dl

LDR 2012

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Louisiana Legislative Auditor
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February 2012

Audit Control # 40110011

Executive Summary

This report provides the results of our informational review of tax credits and other exemptions in Louisiana, including the impact of credits on tax collections administered by the Louisiana Department of Revenue (LDR). The purpose of the audit was to provide the legislature with information on the current population of tax credits and other exemptions in Louisiana and the impact of Corporate Income and Franchise Tax (CIFT) and Individual Income Tax (IIT) credits on tax collections. The audit objectives and results of our work are as follows:

Objective 1: What is the current population of tax credits and other exemptions in Louisiana?

Results: As of February 2011, the state has a total of 464 tax credits and other exemptions that were enacted by individual statutes.

Objective 2: What impact do CIFT and IIT credits have on tax collections in Louisiana?

Results: The amount of CIFT credits claimed during tax years 2005 through 2010 resulted in a tax liability reduction of approximately $3 billion out of a total tax liability of $5.4 billion, an average revenue loss of approximately 55% due to CIFT credits. The amount of IIT credits claimed during tax years 2005 through 2010 resulted in a tax liability reduction of approximately $1.8 billion out of a total tax liability of $16.5 billion, an average revenue loss of approximately 11% due to IIT credits. This money may have been eligible for collection as tax revenue by LDR if these tax credits did not exist.

While determining the average amount of state revenue lost due to CIFT credits and IIT credits, we found that state law does not require agencies that administer tax credits and other exemptions to track and report their return on investment. As a result, it is difficult to determine the overall impact of CIFT and IIT tax credits on Louisiana. In addition, we identified four CIFT credits where only a few entities claimed a significant portion (greater than 50%) of the tax credit.

Objective 1: What is the current population of tax credits and other exemptions in Louisiana?

As of February 2011, Louisiana has 464 credits and other exemptions (including exclusions, deductions, preferential tax treatments, and tax) that are authorized by state law and substantially reduce the tax collection revenues.

LDR's Tax Administration Division, within the Office of the Deputy Secretary,[1] is required to prepare and submit an annual Tax Exemption Budget to the governor and legislature by March 1.[2] The Tax Exemption Budget contains information on each exemption including the revenue loss to the state as a result of each tax exemption. LDR categorizes this budget based on the year it received the tax return or amendment. However, our analysis is based on the original tax year the revenue was incurred, regardless of when LDR received the tax return or amendment.

The breakdown of tax credits and all other tax exemptions is illustrated in Exhibit 1. As shown in this exhibit, tax credits to reduce Individual Income Tax, Corporation Income Tax, Corporation Franchise Tax,[3] and Tax Incentives and Exemptions Contracts liabilities comprise four of the largest tax exemption categories.

Exhibit 1
Population of Tax Credits and Other Exemptions in Louisiana
As of February 2011

Tax Type	Number of Tax Credits	All Other Types of Exemptions*	Total Tax Exemptions
Sales Tax	2	186	188
Individual Income Tax	49	27	76
Corporation Income Tax	36	19	55
Corporation Franchise Tax	22	20	42
Tax Incentives and Exemptions Contracts	25	0	25
Natural Resources - Severance	0	25	25
Petroleum Products Tax	0	18	18
Liquors - Alcoholic Beverage Taxes	0	10	10
Inheritance Tax	0	9	9
Tobacco Tax	0	6	6
Gift Tax	0	5	5
Public Utilities and Carriers Taxes	0	3	3
Telecommunications Tax	0	1	1
Hazardous Waste Disposal Tax	0	1	1
Total Tax Credits and Exemptions	**134**	**330**	**464**

*Includes exemptions, exclusions, deductions, preferential tax treatments, and tax deferrals.
Source: Prepared by legislative auditor's staff using information provided by LDR.

[1] See Appendix B for the LDR organizational chart highlighting the Tax Administration Division.
[2] See Louisiana Revised Statute (R.S.) 47:1517 for statutory requirements regarding Tax Exemption Budget.
[3] LDR defines Corporation Franchise Tax as the tax on the larger of a corporation's assessed value of all real and personal property in the state or the amount of issued and outstanding capital stock, surplus, and undivided profits attributable to Louisiana.

Objective 2: What impact do CIFT credits and IIT credits have on tax collections in Louisiana?

