

ACT No. 358

HOUSE BILL NO. 639

BY REPRESENTATIVES SCHEXNAYDER, BAGLEY, BERTHELOT, BILLIOT, TERRY BROWN, CARPENTER, CHANEY, COX, CROMER, DWIGHT, EDMONDS, FOIL, JIMMY HARRIS, HAVARD, HORTON, HOWARD, IVEY, JAMES, LYONS, POPE, REYNOLDS, SEABAUGH, STOKES, THIBAUT, AND ZERINGUE

1 AN ACT

2 To amend and reenact R.S. 47:242 and 293(10) and to enact R.S. 47:53.5, 111(A)(11), and
3 287.71(B)(8), relative to state income tax; to provide for the determination of wages
4 for purposes of calculating withholding tax; to exclude certain remuneration from the
5 calculation of wages; to provide for the classification of gross income; to exclude
6 certain income from certain gross income calculations; to provide for the
7 determination of Louisiana net income; to exclude certain income from the
8 calculation of Louisiana net income; to exclude certain income derived from
9 activities conducted during certain disaster periods from state income tax; to provide
10 for definitions; to provide for the promulgation of rules; to provide for applicability;
11 to provide for an effective date; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 47:242 and 293(10) are hereby amended and reenacted and R.S.
14 47:53.5, 111(A)(11), and 287.71(B)(8) are hereby enacted to read as follows:

15 §53.5. Exclusions from gross income; compensation for disaster services; out-of-
16 state employees and nonresident corporations; limitations

17 A.(1) There shall be excluded from the gross income of a nonresident
18 business that performs disaster or emergency-related work within the state during a
19 declared state disaster or emergency period all income received for disaster or
20 emergency-related work conducted in this state during the disaster period. The
21 nonresident business shall not be considered to have established a level of presence

1 that would require the business to register, file, or remit the taxes imposed by
2 Chapter 1 of Subtitle II of this Title to this state.

3 (2) There shall be excluded from the gross income of an out-of-state
4 employee, compensation for personal services rendered by a nonresident individual
5 who is an out-of-state employee during a declared state disaster or emergency. The
6 out-of-state employee shall not be considered to have established residency or a
7 presence in the state that would require the employee or the employee's employer to
8 file and pay income taxes, to be subject to tax withholdings, or to be required to file
9 and pay any other state or local tax or fee during the disaster period. The out-of-state
10 employee and the employee's employer shall also be exempt from any related state
11 or local employer withholding and remittance obligations.

12 B. For purposes of this Section, the following terms shall have the following
13 meanings:

14 (1) "Critical infrastructure" means equipment and property that is owned or
15 used by a communications provider or cable operator or for communications
16 networks, electric generation, electric transmission and distribution systems, natural
17 gas and natural gas liquids gathering, processing, and storage, transmission and
18 distribution systems, and water pipelines and related support facilities, equipment,
19 and property that serve multiple persons, including buildings, offices, structures,
20 lines, poles, and pipes.

21 (2) "Declared state disaster or emergency" means any of the following
22 disaster or emergency events:

23 (a) A disaster or emergency declared by executive order or proclamation by
24 the governor pursuant to Chapter 6 of Title 29 of the Louisiana Revised Statutes of
25 1950.

26 (b) A disaster or emergency for which a federal declaration has been issued
27 by the president.

28 (c) An event within the state for which a good-faith response is required and
29 for which a registered business notifies the governor or appropriate local official of

1 the event and the governor or appropriate local official declares a disaster or
2 emergency under Chapter 6 of Title 29 of the Louisiana Revised Statutes of 1950.

3 (3) "Disaster or emergency-related work" means repairing, renovating,
4 installing, building, rendering services, or other business activities that relate to
5 critical infrastructure that has been damaged, impaired, or destroyed by the declared
6 state disaster or emergency.

7 (4) "Disaster period" means a period that begins within ten days of the first
8 day of the governor's declaration, the president's declaration or designation, or
9 declaration by any other authorized state official or appropriate local government
10 official, as set forth in this Section, whichever occurs first, and that extends for a
11 period of sixty calendar days after the end of the declared disaster or emergency
12 period, or any longer period authorized by the designated state official, agency, or
13 local government.

14 (5)(a) "Nonresident business" means a business entity whose services are
15 requested by a registered business in the state or by a state or local government for
16 purposes of performing disaster or emergency-related work in the state and that prior
17 to the declared state of emergency, the nonresident business was not registered to do
18 business in this state, had no employees, agents, or independent contractors in this
19 state, was not transacting business in this state, and has not filed and is not required
20 to file any state or local tax return in this state.

21 (b) For purposes of this Paragraph, "nonresident business" shall include a
22 business entity that is affiliated with a registered business in this state solely through
23 common ownership.

24 (6) "Out-of-state employee" means a nonresident individual who does not
25 provide services or activities in this state, except for disaster or emergency-related
26 work during a disaster period.

27 (7) "Registered business in the state" means a business entity that is
28 registered to do business in the state and was registered prior to a declared state of
29 emergency.

