

2017 Regular Session

HOUSE BILL NO. 628

BY REPRESENTATIVE JONES

TAX: Imposes the Commercial Activity Tax

1 AN ACT

2 To enact Part II-B of Chapter 2 of Subtitle II of Title 47 of the Louisiana Revised Statutes  
3 of 1950, comprised of R.S. 47:288.1 through 288.7, relative to the commercial  
4 activity tax; to provide for the rate and calculation of the tax; to provide for  
5 definitions; to provide for exemptions; to provide for requirements and limitations;  
6 to authorize the promulgation of rules and regulations; to require the filing of  
7 consolidated returns under certain circumstances; to provide for administration of the  
8 tax; to provide for an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Part II-B of Chapter 2 of Subtitle II of Title 47 of the Louisiana Revised  
11 Statutes of 1950, comprised of R.S. 47:288.1 through 288.7, is hereby enacted to read as  
12 follows:

13 PART II-B. LOUISIANA COMMERCIAL ACTIVITY TAX

14 §288.1. Short title

15 This Act shall be known as and may be cited as the "Louisiana Commercial  
16 Activity Tax Act".

17 §288.2. Imposition of Tax

18 A. Every corporation, partnership, limited liability company, limited liability  
19 partnership, limited partnership, estate, trust, or association, whether domestic or  
20 foreign, exercising its charter, or qualified to do business or actually doing business

1 in this state, or owning or using any part or all of its capital, plant, or any other  
2 property in this state, subject to compliance with all other provisions of law, shall  
3 pay an annual commercial activity tax as provided by R.S. 47:288.4. The tax levied  
4 herein is due and payable on any one or all of the following alternative incidents:

5 (1) The qualification to carry on or do business in this state or the actual  
6 doing of business within this state. The term "doing business" as used herein shall  
7 mean and include each and every act, power, right, privilege, or immunity exercised  
8 or enjoyed in this state, as an incident to or by virtue of the powers and privileges  
9 acquired by the nature of such organizations, as well as, the buying, selling, or  
10 procuring of services or property.

11 (2) The exercising of an organization's charter or the continuance of its  
12 charter within this state.

13 (3) The owning or using any part or all of its capital, plant, or other property  
14 in this state.

15 B. It is the purpose of this Section to require the payment of this tax to the  
16 state of Louisiana by organizations for the right granted by the laws of this state to  
17 exist and for the enjoyment, under the protection of the laws of this state, of the  
18 powers, rights, privileges, and immunities derived by reason of the organization's  
19 form of existence and operation. The tax hereby imposed shall be in addition to all  
20 other taxes levied by any other statute.

21 §288.3. Definitions

22 As used in this Part:

23 (1) "Bulk delivery costs" means the cost of delivering the product to the  
24 consumer if both of the following apply:

25 (a) The tangible personal property is delivered in bulk and requires  
26 specialized equipment that generally precludes commercial shipping.

27 (b) The tangible personal property is taxable under R.S. 47:818.12.

28 (2) "Business of gaming" means a business that is assigned an industry group  
29 designation by the United States Census Bureau of Sectors 713210 or 713290

1 pursuant to the North American Industry Classification System and is licensed under  
2 the provisions of Title 27 of the Louisiana Revised Statutes of 1950 to conduct  
3 gaming activities or gaming operations.

4 (3) "Business of manufacturing and merchandising" means a business whose  
5 gross receipts or gross profits is derived primarily from the manufacture, production,  
6 or sale of tangible personal property, whether at wholesale or retail. The term  
7 "business of manufacturing or merchandising" shall not include any of the following:

8 (a) A taxpayer subject to the tax imposed pursuant to Chapter 8 of Subtitle  
9 II of this Title.

10 (b) Any taxpayer whose income is primarily derived from the production or  
11 sale of unrefined oil and gas.