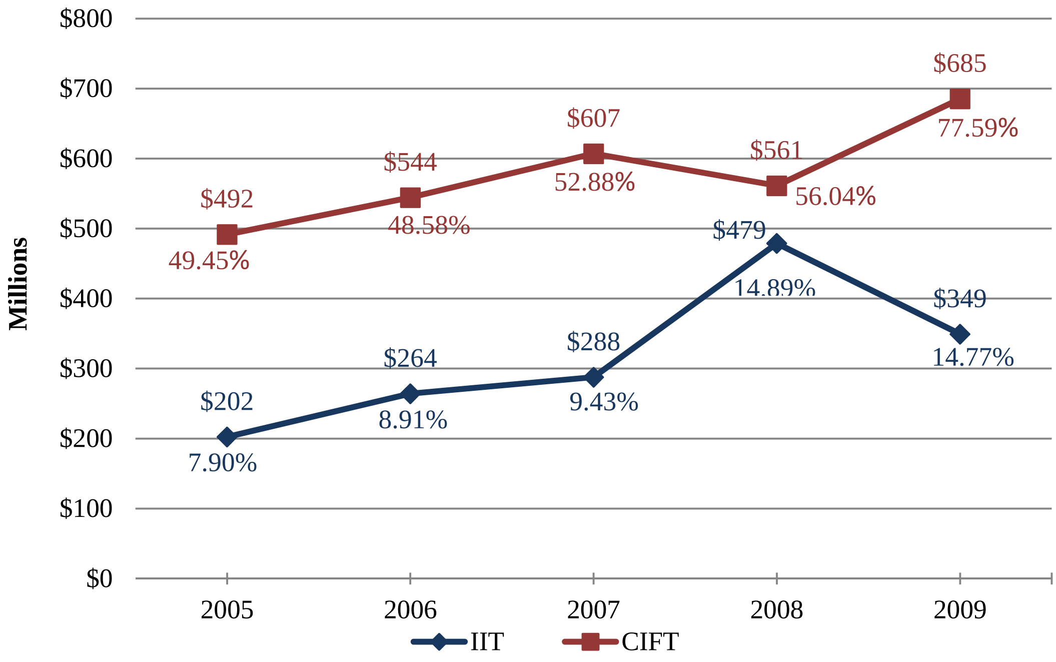
For this analysis, we combined *Corporation Income Tax* and *Corporation Franchise Tax* credits (herein referred to as "Corporate Income and Franchise Tax (CIFT) credits") because these two credits are filed using the same tax return. We also included *Tax Incentives and Exemption Contracts* credits as part of both CIFT and Individual Income Tax (IIT) credits because these credits can be claimed on both the CIFT and IIT returns.[4] As a result, our analysis on credits covers 132 of the 134 tax credits noted in Exhibit 1. We did not analyze other exemptions as part of our analysis because they do not have a dollar-for-dollar impact on tax revenue as credits do, and it is difficult to determine the impact on tax for other exemptions.

The amount of CIFT credits claimed during tax years 2005 through 2010 resulted in a tax liability reduction of approximately $3 billion out of a total tax liability of approximately $5.4 billion, an average revenue loss of approximately 55%. The amount of IIT credits claimed during tax years 2005 through 2010 resulted in a tax liability reduction of approximately $1.8 billion out of a total tax liability of approximately $16.5 billion, an average revenue loss of approximately 11% due to IIT credits. This money may have been eligible for collection as tax revenue by LDR if these tax credits did not exist.[5] Exhibit 2 shows the percent of revenue lost due to CIFT and IIT credits for tax years 2005 through 2009.

[4] Some tax credits may consist of multiple tax exemptions. The dollar amounts used in our analysis include only the amounts captured on the CIFT return and Individual Income Tax return.

[5] The amounts presented here will differ from the amounts in LDR's Tax Exemption Budget because the numbers are a snapshot in time and are as of a different reporting date. Also, LDR prepares the budget based on the year it received the original tax return or amended tax return while our analysis is based on the original tax year the revenue was incurred, regardless of when LDR received the original or amended tax return.

Exhibit 2
Amount of Tax Revenue Lost to Tax Credits
Tax Years 2005 - 2009*



* We did not include totals for 2010 because LDR is still receiving CIFT returns for the 2010 tax year and the data may be incomplete. However, the amount collected to date can be found in Exhibit 3.
Source: Prepared by legislative auditor's staff using information provided by LDR.

While determining the average amount of state revenue lost due to CIFT credits and IIT credits, we found that state law does not require agencies who administer tax credits or other exemptions to track and report the return on investment. As a result, it is difficult to determine the overall impact of CIFT and IIT tax credits on Louisiana. In addition, we identified four CIFT credits where only a few entities claimed a significant portion (greater than 50%) of the tax credit.

Louisiana lost approximately $3 billion in tax revenue due to CIFT credits during tax years 2005 through 2010.

