

2017 Regular Session

HOUSE BILL NO. 648

BY REPRESENTATIVE HAVARD

TAX/STATE: Levies the Louisiana Business Tax

1 AN ACT

2 To enact Subtitle XII of Title 47 of the Louisiana Revised Statutes of 1950, to be comprised

3 of R.S. 47:10001 through 10016, relative to the corporation income and franchise

4 taxes; to provide for the imposition of the Louisiana Business Tax; to provide for the

5 levy, rate, collection, computation, administration, and enforcement of the tax; to

6 provide for credits for certain financial and insurance institutions; to provide for

7 definitions; to provide for the allocation and apportionment of certain business

8 activity; to require the filing of certain tax returns; to authorize certain refunds; to

9 authorize the promulgation of rules and regulations; to provide for certain credits

10 against the Louisiana Business Tax; to exempt certain businesses from payment of

11 the tax; to provide for requirements and limitations; to provide for an effective date;

12 and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Subtitle XII of Title 47 of the Louisiana Revised Statutes of 1950, to be

15 comprised of R.S. 47:10001 through 10016, is hereby enacted to read as follows:

16 SUBTITLE XII. LOUISIANA BUSINESS TAX

17 §10001. Short title

18 This Act and Subtitle shall be known as the "Louisiana Business Tax Act".

1        §10002. Levy and imposition

2            A. There is hereby levied a tax on business activity in Louisiana, which shall  
3        be known as the Louisiana Business Tax. The tax shall not apply to any person  
4        whose annual business income is less than five hundred thousand dollars. The tax  
5        shall not apply to the United States or any agency of the United States, the state of  
6        Louisiana, any political subdivision of the state of Louisiana, or any enterprise of the  
7        state of Louisiana. The tax shall be levied upon the adjusted tax base of every person  
8        engaged in business activity in Louisiana whose annual business income is equal to  
9        or greater than five hundred thousand dollars. The tax to be assessed, levied,  
10       collected, and paid upon the adjusted tax base of every person engaged in business  
11       activity in Louisiana shall be computed at the following rate:

12            (1) At the rate of one and one-half percent upon all adjusted taxable base  
13        between five hundred thousand dollars, but less than five million dollars.

14            (2) At the rate of two percent upon all adjusted taxable base of five million  
15        dollars or more.

16            B. "Adjusted tax base" means the tax base that can be allocated, apportioned,  
17        or attributed to the business activity of a person in Louisiana pursuant to R.S.  
18        47:10004.

19            C. Every person liable for the tax assessed, levied, collected, and paid  
20        pursuant to this Subtitle shall not be liable to the taxes assessed, levied, collected,  
21        and paid pursuant to Parts I, II, and II-A of Chapter 1 and Chapter 5 of Subtitle II of  
22        this Title.

23        §10003. Definitions

24            For purposes of this Subtitle, the following words and phrases have the  
25        meanings ascribed to them in this Section. Terms used in this Subtitle that are not  
26        specifically defined shall have the same meaning as when used in comparable  
27        context in the laws of the United States relating to federal income taxes in effect for  
28        the tax year unless a different meaning is clearly required.

1           (1) "Affiliated group" means two or more United States corporations, as  
2           provided for in Section 7701(a)(3) and (4) of the Internal Revenue Code, one of  
3           which owns or controls, directly or indirectly, eighty percent or more of the capital  
4           stock with voting rights of the other United States corporation or corporations.

5           (2) "Business activity" means a transfer of legal or equitable title to or rental  
6           of property, whether real, personal, or mixed, tangible or intangible, or the  
7           performance of services, or a combination thereof, made or engaged in, or caused to  
8           be made or engaged in, within this state, whether in intrastate, interstate, or foreign  
9           commerce, with the object of gain, benefit, or advantage, whether direct or indirect,  
10          to the taxpayer or to others. The term shall not include the services rendered by an  
11          employee to his employer, services as a director of a corporation, or a casual  
12          transaction. Although an activity of a taxpayer may be incidental to another or other  
13          of his business activities, each activity shall be considered to be business engaged  
14          in within the meaning of this Subtitle.

15          (3) "Business income" means federal taxable income, except that for a  
16          person other than a corporation it means that part of federal taxable income derived  
17          from business activity. Business income does not include any loss carryovers or  
18          carrybacks from other tax periods.

19          (4) "Casual transaction" means a transaction made or engaged in other than  
20          in the ordinary course of repeated and successive transactions of a like character.  
21          Transactions made or engaged in by a person which is incidental to that person's  
22          regular business activity shall be considered to be a business activity within the  
23          meaning of this Subtitle.