12 (c) Any taxpayer defined as an integrated oil company per the United States  
13 Internal Revenue Code 26 U.S.C. 291(b)(4), or integrated oil companies that refine,  
14 produce, and have marketing operations, whose income in Louisiana is principally  
15 derived from production and sale of unrefined oil and gas, and who also engage in  
16 significant marketing of refined petroleum products in Louisiana. Any taxpayer,  
17 whose activities during the taxable year do not include any "gross receipts from retail  
18 sales of oil or natural gas", or any "refinery activities of oil or natural gas", shall not  
19 be considered as an integrated oil company for Louisiana tax purposes,  
20 notwithstanding such taxpayer may be a "related party" or a "member of the federal  
21 consolidated group" under the United States Internal Revenue Code.

22 (4) "Cost of goods sold" means either of the following:

23 (a) Amounts that are both of the following:

24 (i) Allowable as cost of goods sold pursuant to the United States Internal  
25 Revenue Code and any guidelines issued by the Internal Revenue Service relating  
26 to cost of goods sold, unless modified by this Section.

27 (ii) Incurred in acquiring or producing the tangible personal property  
28 generating the Louisiana gross receipts.

1           (b) For entities engaged in the business of manufacturing or merchandising,  
2           cost of goods sold shall only include costs directly incurred in acquiring or producing  
3           the tangible personal property for sale at wholesale or retail. In determining cost of  
4           goods sold:

5           (i) Labor costs shall be limited to direct labor costs as defined in Paragraph  
6           (5) of this Section.

7           (ii) Bulk delivery costs as defined in Paragraph (1) of this Section may be  
8           included.

9           (iii) Costs allowable under Section 263A of the United States Internal  
10          Revenue Code may be included only to the extent the costs are incurred in acquiring  
11          or producing the tangible product generating the Louisiana gross receipts, provided  
12          however that indirect labor costs allowable under Section 263A shall not be  
13          included.

14          (c) For entities engaged in a service enterprise in which the gross receipts are  
15          primarily attributable to service income and the use of property is not a substantial  
16          income-producing factor, no costs shall be included in cost of goods sold.

17          (d) For entities engaged in the business of gaming, costs of goods sold shall  
18          only include cash paid out as winnings to patrons.

19          (5) "Direct labor" means labor that is directly involved in the actual process  
20          of manufacturing the tangible personal property sold or is an integral part of the  
21          manufacturing or merchandising process.

22          (6) "Domestic corporation" means a corporation formed under the laws of  
23          this state.

24          (7) "Domestic limited liability company" means an entity that is an  
25          unincorporated association having one or more members that is organized and  
26          existing under Chapter 22 of Title 12 of the Louisiana Revised Statutes of 1950.

27          (8) "Domestic limited liability partnership" means a limited liability  
28          partnership formed under the laws of this state.

1           (9) "Estate" means a decedent's estate as provided by Civil Code Article 872  
2           and a bankruptcy estate as provided by Section 541 of Title 11 of the United States  
3           Code.

4           (10) "Foreign corporation" means a corporation formed under the laws of  
5           any state other than this state or under the laws of any foreign country.

6           (11) "Foreign limited liability company" means a limited liability company  
7           formed under the laws of any state other than this state or under the laws of any  
8           foreign country.

9           (12) "Foreign limited liability partnership" means a limited liability  
10          partnership formed under the laws of any state other than this state or under the laws  
11          of any foreign country.

12          (13) "Gross receipts from all sources" means the sum of the following:

13          (a) Taxable gross receipts from rents and royalties from immovable or  
14          corporeal movable property from all sources.

15          (b) Taxable gross receipts from royalties or similar revenue from the use of  
16          patents, trademarks, copyrights, secret processes, and other similar intangible rights  
17          from all sources.

18          (c) Taxable gross receipts from construction, repair, or other similar services  
19          from all sources.

20          (d) Taxable gross receipts from estates, trusts, and partnerships from all  
21          sources.

22          (e) Taxable gross receipts from all other items and sources of gross income.

23          (14) "Guidelines issued by the Internal Revenue Service" means regulations,  
24          private letter rulings, or any other guidance issued by the Internal Revenue Service  
25          that may be relied upon by taxpayers under reliance standards established by the  
26          Internal Revenue Service.

