

SENATE BILL NO. 157

BY SENATOR ALLAIN AND REPRESENTATIVE BISHOP

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AN ACT

To amend and reenact R.S. 47:242(1)(g) and (2) and 293(10) and to enact R.S. 47:111(A)(12), 112.2, and 248, relative to exemptions from employee withholding and individual income tax for wages received by certain nonresidents; to authorize an exemption from withholding for certain employers; to provide for an exemption from individual income tax for certain nonresident employees in the state for fewer than twenty-five days; to provide for exceptions, limitations, and requirements; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:242(1)(g) and (2) and 293(10) are hereby amended and reenacted and R.S. 47:111(A)(12), 112.2, and 248 are hereby enacted to read as follows:

§111. Definitions

A. Wages. For purposes of this Subpart the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid:

* * *

(12) That is exempt from this provision pursuant to the mobile workforce employer exemption from withholding and reporting requirement provided in R.S. 47:112.2.

* * *

§112.2. Mobile workforce employer exemption from withholding and reporting requirement

A. Beginning January 1, 2022, except as otherwise provided in this

1 Section, an employer is not required to withhold taxes under R.S. 47:112 on
2 wages that are paid to an employee described in R.S. 47:248. If, during the
3 calendar year, the number of days an employee spends performing employment
4 duties for the employer and any entity related to the employer in this state
5 exceeds the twenty-five-day threshold described in R.S. 47:248(B)(1)(a), an
6 employer shall withhold and remit tax to this state for every day in that
7 calendar year, including the first twenty-five days during which the employee
8 performed employment duties in this state.

9 B. The Department of Revenue shall not require the payment of any
10 penalties or interest otherwise applicable for failing to deduct and withhold
11 income taxes as required under this Subpart if, when determining whether
12 withholding was required, the employer met either of the following conditions:

13 (1) The employer at its sole discretion maintained a time and attendance
14 system specifically designed to allocate employee wages for income tax purposes
15 among all taxing jurisdictions in which the employee performs employment
16 duties for the employer, and the employer relied on data from that system.

17 (2) The employer did not maintain a time and attendance system, and the
18 employer relied on either:

19 (a) Its own records, maintained in the regular course of business, of the
20 employee's location.

21 (b) The employee's reasonable determination of the time the employee
22 expected to spend performing employment duties in this state provided the
23 employer did not have actual knowledge of fraud on the part of the employee
24 in making the determination and provided that the employer and the employee
25 did not collude to evade taxation in making the determination.

26 C. For purposes of this Section, an employee shall be considered present
27 and performing employment duties within this state for a day if the employee
28 performs more of the employee's employment duties in this state than in any
29 other state during that day. Any portion of the day during which the employee
30 is in transit shall not be considered in determining the location of an employee's

1 **performance of employment duties.**

2 * * *

3 §242. Segregation of items of gross income

4 All items of gross income, not otherwise exempted in this Chapter, shall be
5 segregated into two general classes.

6 (1) The class of gross income to be designated as "allocable income" shall
7 include only the following:

8 * * *

9 (g) Salaries, wages, or other compensation received by a nonresident
10 individual for personal services.

11 ~~(i) However, salaries,~~ **Salaries,** wages, or other compensation received by a
12 nonresident individual for personal services rendered during a declared state disaster
13 or emergency as defined in R.S. 47:53.5 shall not be considered an item of gross
14 income to be designated as allocable income.

15 **(ii) Wages, as defined by R.S. 47:111(A), paid to a nonresident individual**
16 **that are exempt pursuant to the mobile workforce provisions of R.S. 47:248**
17 **shall not be considered an item of gross income to be designated as allocable**
18 **income.**

19 * * *

20 (2) The class of income to be designated as "apportionable income" shall
21 include all items of gross income which are not properly includible in allocable
22 income as defined in this Section.

23 ~~(a) However, salaries,~~ **Salaries,** wages, or other compensation received by
24 a nonresident individual for personal services rendered during a declared state
25 disaster or emergency and income from construction, repair, or other similar services
26 received by a nonresident corporation for disaster or emergency-related work
27 rendered during a declared state disaster or emergency as defined in R.S. 47:53.5
28 shall not be considered an item of gross income to be designated as apportionable
29 income.

30 **(b) Wages, as defined by R.S. 47:111(A), paid to a nonresident individual**

1 that are exempt pursuant to the mobile workforce provisions of R.S. 47:248
2 shall not be considered an item of gross income to be designated as allocable
3 income.