As illustrated in Exhibit 3, entities filed 776,211 tax returns for tax years 2005 through 2010 with a total income tax liability of approximately $5.4 billion. Of these tax returns, 58,236 (7.5%) contained a CIFT credit which was used to offset the entities' tax liabilities. The amount of CIFT credits claimed during this period totaled approximately $3 billion. As a result, of the total possible tax revenue that could have been collected by LDR, approximately 55% was not collected due to tax credits claimed on 7.5% of returns claiming a CIFT credit.

In addition, the percentage of returns claiming a tax credit has consistently increased from tax years 2005 to 2010. Similarly, the percentage of tax revenue lost to credits has gradually increased from about 50% in 2005 to 56% in 2008. In 2009, however, the percentage of foregone tax revenue rose to approximately 78%. According to LDR, this is due, in part, to Act 476 of the 2009 Regular Session, which eliminated the mandatory minimum $10 annual corporate franchise tax on all corporations. Before this Act, all corporations were required to file a tax return and pay the $10 tax; however, since the $10 franchise tax was eliminated, tax liabilities have decreased while the total amount of tax credits claimed has increased.

Exhibit 3
CIFT Returns and Credits Claimed
As of September 15, 2011

Tax Year	Number of Returns Filed	Number of Returns Claiming Credits	Percent of Returns Claiming Credits	Tax Liability Before Credits	Total Amount of Credits Claimed	Percent Lost to Credits
2005	151,044	8,262	5.47%	$994,165,076	$491,582,220	49.45%
2006	145,451	10,247	7.04%	1,120,413,454	544,305,942	48.58%
2007	146,802	10,766	7.33%	1,147,838,143	607,005,602	52.88%
2008	144,408	11,016	7.63%	1,001,546,388	561,251,601	56.04%
2009	117,268	11,023	9.40%	883,213,155	685,292,268	77.59%
2010*	71,238	6,922	9.72%	227,423,744	70,681,683	31.08%
Total	**776,211**	**58,236**	**Average 7.50 %**	**$5,374,599,960**	**$2,960,119,316**	**Average 55.08%**

*LDR is still receiving CIFT returns for the 2010 tax year and the data may be incomplete. CIFT returns are due based on the corporations' fiscal year end date and not on May 15 as is the case with IIT returns.
Source: Prepared by legislative auditor's staff using information in LDR's data system.

Louisiana lost approximately $1.8 billion in tax revenue due to IIT credits during tax years 2005 through 2010.

As illustrated in Exhibit 4, individual taxpayers filed approximately 11.6 million tax returns for tax years 2005 through 2010 with a total income tax liability of approximately $16.5 billion. Of these tax returns, approximately 4.9 million (43%) contained a tax credit which was used to offset the individual taxpayers' tax liabilities. The amount of tax credits claimed during this period totals approximately $1.8 billion. As a result, of the total possible tax revenue that could have been collected by LDR during these years, an average of approximately 11% was lost due to IIT credits.

In addition, the percentage of returns claiming a tax credit increased significantly in 2006 due to a refundable tax credit available to taxpayers who paid the assessments levied by the Louisiana Citizens Property Insurance Corporation due to hurricanes Katrina and Rita, as well as other disaster related credits as a result of hurricanes Katrina and Rita. The number of individuals claiming a tax credit increased again in 2008 because of the Property Insurance Credit - a refundable tax credit for taxpayers who paid premiums on their primary residence for homeowners' insurance, condominium owners' insurance, or tenant homeowners' insurance. Though the percentage of individual returns claiming a tax credit has increased significantly from 9.2% in tax year 2005 to approximately 57.4% in tax year 2010, the dollar amount of the credits claimed has only shown a slight increase going from approximately 7.9% to 10.5% during that same time frame.

Exhibit 4
IIT Returns and Credits Claimed
As of September 15, 2011

Tax Year	Number of Returns Filed	Number of Returns Claiming Credits	Percent of Returns Claiming Credits	Tax Liability Before Credits	Total Amount of Credits Claimed	Percent Lost to Credits
2005	1,863,724	171,407	9.20%	$2,560,519,007	$202,330,071	7.90%
2006	1,902,856	646,330	33.97%	2,964,985,482	264,118,668	8.91%
2007	1,983,597	786,086	39.63%	3,049,585,054	287,688,057	9.43%
2008	1,998,756	1,151,231	57.60%	3,215,941,506	478,798,422	14.89%
2009	1,966,510	1,122,738	57.09%	2,363,463,517	349,197,494	14.77%
2010	1,863,074	1,068,740	57.36%	2,329,464,642	243,931,991	10.47%
Total	**11,578,517**	**4,946,532**	**Average 42.72%**	**$16,483,959,208**	**$1,826,064,703**	**Average 11.08%**

Source: Prepared by legislative auditor's staff using information in LDR's data system.