24          (5) "Compensation" means all wages, salaries, fees, bonuses, commissions,  
25          or other payments made in the taxable year on behalf of or for the benefit of  
26          employees, officers, or directors of the taxpayers and subject to or specifically  
27          exempt from withholding under Section 3401 to 3406 of the Internal Revenue Code.  
28          Compensation includes, on a cash or accrual basis consistent with the taxpayer's  
29          method of accounting for federal income tax purposes, payments under the federal

1 insurance contribution act and similar social insurance programs, payments,  
2 including self-insurance, for workmen's compensation insurance, payments to  
3 individuals not currently working, payments to dependents and heirs of individuals  
4 because of current or former labor services rendered by those individuals, payments  
5 to a pension, retirement, or profit sharing plan, and payments for insurance for which  
6 employees are the beneficiaries. Compensation does not include discounts on the  
7 price of the taxpayer's merchandise or services sold to the taxpayer's employees,  
8 officers, or directors which are not available to other customers.

9 (6) "Cost of goods sold" means all direct costs of acquiring or producing the  
10 goods that are allowable under the United States Internal Revenue Code.

11 (7) "Department" means the Department of Revenue.

12 (8) "Employee" means an employee as defined in Section 3401(c) of the  
13 Internal Revenue Code. A person from whom an employer is required to withhold  
14 for federal income tax purposes shall prima facie be deemed an employee.

15 (9) "Employer" means an employer as defined in Section 3401(d) of the  
16 Internal Revenue Code. A person required to withhold for federal income tax  
17 purposes shall prima facie be deemed an employer.

18 (10) "Federal taxable income" means taxable income as defined in Section  
19 63 of the Internal Revenue Code.

20 (11) "Financial organization" means a bank, industrial bank, trust company,  
21 building and loan or savings and loan association, savings bank, trust bank, bank  
22 holding company as defined in 12 USC 1841, credit union, safety and collateral  
23 deposit company, regulated investment company as defined in the Internal Revenue  
24 Code, and any other association, joint stock company, or corporation at least ninety  
25 percent of whose assets consist of intangible personal property and at least ninety  
26 percent of whose tax base consists of dividends or interest or other charges resulting  
27 from the use of money or credit.

28 (12) "Foreign person" means a person formed under the laws of a foreign  
29 country or a political subdivision of a foreign country.

1           (13) "Internal Revenue Code" means the United States Internal Revenue  
2           Code of 1986, as amended. A reference in this Subtitle to the Internal Revenue Code  
3           includes other provisions of the laws of the United States relating to federal income  
4           taxes.

5           (14) "Person" means a corporation or any other entity or groups of entities  
6           acting as a unit and that is taxed as a corporation for federal income tax purposes.  
7           The term person does not include natural persons, the estate of a decedent, any  
8           nonprofit entity organized and operated exclusively for educational purposes or any  
9           nonprofit sports organization.

10           (15) "Rent" includes a lease payment or other payment for the use of any  
11           property to which the taxpayer does not have legal or equitable title.

12           (16) "Rental business" means a business whose principal business activity  
13           consists of the rental or leasing of any property.

14           (17) "Sale" or "sales" means all receipts arising from a transaction or  
15           transactions that constitute consideration for one of the following:

16           (a) The transfer of title to, or possession of, property that is stock in trade or  
17           other property of a kind which would properly be included in the inventory of the  
18           taxpayer if on hand at the close of the tax period, or property held by the taxpayer  
19           primarily for sale to customers in the ordinary course of its trade or business.

20           (b) The performance of services, which constitute business activities other  
21           than those included in Subparagraph (a) of this Paragraph.

22           (c) Any combination of Subparagraphs (a) or (b) of this Paragraph.

23           (18) "Secretary" means the secretary of the Department of Revenue.

24           (19) "State" means any state of the United States, the District of Columbia,  
25           the Commonwealth of Puerto Rico, any territory or possession of the United States,  
26           and any foreign country, or political subdivision of any of the foregoing.

27           (20)(a) "Tax base" means business income of the tax year, before allocation,  
28           apportionment, or attribution even if zero or negative, subject to the following  
29           adjustments:

1           (i) Add, to the extent not already included in the tax base, income classified  
2           as unrelated business taxable income or unrelated taxable income as defined in the  
3           Internal Revenue Code.

4           (ii) Add all taxes on or measured by net income and the tax imposed by this  
5           Subtitle to the extent the taxes were deducted in arriving at federal taxable income.

