

Revenue Information Bulletin No. 23-024
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Individual Income Tax

Credit For Taxes Paid to Other States
Act 413 of the 2023 Regular Session

Act 413 of the 2023 Regular Session of the Louisiana Legislature (“Act 413”) makes permanent the safeguards established by Act 109 of the 2015 Regular Session of the Louisiana Legislature (“Act 109”). Act 413 also provides clarification regarding the deduction authorized in La. R.S. 47:33(6). The purpose of this bulletin is to provide additional guidance concerning eligibility and the calculation of the credit in light of the changes made by Act 413.

The Credit and Deduction after Act 413

Louisiana residents with out-of-state income may take a credit against their Louisiana individual income taxes for the amount of tax paid to the other state on that out-of-state income subject to the following safeguards:

1. The credit is limited to the amount of Louisiana income tax that would have been imposed if the income earned in the other state had been earned in Louisiana.
2. The credit is not allowed for tax paid on income not subject to tax in Louisiana.
3. The credit is not allowed for income taxes paid to a state that allows a nonresident a credit against income taxes imposed by that state for taxes paid to the state of residence.
4. A taxpayer cannot claim both the credit provided in La. R.S. 47:33(1)-(5) and the deduction provided in La. R.S. 47:33(6).

Louisiana residents may take a deduction for another state’s entity-level tax that is based solely on net income included in the entity’s federal taxable income without any capital component, provided the entity’s income is included in the resident’s Louisiana income and is subject to Louisiana income tax. The deduction is limited to the Louisiana resident’s proportionate share of the entity-level tax paid. The deduction is not allowed if a credit was taken for the same tax.

History of the Credit

The purpose of La. R.S 47:33 is to prevent a Louisiana resident taxpayer from being double-taxed on the same out-of-state sourced income, once by the state to which the income is sourced, and again by Louisiana upon the filing of a Louisiana resident return. Prior to 2015,

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Louisiana allowed residents filing a resident income tax return a dollar-for-dollar credit for the amount of any taxes paid on out-of-state sourced income.

Act 109 of the 2015 Regular Session (“Act 109”)

With the passage of Act 109, Louisiana imposed three limitations on the credit:

1. La. R.S. 47:33(A)(4) provided that the credit is only allowed if the other state provides a similar credit for Louisiana income taxes paid on income derived from property located in, or from services rendered in, or from business transacted in Louisiana (“the reciprocity limitation”).
2. La. R.S. 47:33(A)(5) limited the credit to the amount of Louisiana income tax that would have been imposed if the income earned in the other state had been earned in Louisiana (“the calculation change limitation”).
- c. La. R.S. 47:33(A)(6) prohibits the credit for income taxes paid to a state that allows a nonresident a credit against income taxes imposed by that state for taxes paid or payable to the state of residence.

The limitations of Act 109 were originally temporary and set to cease on July 1, 2018.

Texas Tax and The Smith Case

Prior to Act 109, Louisiana residents were permitted to take the credit for Texas Franchise Tax (“Texas Tax”) paid on income that flowed-through to them. The Texas Tax is an entity-level tax on the taxable margins of an entity with limited liability protections. Texas does not levy an individual income tax and thus does not offer a similar credit for taxes paid to Louisiana residents. As a result, the reciprocity limitation enacted by Act 109 was triggered prohibiting a credit for the Texas Tax paid by Louisiana residents. The provision was challenged in *Smith v. Robinson*¹, and the Louisiana Supreme Court held that the reciprocity limitation was unconstitutional. The calculation change limitation, legislative recoveries provision, and the remaining provisions of Act 109 remained in effect.

Act 6 of the 2018 2nd Extraordinary Session (“Act 6”)

Act 6 made three changes to the credit statute:

1. The calculation change limitation was revised to codify the existing calculation of the credit.
2. Enacted the deduction for another state’s entity-level tax that is based solely on net income included in the entity’s federal taxable income without any capital component. The deduction applies for taxes paid on or after January 1, 2018.
3. Extended the Act 109 cease date to July 1, 2023.

¹ *Smith v. Robinson*, 18-728 (La. 12/5/18), 265 So. 3d 740, *aff’d* as amended on reh’g, 18-728 at p. 2 (La. 2/27/19), 265 So. 3d at 755 (affirming unconstitutionality but limiting it to LA R.S. 47:33(A)(4))

Additional Clarifications for Calculating the Credit after Act 413

Federal Deduction of State Taxes Paid

Section 164 of the Internal Revenue Code (“IRC”) generally allows an individual a deduction for state and local taxes paid, which is available to taxpayers who itemize their deductions on Federal Form 1040 Schedule A. Similarly, Section 162 of the IRC allows a deduction for ordinary and necessary business expenses paid or accrued during the taxable year in carrying on a trade or business, including, but not limited to, state and local taxes attributable to a trade or business.

Taxpayers who claim a deduction under a qualifying federal provision are not prohibited from claiming the credit under La. R.S. 47:33(1)-(5). The clarification provided in La. R.S. 47:33(6)(c) is limited to state tax calculations and places no restrictions on claiming the state credit relative to when any such taxes paid may also be deducted for federal tax purposes. As such, qualifying state taxes which are paid and deducted under a qualifying federal provision remain eligible and may be utilized for purposes of claiming the credit for taxes paid, as provided in La. R.S. 47:33.

No Credit for Out-of-State Net Operating Loss

No credit or deduction is allowed for resident individual taxpayers paying another state’s entity-level tax, if the entity’s operations resulted in a net loss for federal income tax purposes, for the taxable year. This net loss reduces the resident individual’s Louisiana taxable income; therefore, there is no out-of-state income subject to Louisiana tax and thus, no credit can be claimed nor deduction taken pursuant to La. R.S. 47:33(4)(a) and (6)(b).

Questions concerning this publication may be submitted by email to Policy.Publications@La.gov.

Kevin J. Richard, CPA
Secretary