State law does not require agencies that administer tax credits and other exemptions to track or report their return on investment.

During our review, we found that although the majority of Louisiana's credits and other exemptions are administered solely by LDR, 15 other state agencies and departments have varying degrees of involvement in administering them. This involvement ranges from writing the rules for the credit or exemption program to issuing certificates that qualify the entity or individual for the credit/exemption. Exhibit 5 lists the agencies other than LDR that have some involvement with the administration of tax credits and other exemptions in Louisiana.

Exhibit 5 Agencies Other than LDR Involved with Credits and Other Exemptions*
Agency/Department
Agriculture and Forestry
Board of Regents
Culture, Recreation and Tourism
Division of Administration
Economic Development
Education
Environmental Quality
Financial Institutions
Health and Hospitals
Insurance
Natural Resources
Public Safety
Transportation and Development
Wildlife and Fisheries
Workforce Commission
*Note: Some credits and other exemptions have involvement from multiple agencies. **Source**: Prepared by legislative auditor's staff using information provided by LDR.

State law does not require agencies that administer tax credits or other exemptions track and report on their return on investment. Some agencies, however, such as the Historical Preservation Office of the Department of Culture, Recreation and Tourism, informally track return on investment information on administered tax credits. Not requiring all agencies to formally track and report on their return on investment makes it difficult to determine what benefits, if any, the state receives from offering these exemptions.

Matter for Legislative Consideration: If the legislature is interested in the return on investment for the state's tax credits and other exemptions, the legislature may wish to consider adding this requirement to state law and requiring the appropriate state entities to formally track and report this information.

Some CIFT credits benefit only a few entities; state law prohibits disclosure of these entities.

We reviewed the data for each IIT and CIFT credit that had been claimed by more than 25 individuals or entities and $1 million claimed in a given tax year to determine if there were any instances in which only a few individuals or entities claimed a significant majority of the tax credit for a given tax year. We did not identify any instances where an individual claimed a significant portion of the total IIT tax credit; however, we did identify four CIFT credits where only a few entities claimed a significant portion (greater than 50%) of the tax credit. However, because of R.S. 47:1508,[6] we cannot disclose the entities that have received these tax credits.

As illustrated in Exhibit 6, during tax year 2009, the top five entities that claimed each of the listed CIFT credits claimed between 68% and 94% of the total credit. However, each tax credit has a specific purpose and although there appears to only be a few entities benefiting from these four credits, the credits may still be meeting their intended purposes. As stated earlier, without entities tracking the return on investment for the tax credits and other exemptions they administer, it is difficult to determine the impact of these credits/exemptions and whether they are meeting their intended purposes in law.

Exhibit 6
Top Five Entities for CIFT Credits Claimed for 2009 Tax Year
As of September 15, 2011

Tax Credit	Total Entities Claiming Credit	Total Credit Amount Claimed	Amount Claimed by Top 5 Entities	Percent Claimed by Top 5 Entities
Ad Valorem Tax Paid by Certain Telephone Companies	42	$22,693,178	$17,557,817	77%
Enterprise Zones - Jobs Tax Credit	70	9,273,335	6,310,401	68%
Motion Picture Investor	62	20,754,488	16,138,323	78%
Research and Development	31	8,881,715	8,343,418	94%

Source: Prepared by legislative auditor's staff using information in LDR's data system.

Matter for Legislative Consideration: If the legislature is interested in which companies are receiving the most benefit from the state's tax credits and other exemptions, the legislature may wish to consider amending the statutes to allow the disclosure of entities claiming tax credits and other exemptions.

[6] R.S. 47:1508 prohibits all entities, including the Legislative Auditor, from divulging or disclosing any information obtained from tax records except for "the publication of statistics so classi.fied as to prevent the identification of any return or report and the items thereof." As a result, we cannot disclose the entities that have received the benefits from CIFT credits.