6           (iii) Add, to the extent deducted in arriving at federal taxable income, all of  
7           the following:

8           (aa) Any deduction for depreciation, depletion, intangible drilling costs,  
9           amortization, or immediate or accelerated write-off related to the cost of assets  
10          including tangible and intangible assets.

11          (bb) Any dividends paid or accrued except dividends that represent reduction  
12          of premiums to policyholders of insurance companies.

13          (cc) Any deduction or exclusion by a taxpayer due to a classification as, or  
14          the payment of commissions or other fees to, a domestic international sales  
15          corporation, western hemisphere trade corporation, China trade act corporation,  
16          foreign sales corporation, or any like special classification the purpose of which is  
17          to reduce or postpone federal income tax liability.

18          (dd) All interest including amounts paid, credited, or reserved by insurance  
19          companies as amounts necessary to fulfill the policy and other contract liability  
20          requirements of Sections 805 and 809 of the Internal Revenue Code.

21          (ee) All rents and royalties, except for oil and gas royalties that are excluded  
22          in the depletion deduction calculation under the Internal Revenue Code.

23          (iv) Add compensation as defined in Paragraph (5) of this Section.

24          (v) Deduct, to the extent included in arriving at federal taxable income, all  
25          of the following:

26          (aa) Dividends received or deemed received, including the foreign dividend  
27          gross-up provided for in the Internal Revenue Code.

1           (bb) All interest except amounts paid, credited, or reserved by an insurance  
2           company as amounts necessary to fulfill the policy and other contract liability  
3           requirements of Sections 805 and 809 of the Internal Revenue Code.

4           (cc) All rents and royalties, except oil and gas royalties that are included in  
5           the depletion deduction calculation under the Internal Revenue Code.

6           (vi) Deduct all cost of goods sold.

7           (vii) Deduct any capital loss not deducted in arriving at federal taxable  
8           income in the year the loss occurred.

9           (viii) To the extent included in federal taxable income, add the loss or  
10          subtract the gain from the tax base that is attributable to another entity whose  
11          business activities are taxable under this Subtitle or would be taxable under this  
12          Subtitle if the business activities were in this state.

13          (b) Alternate tax bases.

14          (i) The tax base of nonprofit persons not required to pay federal income taxes  
15          shall be the net sales of goods or services less the direct material expenses incurred  
16          in producing the goods or service, as determined by the secretary.

17          (ii) The tax base of a financial organization is business income subject to the  
18          net additions less the deductions specified in the definition of "tax base" with the  
19          exception of the additions and deductions for interest.

20          (iii) If the tax base calculation provisions of R.S. 47:10003(20) do not fairly  
21          represent the business activity of a taxpayer, the taxpayer may petition for or the  
22          secretary may require, an alternative method of calculating the tax base to effectuate  
23          an equitable calculation of the taxpayer's business activity. The tax base calculation  
24          provisions of R.S. 47:10003(20) shall be presumed to fairly represent the taxpayer's  
25          business activity unless it can be demonstrated that the business activity attributed  
26          to the taxpayer by this method is out of all appropriate proportion to the actual  
27          business activity transacted by the taxpayer and leads to a grossly distorted result.

1           (iv) The tax base of a rental business is business income subject to the net  
2           additions less the net deductions specified in the definition of "tax base" with the  
3           exception of the additions and deductions for rent.

4           (21) "Tax year" or "taxable year" means the calendar year, or the fiscal year  
5           ending during the calendar year, upon the basis of which the tax base is computed  
6           under this Subtitle. When a return is made for a fractional part of a year, tax year  
7           means the period for which the return is made. A taxpayer's tax year shall be for the  
8           same period as is covered by his federal income tax return.

9           (22) "Taxpayer" means a person liable for a tax, interest, or penalty under  
10          this Subtitle.

11          (23) "Unrelated business activity" or "unrelated trade or business" means any  
12          business activity that gives rise to unrelated business taxable income as defined in  
13          the Internal Revenue Code.

14          (24) "Wages" means wages as defined in Section 3401 of the Internal  
15          Revenue Code. The secretary may expand the definition of wages in rules and  
16          regulations promulgated under this Subtitle.

17          §10004. Allocation and apportionment of business activity

18           A. Business activities solely in Louisiana. In the case of a taxpayer whose  
19           business activities are not taxable in another state as defined in Subsection C of this  
20           Section, the entire tax base of the taxpayer shall be allocated to this state.

21           B. Business within and outside of Louisiana. A taxpayer whose business  
22           activities are taxable both within and outside of the state shall apportion his tax base  
23           as provided in this Section. In the case of a foreign person, only items effectively  
24           connected to business activity in the United States shall be included in the factors.