4 * * *

5 **§248. Exemption for certain nonresident individuals; mobile workforce**

6 **A. Definitions. As used in this Section:**

7 **(1) "Professional athlete" means an athlete who performs services in a**
8 **professional athletic event for compensation and includes active players and**
9 **players on the disabled list if required to travel with the team.**

10 **(2) "Professional entertainer" means a person who performs services in**
11 **the professional performing arts for compensation on a per-event basis.**

12 **(3) "Public figure" means a person of prominence who performs services**
13 **at discrete events, such as speeches, public appearances, or similar events, for**
14 **compensation on a per-event basis.**

15 **(4) "Qualified production employee" means a person who performs**
16 **services of any nature directly relating to a state-certified production for**
17 **compensation, provided that the compensation paid to the person is a qualified**
18 **production expenditure pursuant to the motion picture production tax credit**
19 **provided for in R.S. 47:6007, and that the compensation is subject to**
20 **withholding as a condition to treating the compensation as a qualified**
21 **production expenditure.**

22 **(5) "Staff member of a professional athletic team" means any person**
23 **required to travel with and perform services on behalf of a professional athletic**
24 **team, including but not limited to coaches, managers, and trainers.**

25 **(6) "Time and attendance system" means a system through which an**
26 **employee is required, on a contemporaneous basis, to record the employee's**
27 **work location for every day worked outside the state where the employee's**
28 **employment duties are primarily performed and that is designed to allow the**
29 **employer to allocate the employee's compensation for income tax purposes**
30 **among all states in which the employee performs employment duties for the**

1 employer.

2 B.(1) Beginning January 1, 2022, wages, as defined by R.S. 47:111(A),
3 paid to a nonresident individual are exempt from the tax levied under R.S.
4 47:290 if all of the following conditions apply:

5 (a) The compensation is paid for employment duties performed by the
6 individual in this state for twenty-five or fewer days in the calendar year.

7 (b) The individual performed employment duties in more than one state
8 during the calendar year.

9 (c) The wages are not paid for employment duties performed by the
10 individual in the individual's capacity as a professional athlete, staff member of
11 a professional athletic team, professional entertainer, public figure, or qualified
12 production employee.

13 (d) The individual's income is exempt from taxation by this state under
14 the United States Constitution or federal statute or the nonresident individual's
15 state of residence either provides a substantially similar exemption or does not
16 impose an individual income tax.

17 (2) The exemption provided in this Subsection shall not apply if the
18 nonresident individual has any other income derived from sources within this
19 state for the taxable year.

20 * * *

21 §293. Definitions

22 The following definitions shall apply throughout this Part, unless the context
23 requires otherwise:

24 * * *

25 (10) "Tax table income", for nonresident individuals, means the amount of
26 Louisiana income, as provided in this Part, allocated and apportioned under the
27 provisions of R.S. 47:241 through 247, plus the total amount of the personal
28 exemptions and deductions already included in the tax tables promulgated by the
29 secretary under authority of R.S. 47:295, less the proportionate amount of the federal
30 income tax liability, excess federal itemized personal deductions, the temporary

1 teacher deduction, the recreation volunteer and volunteer firefighter deduction, the
 2 construction code retrofitting deduction, any gratuitous grant, loan, or other benefit
 3 directly or indirectly provided to a taxpayer by a hurricane recovery entity if such
 4 benefit was included in federal adjusted gross income, the exclusion provided for in
 5 R.S. 47:297.3 for S Bank shareholders, the deduction for expenses disallowed by 26
 6 U.S.C. 280C, salaries, wages or other compensation received for disaster or
 7 emergency-related work rendered during a declared state disaster or emergency,
 8 wages of nonresident individuals who are eligible for the mobile workforce
 9 exemption pursuant to R.S. 47:248, the deduction for net capital gains, the pass-
 10 through entity exclusion provided in R.S. 47:297.14, and personal exemptions and
 11 deductions provided for in R.S. 47:294. The proportionate amount is to be
 12 determined by the ratio of Louisiana income to federal adjusted gross income. When
 13 federal adjusted gross income is less than Louisiana income, the ratio shall be one
 14 hundred percent.

* * *

16 Section 2. This Act shall become effective upon signature by the governor or, if not
 17 signed by the governor, upon expiration of the time for bills to become law without signature
 18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 19 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 20 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____