27          (15) "Immovable property" means land and all things permanently affixed  
28          to the land.

1           (16) "Louisiana gross profits" means Louisiana gross receipts reduced by  
2           cost of goods sold attributable to Louisiana gross receipts. If the amount of cost of  
3           goods sold attributable to Louisiana gross receipts is zero, then "Louisiana gross  
4           profits" shall mean Louisiana gross receipts.

5           (17) "Louisiana gross receipts" means the sum of the following:

6           (a) Taxable gross receipts from rents and royalties from immovable or  
7           corporeal movable property allocable to this state.

8           (b) Taxable gross receipts from royalties or similar revenue from the use of  
9           patents, trademarks, copyrights, secret processes, and other similar intangible rights  
10          allocable to this state.

11          (c) Taxable gross receipts from construction, repair, or other similar services  
12          allocable to this state.

13          (d) Taxable gross receipts from estates, trusts, and partnerships allocable to  
14          this state.

15          (e) Taxable gross receipts from all other items and sources of gross income  
16          attributable to this state determined in a manner consistent with the provisions of  
17          R.S. 47:287.95 and any related administrative regulations.

18          (18) "Partnership" means a syndicate, group, pool, joint venture, or other  
19          unincorporated organization through or by means of which any business, financial  
20          operation, or venture is carried on.

21          (19) "Secretary" means the secretary of the Department of Revenue.

22          (20) "Tangible personal property" means and includes personal property,  
23          other than immovable property, which may be seen, weighed, measured, felt or  
24          touched, or is in any other manner perceptible to the senses.

25          (21) "Taxable gross receipts" means gross receipts less the sum of returns  
26          and allowances, cash discounts allowed and taken, and unpaid balances on an  
27          account previously included in gross receipts and subsequently found to be bad in  
28          accordance with Section 166 of the United States Internal Revenue Code and that are  
29          actually charged off for federal income tax purposes.

1           (22) "Trust" shall have the same meaning as provided by R.S. 9:1731 and  
2           includes "electing small business trusts" as defined by Section 1361 of the United  
3           States Internal Revenue Code.

4           §288.4. Commercial Activity Tax Calculation

5           A. Except as hereinafter provided, for taxable years beginning on or after  
6           January 1, 2018, an annual commercial activity tax shall be paid by every business  
7           in accordance with this Part on all Louisiana gross receipts.

8           B. Corporations classified under Subchapter S of the United States Internal  
9           Revenue Code as an S corporation shall be subject to the provisions of Subsection  
10          C of this Section provided the S corporation excludes all Louisiana taxable income  
11          pursuant to R.S. 47:287.732. If the S corporation fails to exclude all Louisiana  
12          taxable income pursuant to R.S. 47:287.732, the S corporation shall be subject to the  
13          provisions of Subsection D of this Section.

14          C. Except as hereinafter provided, for entities other than corporations, the  
15          tax shall be based on gross receipts from all sources, as follows:

16               (1) If gross receipts from all sources is one hundred and fifty thousand  
17               dollars or more, but equal to or less than five hundred thousand dollars, the tax shall  
18               be two hundred fifty dollars.

19               (2) If gross receipts from all sources is greater than five hundred thousand  
20               dollars, but equal to or less than one million dollars, the tax shall be five hundred  
21               dollars.

22               (3) If gross receipts from all sources is greater than one million dollars, but  
23               equal to or less than one million five hundred thousand dollars, the tax shall be seven  
24               hundred fifty dollars.

25               (4) If gross receipts from all sources is greater than one million five hundred  
26               thousand dollars, but equal to or less than three million dollars, the tax shall be one  
27               thousand five hundred dollars.

1           (5) If gross receipts from all sources is greater than three million dollars, but  
2           equal to or less than six million dollars, the tax shall be three thousand two hundred  
3           fifty dollars.