25           C. Business outside of state. For purposes of apportionment of the tax base  
26           from business activities under this Subtitle, a taxpayer is taxable in another state if  
27           either of the following is applicable:

28           (1) In the other state, the taxpayer is subject to a business privilege tax, a net  
29           income tax, a franchise tax measured by net income, a franchise tax for the privilege



1 of doing business, a corporate stock tax, or a tax of the type imposed under this  
2 Subtitle.

3 (2) The other state has jurisdiction to subject the taxpayer to one or more of  
4 the taxes regardless of whether, in fact, the state does or does not.

5 D. Apportionment method

6 (1) All of the tax base, other than the tax base derived principally from  
7 transportation, financial, or insurance carrier services or specifically allocated, shall  
8 be apportioned to this state by multiplying the tax base by a fraction, the numerator  
9 of which is the property factor plus the payroll factor plus the sales factor, and a  
10 denominator of three. If the denominator of any of the factors is zero, those factors  
11 shall be eliminated from the calculation of the fraction.

12 (a) The property factor is a fraction, the numerator of which is the average  
13 value of the taxpayer's real and tangible personal property owned, used, or rented in  
14 this state during the tax year and the denominator of which is the average value of  
15 all the taxpayer's real and tangible personal property owned, used, or rented during  
16 the tax year.

17 (b) Property owned by the taxpayer is valued at its original cost. Property  
18 rented by the taxpayer is valued at eight times the net annual rental rate. Net annual  
19 rental rate is the annual rental rate paid by the taxpayer less any annual rental rate  
20 received by the taxpayer from subrentals.

21 (c) The average value of property shall be determined by averaging the  
22 values at the beginning and ending of the tax year, but the secretary may require the  
23 periodic averaging of values during the tax year if reasonably required to reflect  
24 properly the average value of the taxpayer's property.

25 (d) The payroll factor is a fraction, the numerator of which is the total wages  
26 paid in this state during the tax year by the taxpayer and the denominator of which  
27 is the total wages paid everywhere during the tax year by the taxpayer. Wages shall  
28 be considered paid in this state under any of the following circumstances:

29 (i) The individual's service is performed entirely within the state.

1           (ii) The individual's service is performed both within and outside of the state,  
2           but the service performed outside of the state is incidental to the individual's service  
3           within the state.

4           (iii) Some of the service is performed in the state and the base of operations,  
5           or if there is no base of operations, the place from which the service is directed or  
6           controlled is in the state; or the base of operations or the place from which the  
7           service is directed or controlled is not in any state in which some part of the service  
8           is performed, but the individual's residence is in this state.

9           (e) The sales factor is a fraction, the numerator of which is the total sales of  
10          the taxpayer in this state during the tax year, and the denominator of which is the  
11          total sales of the taxpayer everywhere during the tax year.

12          (i) Sales of tangible personal property shall be considered sales in this state  
13          as follows:

14          (aa) The property is shipped or delivered to a purchaser, other than the  
15          United States government, within this state regardless of the free on board point or  
16          other conditions of the sale.

17          (bb) The property is shipped from an office, store, warehouse, factory, or  
18          other place of storage in this state and the purchaser is the United States government,  
19          or the taxpayer is not taxable in the state of the purchaser. For purposes of this Item  
20          only, "state" means any state of the United States, the District of Columbia, the  
21          Commonwealth of Puerto Rico, any territory or possession of the United States, or  
22          political subdivision thereof.

23          (ii) Sales other than sales of tangible personal property, shall be considered  
24          sales in this state as follows:

25          (aa) The business activity is performed in this state.

26          (bb) The business activity is performed both inside and outside of this state  
27          and, based on costs of performance, a greater proportion of the business activity is  
28          performed in this state than the proportion performed outside this state.

1           (iii) Receipts derived from services performed for planning, design, or  
2           construction activities within this state shall be deemed Louisiana receipts.

3           (2) Apportionment of transportation services. The tax base of a taxpayer  
4           whose principal business activities consist of transportation services rendered either  
5           entirely within or partly within and partly outside of this state shall be apportioned  
6           as follows:

7           (a) When the tax base is derived from transportation services other than that  
8           of oil or gas by pipeline, the tax base apportioned to Louisiana sources shall be that  
9           portion of the tax base of the taxpayer in the ratio that the revenue miles of the  
10           taxpayer in Louisiana bear to the revenue miles of the taxpayer everywhere. A  
11           revenue mile means the transportation for one mile for a consideration of one net ton  
12           in weight or one passenger. The tax base apportioned to Louisiana in the case of a  
13           taxpayer engaged in the transportation both of property and of individuals shall be  
14           that portion of the entire tax base of the taxpayer which is equal to the sum of his  
15           passenger miles and ton mile fractions, separately computed and individually  
16           weighted by the ratio of the tax base from passenger transportation to the total tax  
17           base from all transportation, and by the ratio of the tax base from freight  
18           transportation to the total tax base from all transportation, respectively.