1 C.(1) Nonresident businesses and out-of-state employees shall be required
 2 to pay transaction taxes and fees including but not limited to taxes on motor fuels,
 3 hotel occupancy taxes, car rental taxes, fees, or other sales and use taxes on
 4 purchases or services made in the state during the disaster period, unless these taxes
 5 are otherwise exempted during the disaster period.

6 (2) Upon request by the secretary of the Department of Revenue, any
 7 registered business in the state that requests any nonresident business to perform
 8 disaster or emergency-related work shall provide written notice to the secretary of
 9 the Department of Revenue within the disaster period. The written notice shall
 10 include the following:

11 (a) The name, address, and federal tax identification number of the
 12 nonresident business.

13 (b) The date of the request to the nonresident business to perform disaster or
 14 emergency-related work.

15 (c) The date and declaration number of the declared state disaster or
 16 emergency.

17 (d) A general description of the disaster or emergency-related work
 18 requested.

19 D. Any nonresident business or out-of-state employee that remains in the
 20 state after the disaster period shall be subject to the state's normal standards for
 21 establishing presence, residency, or doing business in the state and shall be subject
 22 to and responsible for any business or employee tax requirements that ensue.

23 E. The secretary of the Department of Revenue may promulgate rules and
 24 regulations in accordance with the Administrative Procedure Act as are necessary to
 25 implement the provisions of this Section including, but not limited to rules to
 26 develop and issue forms or establish online processes.

27 * * *

28 §111. Definitions

29 A. Wages. For purposes of this Subpart the term "wages" means all
 30 remuneration (other than fees paid to a public official) for services performed by an

1 employee for his employer, including the cash value of all remuneration paid in any
2 medium other than cash; except that such term shall not include remuneration paid:

3 * * *

4 (11) for services performed by a nonresident individual during a declared
5 state disaster or emergency as defined in R.S. 47:53.5.

6 * * *

7 §242. Segregation of items of gross income

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

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

12 (a) ~~rents~~ Rents and royalties from immovable or corporeal movable
13 property;

14 (b) ~~profits~~ Profits from sales or exchanges of property (including ~~such~~ items
15 such as stocks, bonds, notes, land, machinery, mineral rights) not made in the regular
16 course of business;

17 (c) ~~interest~~ Interest income;

18 (d) ~~dividends~~ Dividends from corporate stock;

19 (e) ~~royalties~~ Royalties or similar revenue from the use of patents, trade
20 marks, copyrights, secret processes, and other similar intangible rights;

21 (f) ~~income~~ Income from estates, trusts, and partnerships;

22 (g) ~~salaries,~~ Salaries, wages, or other compensation received by a
23 nonresident individual for personal services; However, salaries, wages, or other
24 compensation received by a nonresident individual for personal services rendered
25 during a declared state disaster or emergency as defined in R.S. 47:53.5 shall not be
26 considered an item of gross income to be designated as allocable income.

27 (h) ~~income~~ Income from construction, repair, or other similar services.
28 However, income from construction, repair, or other similar services received by a
29 nonresident corporation for disaster emergency-related work rendered during a

1 declared state disaster or emergency as defined in R.S. 47:53.5 shall not be
2 considered an item of gross income to be designated as allocable income.

3 (2) The class of income to be designated as "apportionable income" shall
4 include all items of gross income which are not properly includible in allocable
5 income as defined in this Section. However, salaries, wages, or other compensation
6 received by a nonresident individual for personal services rendered during a declared
7 state disaster or emergency and income from construction, repair, or other similar
8 services received by a nonresident corporation for disaster or emergency-related
9 work rendered during a declared state disaster or emergency as defined in R.S.
10 47:53.5 shall not be considered an item of gross income to be designated as
11 apportionable income.

12 * * *

13 §287.71. Modifications to federal gross income

14 * * *

15 B. There shall be subtracted from gross income determined under federal law,
16 unless already excluded therefrom, the following items:

17 * * *

18 (8) Income received by a nonresident business for disaster or
19 emergency-related work rendered during a declared state disaster or emergency, as
20 defined in R.S. 47:53.5.

21 * * *

22 §293. Definitions

23 * * *

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

1 deduction, the construction code retrofitting deduction, any gratuitous grant, loan,
 2 or other benefit directly or indirectly provided to a taxpayer by a hurricane recovery
 3 entity if such benefit was included in federal adjusted gross income, the exclusion
 4 provided for in R.S. 47:297.3 for S Bank shareholders, the deduction for expenses
 5 disallowed by I.R.C. Section 280C, salaries, wages or other compensation received
 6 for disaster or emergency-related work rendered during a declared state disaster or
 7 emergency, the deduction for net capital gains, and personal exemptions and
 8 deductions provided for in R.S. 47:294. The proportionate amount is to be
 9 determined by the ratio of Louisiana income to federal adjusted gross income. When
 10 federal adjusted gross income is less than Louisiana income, the ratio shall be one
 11 hundred percent.

* * *

13 Section 2. The provisions of this Act shall be applicable to all tax years beginning
 14 on and after January 1, 2018.

15 Section 3. This Act shall become effective on July 1, 2017.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____