4           (6) If gross receipts from all sources is greater than six million dollars, but  
5           equal to or less than twelve million dollars, the tax shall be six thousand five hundred  
6           dollars.

7           (7) If gross receipts from all sources are greater than twelve million dollars,  
8           the tax shall be twelve thousand five hundred dollars.

9           D. Except as hereinafter provided, for corporations, or those entities electing  
10          to be treated and taxed as corporations for federal income tax purposes, the tax shall  
11          be the greater of the following:

12           (1) Louisiana corporation income tax as provided by Part II-A of Chapter 1  
13          of this Subtitle, after the application of all available credit carryforwards,  
14          nonrefundable credits, and refundable credits.

15           (2) An amount, based on gross receipts from all sources, as follows:

16           (a) If gross receipts from all sources are one hundred fifty thousand dollars  
17          or more, but equal to or less than five hundred thousand dollars, the tax shall be two  
18          hundred fifty dollars.

19           (b) If gross receipts from all sources is greater than five hundred thousand  
20          dollars, but equal to or less than one million dollars, the tax shall be five hundred  
21          dollars.

22           (c) If gross receipts from all sources is greater than one million dollars, but  
23          equal to or less than one million five hundred thousand dollars, the tax shall be seven  
24          hundred fifty dollars.

25           (3) If gross receipts from all sources is greater than one million five hundred  
26          thousand dollars, an amount equal to thirty-five cents per one hundred dollars of the  
27          entity's Louisiana gross receipts.

28           E. For corporations, or those entities electing to be treated and taxed as  
29          corporations for federal income tax purposes, engaged in the business of



1 manufacturing or merchandising or the business of gaming, the tax shall be the  
2 greater of the following:

3 (1) Louisiana corporation income tax as provided by Part II-A of Chapter 1  
4 of this Subtitle, after the application of all available credit carryforwards,  
5 nonrefundable credits, and refundable credits.

6 (2) An amount, based on gross receipts from all sources, as follows:

7 (a) If gross receipts from all sources are one hundred fifty thousand dollars  
8 or more, but equal to or less than five hundred thousand dollars, the tax shall be two  
9 hundred fifty dollars.

10 (b) If gross receipts from all sources is greater than five hundred thousand  
11 dollars, but equal to or less than one million dollars, the tax shall be five hundred  
12 dollars.

13 (c) If gross receipts from all sources is greater than one million dollars, but  
14 equal to or less than one million five hundred thousand dollars, the tax shall be seven  
15 hundred fifty dollars.

16 (3) If gross receipts from all sources is greater than one million five hundred  
17 thousand dollars, the lesser of the following:

18 (a) Thirty-five cents per one hundred dollars of the entity's Louisiana gross  
19 receipts.

20 (b) Two dollars and seventy-six cents per one hundred dollars of the entity's  
21 Louisiana gross profits.

22 §288.5. Requirement to File Consolidated Returns

23 A. Entities shall file consolidated returns in any of the following situations:

24 (1) Except in the case of a single member limited liability company electing  
25 to be treated and taxed as a corporation for federal income tax purposes, if a  
26 corporation is the sole member of one or more single member limited liability  
27 companies, then the corporation shall file a consolidated return and treat the single  
28 member limited liability company or companies as a division of the corporation. The  
29 corporation shall include the gross receipts of the single member limited liability

1 company or companies in the corporation's calculation as provided by R.S.  
2 47:288.4(D) or (E), and each single member limited liability company or companies  
3 shall file a return as provided by R.S. 47:288.4(A), but shall pay only the amount  
4 required by R.S. 47:288.4(C)(1), provided the single member limited liability  
5 company has the requisite nexus to this state.