19           (b) When the tax base is derived from the transportation of oil by pipeline,  
20           the tax base apportioned to Louisiana shall be the tax base of the taxpayer in the ratio  
21           that the barrel miles transported in Louisiana bear to the barrel miles transported by  
22           the taxpayer everywhere.

23           (c) When the tax base is derived from the transportation of gas by pipeline,  
24           the tax base apportioned to Louisiana shall be the tax base of the taxpayer in the ratio  
25           that one thousand cubic foot miles transported in Louisiana bear to one thousand  
26           cubic foot miles transported by the taxpayer everywhere.

27           (d) Alternative allocation and apportionment. If it is shown to the  
28           satisfaction of the secretary that the foregoing information is not available or cannot  
29           be obtained without unreasonable expense to the taxpayer, the secretary may use

1 other available data which, in the opinion of the secretary, will result in an equitable  
2 allocation and apportionment of the receipts to this state.

3 (3) Insurer doing interstate business. The tax base of an insurer doing  
4 business both within and outside of the state or partly within and outside of the state  
5 shall be that portion of the tax base of the taxpayer that the total direct premiums  
6 received for insurance upon property or risk in this state, deducting premiums upon  
7 policies not taken and returned premiums on canceled policies from Louisiana, bears  
8 to the total direct premiums received for insurance upon property or risk, deducting  
9 premiums upon policies not taken and returned premiums on canceled policies  
10 everywhere.

11 (4) Financial organizations; tax base apportioned to Louisiana sources. The  
12 tax base of a financial organization apportioned to Louisiana sources shall be as  
13 follows:

14 (a) The entire tax base of a taxpayer whose business activities are confined  
15 solely to this state.

16 (b) In the case of a taxpayer whose business activities are conducted partially  
17 within and partially outside of this state, that portion of the tax base as the total  
18 business in this state is to its total business everywhere during the period covered by  
19 the return. Total business includes the sum of all of the following:

20 (i) Fees, commissions, or other compensation for financial services.

21 (ii) Total profits from trading in stocks, bonds, or other securities.

22 (iii) Interest charged to customers for carrying debit balances of margin  
23 accounts, without deduction of any costs incurred in carrying the accounts.

24 (iv) Interest and dividends received.

25 (v) Any other income resulting from operation as a financial organization.

26 (c) Total business in this state shall be determined as follows:

27 (i) The numerator includes interest and fees or penalties in the nature of  
28 interest from loans secured by real property if the property is located within this  
29 state. If the property is located both within this state and one or more other states,

1        the receipts described in this Subsection are included in the numerator if more than  
2        fifty percent of the fair market value of the real property is located within this state.  
3        If more than fifty percent of the fair market value of the real property is not located  
4        within any one state, then the receipts described in this Subsection shall be included  
5        in the numerator if the borrower is located in this state. A borrower engaged in a  
6        trade or business is located in this state if the borrower's commercial domicile is in  
7        this state. A borrower not engaged in a trade or business is located in this state if the  
8        borrower's billing address indicated in the books and records of the taxpayer is in this  
9        state. The determination of whether the real property securing a loan is located  
10       within this state shall be made as of the time the original agreement was made and  
11       any and all subsequent substitutions of collateral shall be disregarded.

12                (ii) The numerator includes interest and fees or penalties in the nature of  
13        interest from loans not secured by real property and interest charged to customers for  
14        carrying debit balances of margin accounts if the borrower is located in this state.  
15        The determination of whether the borrower is located in this state shall be made in  
16        accordance with Item(i) of this Subparagraph.

17                (iii) The numerator includes interest and fees or penalties in the nature of  
18        interest from credit card receivables and receipts from fees charged to cardholders,  
19        such as annual fees, if the billing address of the cardholder indicated in the books and  
20        records of the taxpayer is in this state.

21                (iv) The numerator includes receipts from merchant discounts if the  
22        commercial domicile of the merchant is in this state. Receipts shall be computed  
23        after deducting any cardholder charge backs, but shall not be reduced by any  
24        interchange transaction fees or by any issuer's reimbursement fees paid to another  
25        party for charges made by its cardholders. "Merchant discount" means the fee, or  
26        negotiated discount, charged to a merchant by the taxpayer for the privilege of  
27        participating in a program to accept a credit card in payment for merchandise or  
28        services sold to the cardholder.