APPENDIX A: SCOPE AND METHODOLOGY

Louisiana Revised Statute 25:513(D)(4) directs the Louisiana Legislative Auditor to conduct performance audits, program evaluations, and other studies to enable the legislature and its committees to evaluate the efficiency, effectiveness, and operation of state programs and activities. This informational report provides information on tax credits in the State of Louisiana from 2005 through 2011. Our audit focused on the administration of tax credits and exemptions. Because this is an informational report, we did not conduct this project in accordance with all governmental auditing standards. The audit objectives were to answer the following questions:

1. What is the current population of tax credits and other exemptions in Louisiana?

2. What impact do CIFT credits and IIT credits have on tax collections in Louisiana?

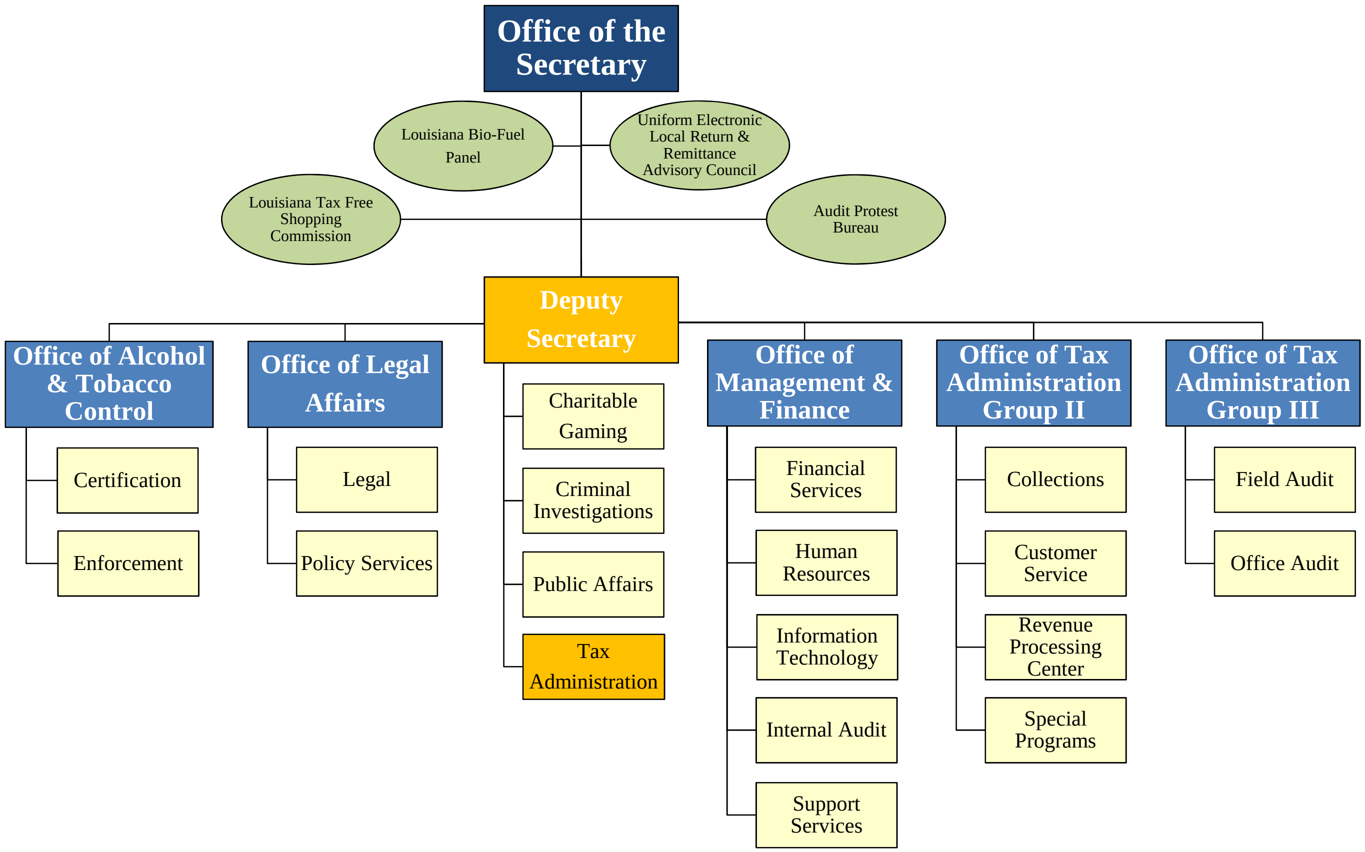
To answer the audit objectives, we conducted the following procedures:

» Obtained and reviewed laws and policies to determine the full population of tax credits and exemptions and who is responsible for them.

» Interviewed personnel in LDR's Tax Administration Division and other relevant agencies involved in administering tax credits.

» Obtained and analyzed tax credit data to determine the impact on tax collections.

APPENDIX B: LDR ORGANIZATIONAL CHART



Source: Prepared by legislative auditor's staff using information provided by LDR.