6 (2) If a corporation is the sole shareholder of one or more qualified  
7 Subchapter S subsidiaries and elects to treat the qualified Subchapter S subsidiary  
8 or subsidiaries as disregarded entities for state income tax purposes, then the  
9 corporation shall file a consolidated return and treat the qualified Subchapter S  
10 subsidiary or subsidiaries as disregarded entities. The corporation shall include the  
11 gross receipts of the qualified Subchapter S subsidiary or subsidiaries in the  
12 corporation's tax calculation as provided by R.S. 47:288.4(D) or (E), and each  
13 qualified Subchapter S subsidiary or subsidiaries shall file a return as provided by  
14 R.S. 47:288.4(A), but shall pay only the amount as required by R.S. 47:288.4(C)(1),  
15 provided the qualified Subchapter S subsidiary has the requisite nexus to this state.

16 (3) Publicly traded partnerships as defined by Section 7704(b) of the United  
17 States Internal Revenue Code shall file a consolidated return and include the gross  
18 receipts of their publicly traded partnership affiliates in the publicly traded  
19 partnership's tax calculation as provided by R.S. 47:288.4(D) or (E), and each  
20 publicly traded partnership affiliate shall file a return as provided by R.S.  
21 47:288.4(A), but shall pay only the amount as required by R.S. 47:288.4(C)(1),  
22 provided the publicly traded partnership affiliate has the requisite nexus to this state.  
23 For purposes of this subsection, "publicly traded partnership affiliates" means any  
24 limited liability company or limited partnership for which at least eighty percent of  
25 the limited liability company member interests or limited partner interests are owned  
26 directly or indirectly by the publicly traded partnership.

27 §288.6. Administrative Provisions

28 A. Entities subject to the tax imposed in this Part shall file a return, on forms  
29 prepared by the secretary, on or before the fifteenth day of the fifth month following

1 the close of the entity's taxable year. The secretary may grant a reasonable extension  
2 of time for filing returns, not to exceed six months, from the date the return is due.  
3 Requests for filing extensions and returns shall be filed electronically by all entities.

4 B. Entities subject to the tax shall make payments of estimated tax in the  
5 same manner as provided by R.S. 47:287.654. Any tax remaining due after making  
6 the payments of estimated tax shall be paid by the original due date of the return,  
7 subject to the applicable penalties for underpayment of estimated tax as provided by  
8 R.S. 47:287.655.

9 C. The secretary may promulgate rules and regulations pursuant to the  
10 Administrative Procedure Act for the purposes of administration and enforcement  
11 of this Part. Such regulations shall have the full force and effect of law.

12 §288.7. Entities exempt from the tax

13 A. The tax imposed by this Part shall not apply to any of the following:

14 (1) Mutual savings banks, national banking corporations, and banking  
15 corporations organized under the laws of the state of Louisiana who pay a tax for  
16 their shareholders or whose shareholders pay a tax on their shares of stock under  
17 other laws of this state and building and loan associations.

18 (2) Insurance corporations paying a premium tax under Title 22 of the  
19 Louisiana Revised Statutes of 1950.

20 (3) Corporations or other entities exempt under Sections 401(a) or 501 of the  
21 United States Internal Revenue Code.

22 (4) Religious, educational, charitable, or like corporations not organized or  
23 conducted for pecuniary profit.

24 (5) Agencies, instrumentalities, or political subdivisions of the state.

25 (6) Farmers cooperatives as defined in R.S. 47:287.521(A), homeowners  
26 associations including those described in Section 528 of the United States Internal  
27 Revenue Code, political organizations as defined in Section 527 of the United States  
28 Internal Revenue Code, and rural electric and rural telephone cooperatives.

1           (7) Cooperative, nonprofit membership corporations organized for the  
2           purpose of supplying electrical energy and promoting and extended the use thereof  
3           as defined in Part I of Chapter 4 of Title 12 of the Louisiana Revised Statutes of  
4           1950.

5           B. As used in this Section, "qualified exempt organization" means an entity  
6           listed in this Section and shall not include any entity whose exempt status has been  
7           disallowed by the Internal Revenue Service. The Department of Revenue may  
8           promulgate rules and regulations pursuant to the Administrative Procedure Act to  
9           further define "qualified exempt organization" to include an entity for which  
10          exemption is constitutionally or legally required, or to exclude any entity created  
11          primarily for tax avoidance purposes with no legitimate business purpose.