1           (v) All other business shall be included or excluded from the numerator as  
2           provided by the secretary.

3           §10005. Apportionment not representative of business activity; petition by taxpayer;  
4           approval of alternative method

5           A. If the apportionment provisions of R.S. 47:10004 do not fairly represent  
6           the extent of the taxpayer's business activity in this state, the taxpayer may petition  
7           for, or the secretary may require, in respect to all or any part of the taxpayer's  
8           business activity, any of the following, if reasonable:

9                   (1) Separate accounting.

10                   (2) The exclusion of any one or more of the factors.

11                   (3) The inclusion of one or more additional factors which will fairly  
12           represent the taxpayer's business activity in this state.

13                   (4) The employment of any other method to effectuate an equitable  
14           allocation and apportionment of the taxpayer's tax base.

15           B. An alternate method shall be effective only if it is approved in writing by  
16           the secretary.

17           C. The apportionment provisions of R.S. 47:10004 shall be presumed to  
18           fairly represent the extent of the taxpayer's business activity in this state unless it can  
19           be demonstrated that the business activity attributed to the taxpayer in this state is  
20           out of all appropriate proportion to the actual business transacted in this state and  
21           leads to a grossly distorted result.

22           §10006. Estimated tax return; filing

23                   A. Estimated tax return. A taxpayer who reasonably expects liability for the  
24           tax year to exceed five thousand dollars shall file an estimated tax return and pay an  
25           estimated tax for each quarter of the taxpayer's tax year.

26                   B. Time for filing estimated payment. For taxpayers paying the tax on a  
27           calendar year basis, the quarterly returns and estimated payments shall be made by  
28           March fifteenth, June fifteenth, September fifteenth, and December fifteenth.  
29           Taxpayers not paying taxes on a calendar year basis shall file quarterly returns and

1 make estimated payments on the appropriate due date which, in the taxpayer's fiscal  
2 year, corresponds to the calendar year.

3 C. Amounts of estimated payments. The estimated payment made with each  
4 quarterly return of each tax year shall be one-fourth of the estimated tax liability for  
5 the tax year. The second, third, and fourth estimated payments in each tax year shall  
6 include adjustments, if necessary, to correct underpayments or overpayments from  
7 previous quarterly payments.

8 D. Interest assessed on underpayment of estimated tax. Estimated tax due  
9 but not paid shall bear interest at the rate provided for in R.S. 47:1601.

10 E. Interest; when not assessed. The interest provided by this Section shall  
11 not be assessed if any of the following occur:

12 (1) If the sum of the estimated payments equals at least eighty-five percent  
13 of the liability and the amount of each estimated payment reasonably approximates  
14 the tax liability incurred during the quarter for which the estimated payment was  
15 made.

16 (2) If the preceding year's tax liability was greater than five thousand dollars  
17 and the taxpayer submitted four equal installments of which equal the previous year's  
18 tax liability.

19 F. Form; contents. Each estimated return shall be made in a manner  
20 prescribed by the secretary and shall include any information required by the  
21 secretary. The secretary may require electronic filing, electronic payment, or both  
22 by any taxpayer.

23 G. Return for tax year less than twelve months. With respect to a taxpayer  
24 filing an estimated tax return for the taxpayer's first tax year of less than twelve  
25 months, the amounts paid with each return shall be proportional to the number of  
26 payments made in the first tax year.

27 H. Credit of payments against tax. Payments made under this Section shall  
28 be a credit against the payment required with the annual tax return required in R.S.  
29 47:10007.

1           I. Filing and payment at other periods. When the secretary considers it  
2           necessary to insure payment of the tax or to provide a more efficient administration  
3           of the tax, the secretary may require filing of the returns and payment of the tax for  
4           other than quarterly or annual periods.

5           §10007. Final return; contents; due date; payment of balance; exception

6           A. Due date of tax. The tax imposed by this Subtitle shall be due on the day  
7           after the last day of the taxpayer's taxable year.

8           B. An annual or final return shall be filed with the secretary, in the form and  
9           content prescribed by the secretary, by the fifteenth day of the fourth month after the  
10          end of the taxpayer's tax year. Any final liability shall be remitted with this return.  
11          At the discretion of the secretary, a person whose business income is less than five  
12          hundred thousand dollars may not need to file a return required under this Subtitle.  
13          For a person whose business income is for a tax year that is less than twelve months,  
14          the five hundred thousand dollar threshold shall be multiplied by a fraction, the  
15          numerator of which is the number of months in the tax year and the denominator of  
16          which is twelve.