12          C. Notwithstanding any provision to the contrary, any entity that is owned  
13          in whole or in part by a qualified exempt organization shall, in calculating its  
14          Louisiana gross receipts or Louisiana gross profits, exclude the proportionate share  
15          of its Louisiana gross receipts or Louisiana gross profits attributable to the ownership  
16          interest of the qualified exempt organization.

17          Section 2. This Act shall become effective January 1, 2018.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 628 Original

2017 Regular Session

Jones

**Abstract:** Imposes a Commercial Activity Tax on the taxable gross receipts of certain entities doing business in La. and provides for exemptions and administration of the tax.

Proposed law imposes a Commercial Activity Tax (CAT) on the taxable gross receipts of each entity doing business in La. CAT is required to be paid by the entity subject to the tax in addition to any other La. tax for which the entity may be liable.

Proposed law requires business entities, including certain S corporations whose income is deducted in computing La. corporation income tax liability, to pay a CAT as follows:

- (1) \$250 if the entity's gross receipts are at least \$150K, but equal to or less than \$500K.
- (2) \$500 if the entity's gross receipts are more than \$500K, but equal to or less than \$1M.

- (3) \$750 if the entity's gross receipts are more than \$1M, but equal to or less than \$1.5M.
- (4) \$1,500 if the entity's gross receipts are more than \$1.5M, but equal to or less than \$3M.
- (5) \$3,250 if the entity's gross receipts are more than \$3M, but equal to or less than \$6M.
- (6) \$6,500 if the entity's gross receipts are more than \$6M, but equal to or less than \$12M.
- (7) \$12,500 if the entity's gross receipts are more than \$12M.

Proposed law requires corporations and entities that are taxed as corporations for federal income tax purposes, except for corporations engaged in the business of manufacturing or merchandising, to pay the greater of the following:

- (1) The net corporation income tax due after the application of all credit carryforwards, nonrefundable credits, and refundable credits.
- (2) One of the following amounts:
  - (a) \$250 if the entity's gross receipts are at least \$150K, but equal to or less than \$500K.
  - (b) \$500 if the entity's gross receipts are more than \$500K, but equal to or less than \$1M.
  - (c) \$750 if the entity's gross receipts are more than \$1M, but equal to or less than \$1.5M.
  - (d) 0.35% of the amount of gross receipts if the entity's gross receipts are greater than \$1.5M.

Proposed law requires corporations and entities that are taxed as corporations for federal income tax purposes that are engaged in the business of manufacturing or merchandising or gaming to pay the greater of the following:

- (1) The net corporation income tax due after the application of all credit carryforwards, nonrefundable credits, and refundable credits.
- (2) One of the following amounts:
  - (a) \$250 if the entity's gross receipts are at least \$150K, but equal to or less than \$500K.
  - (b) \$500 if the entity's gross receipts are more than \$500K, but equal to or less than \$1M.
  - (c) \$750 if the entity's gross receipts are more than \$1M, but equal to or less than \$1.5M.
- (3) The lesser of the following:
  - (a) 0.35% of the amount of gross receipts if the entity's gross receipts are greater than \$1.5M.
  - (b) 2.76% of the amount of the entity's La. gross profits.

Proposed law requires consolidated returns to be filed by the following:

- (1) A corporation that is the sole member of one or more single member LLCs.
- (2) A corporation that is the sole shareholder of one or more qualified Subchapter S subsidiaries.
- (3) Certain publicly traded partnerships.

Proposed law exempts from the CAT the following entities:

- (1) Entities with less than \$150K in gross receipts.
- (2) Non-profit organizations and certain organizations not formed for pecuniary profit.
- (3) Certain public utilities.
- (4) Certain financial institutions.
- (5) Certain insurance companies.
- (6) Homeowners associations.
- (7) Political organizations.
- (8) Rural electric and telephone cooperatives.

Effective Jan. 1, 2018.

(Adds R.S. 47:288.1-288.7)