17          C. The secretary may extend the date for filing an annual return; however,  
18          a filing extension shall not extend the time for payment of the tax.

19          D.(1) The secretary may grant a reasonable extension of time for filing  
20          returns, not to exceed seven months from the date the Louisiana tax return is due or  
21          the extended due date of the federal income tax return, whichever is later.

22          (2) The secretary may accept a photocopy or duplicate original of the  
23          taxpayer's federal application for an extension of time to file a return, or the  
24          application for an automatic extension of time to file a federal return.

25          (3) The secretary may otherwise provide for the automatic extension of time  
26          to file a return not to exceed seven months.



1        §10008. Furnishing copy of federal income tax return to state

2                A. A taxpayer required to file a return under this Subtitle may be required  
3        to furnish a true and correct copy of any return or portion of any return which he has  
4        filed under the provisions of the Internal Revenue Code.

5                B. A taxpayer shall file an amended return showing any alteration in or  
6        modification of his federal income tax return which affects his tax base under this  
7        Subsection. The amended return shall be filed within sixty days after a final  
8        determination by the Internal Revenue Service.

9        §10009. Information return of income paid to others; copies of federal tax returns

10               At the request of the secretary, a person required by the Internal Revenue  
11        Code to file or submit an information return of income paid to others shall, to the  
12        extent the information is applicable to residents of this state, at the same time file or  
13        submit the information in a form and content prescribed by the secretary.

14        §10010. Consolidated or combined return

15               The secretary may permit or require combined reporting and the filing of a  
16        consolidated or combined return by related persons, including but not limited to  
17        affiliated groups of corporations. Furthermore, the secretary may promulgate rules  
18        and regulations in accordance with the Administrative Procedures Act to implement  
19        the provisions of this Section, including to require and provide for combined  
20        reporting and the filing of consolidated or combined returns for any person, when  
21        necessary to clearly reflect the tax base.

22        §10011. Administrative provisions

23               A. Except as specifically provided to the contrary in this Subtitle, all matters  
24        pertaining to the administration of this Subtitle shall be governed by the provisions  
25        of Chapter 18 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 in  
26        the same manner as they apply to the taxes imposed by Subtitle II.

27               B. Refunds of overpayments.

28               (1) In addition to the authority given to the secretary to refund overpayments  
29        under R.S. 47:1621, the secretary may refund overpayments resulting from

1 unintentional errors by the taxpayer. This provision shall apply to all taxes imposed  
2 by Subtitle II of Title 47 that are administered by the secretary.

3 (2) Interest on refunds of overpayments of the tax imposed by this Subtitle  
4 shall not begin to accrue until ninety days from the later of the filing date of the  
5 return showing the overpayment or the due date of the return showing the  
6 overpayment. An overpayment of the tax imposed by this Subtitle shall bear no  
7 interest if credit is given for the overpayment.

8 C. The secretary may provide for the rounding to whole dollars of any  
9 amount required to be reported under this Subtitle.

10 D. Keeping of records; powers of secretary. A person liable for any tax  
11 imposed under this Subtitle shall keep and maintain accurate records in such form  
12 as to make it possible to determine the tax due under this Subtitle. When deemed  
13 necessary, the secretary may require a person, by notice served upon him, to make  
14 a return, render under oath statements, or keep records as the secretary deems  
15 sufficient to show whether or not the person is liable for tax under this Subtitle.

16 E. Transfer of business; liability of successor. If a person liable for the tax  
17 levied by this Subtitle, or any employer required to deduct or withhold a tax from  
18 salaries or wages, sells out his business or stock of goods or ceases his business  
19 activity, his successor or succeeding successors shall withhold sufficient of the  
20 purchase money to satisfy the amount of tax which may be due and unpaid until the  
21 former owner produces a certificate from the department stating that a tax is not due.  
22 A successor who fails to withhold purchase money is liable personally for any tax  
23 accruing by virtue of the business of the former owner.

24 §10012. Records, books, and accounts; examination by secretary; violation,  
25 misdemeanor, penalty

26 A person shall keep records, books, and accounts as may be necessary to  
27 determine the amount of tax for which the person is liable under this Subtitle and as  
28 the secretary requires until the tax prescribes. The records, books, and accounts shall  
29 be open for examination at any time during regular business hours of the taxpayer

1 by the secretary and his agents. A person who violates this Section shall be guilty  
2 of a misdemeanor and shall be fined not more than one thousand dollars, or  
3 imprisoned for not more than one year, or both.

4 §10013. Administration of tax; forms; rules

5 A. The tax imposed by this Subtitle shall be administered by the secretary.  
6 The secretary shall prescribe forms for use by taxpayers and shall have the authority  
7 to adopt and promulgate rules for the maintenance by taxpayers of records, books,  
8 and accounts, and for the computation of the tax, the manner and time of changing  
9 or electing accounting methods and of exercising the various options contained in  
10 this Subtitle, the making of returns, and the ascertainment, assessment, collection,  
11 and administration of the tax imposed.

12 B. In addition to the returns authorized and required in this Subtitle, the  
13 secretary may prescribe alternate forms and instructions deemed practicable for the  
14 purpose of simplifying compliance. Forms and instructions may contain arithmetical  
15 shortcuts and abbreviated formulae which do not precisely trace the computational  
16 scheme of this Subtitle.

17 §10014. Imposition in addition to other taxes

18 The tax imposed by this Subtitle shall be in addition to all other taxes for  
19 which the taxpayer may be liable.

20 §10015. Credit for premium tax

21 For tax years beginning on or after January 1, 2018, there shall be allowed  
22 a credit against the tax imposed by this Subtitle for premium taxes paid under Title  
23 22 of the Louisiana Revised Statutes of 1950 due during the taxable year. The  
24 amount of this credit shall be equal to the amount of tax paid under Title 22 of the  
25 Louisiana Revised Statutes of 1950.

26 §10016. Credit for shares tax

27 For tax years beginning on or after January 1, 2018, there shall be allowed  
28 a credit against the tax imposed by this Subtitle for ad valorem taxes paid to political

1            subdivisions under R.S. 47:1967 due during the taxable year. The amount of this  
 2            credit shall be equal to the amount of tax paid under R.S. 47:1967.  
 3            Section 2. This Act shall become effective on January 1, 2018.

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 648 Original

2017 Regular Session

Havard

**Abstract:** Levies the La. Business Tax on the adjusted tax base of corporate taxpayers and provides for exemptions and administration of the tax.

Present law imposes an income tax on corporations and provides for the collection, computation, administration, and enforcement of the tax. Further imposes a franchise tax on the capital assets of corporations.

Proposed law supercedes present law with respect to taxation on corporations.

Proposed law levies the La. Business Tax on corporations and entities taxed as corporations for federal income tax purposes. The tax shall be levied at the following rates:

- (1) 1.5% on the adjusted tax base of taxpayers with a business income of at least \$500,000, but equal to or less than \$5M.
- (2) 2% on the adjusted tax base of taxpayers with a business income of more than \$5M.

Proposed law defines "business income" to mean federal taxable income. Further provides that business income shall not include any loss carryforwards or carrybacks from other tax periods.

Proposed law defines "adjusted tax base" as business income plus depreciation, dividends, interest, royalties, compensation, and taxes.

Proposed law allows the cost of goods sold to be deducted from the tax base to the extent it was not included in the calculation of the federal taxable income.

Proposed law apportions income to Louisiana using the following calculation:

$$\frac{\text{Property} + \text{Payroll} + \text{Sales}}{3}$$

Therefore, equal weight is given to three factors:

Property factor:  $\frac{\text{value of property in Louisiana}}{\text{value of all property}}$

Payroll factor:  $\frac{\text{total wages paid in state}}{\text{total wages paid everywhere}}$

Sales factor:  $\frac{\text{total sales in state}}{\text{total sales everywhere}}$

Proposed law provides an alternative apportionment method for transportation services, oil and gas transportation, certain insurers, and financial institutions.

Proposed law allows the secretary to authorize an alternate method of apportionment if the taxpayer is able to demonstrate that the apportionment provisions in proposed law do not fairly represent the extent of the taxpayer's business activity in this state.

Proposed law provides that the tax shall not apply to nonprofit educational institutions or nonprofit sports organizations.

Proposed law requires quarterly payment of an entity's estimated tax, with a final tax return due on the day after the last day of the taxpayer's taxable year.

Proposed law authorizes the secretary to require combined reporting and the filing of consolidated or combined returns by related parties.

Proposed law provides that provisions implementing the corporation income tax become inapplicable, inoperable, and of no effect on Jan. 1, 2018. Provides that provisions implementing the corporation franchise tax become inapplicable, inoperable, and of no effect on Jan. 1, 2018.

Proposed law enacts a credit against the tax for the shares tax paid by certain banks and insurance companies.

Effective Jan. 1, 2018.

(Adds R.S. 47:10001-10016)