

2019 Regular Session

HOUSE BILL NO. 608

BY REPRESENTATIVE WRIGHT

TAX/CORP INCOME: Provides relative to corporate income and franchise tax reform

1 AN ACT

2 To amend and reenact R.S. 47:93(B), 241, 287.12, 287.69, 287.442(B)(1), 300.6(A),
3 300.7(A), 6020(G), 6023(I), and 6034(K), and R.S. 51:1787(K) and 2461, and to
4 enact R.S. 47:55(6), 3206, 6007(K), and 6022(M), and to repeal R.S. 47:44.1(A),
5 287.79, 287.83, 287.85, 287.442(B)(1), and Chapter 5 of Subtitle II of Title 47 of the
6 Louisiana Revised Statutes of 1950, comprised of R.S. 47:601 through 618, relative
7 to state income and corporate franchise taxes; to provide for the rates and brackets
8 for purposes of calculating corporate income taxes; to authorize the reduction in
9 corporate income tax rates under certain circumstances; to repeal deductibility of
10 federal income taxes paid for purposes of calculating corporate income taxes; to
11 repeal the corporate franchise tax; to repeal certain income tax credits; to terminate
12 certain income tax credits; to provide for applicability; to provide for an effective
13 date; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 47:93(B), 241, 287.12, 287.69, 287.442(B)(1), 300.6(A), 300.7(A),
16 6020(G), 6023(I), and 6034(K) are hereby amended and reenacted and R.S. 47:55(6), 3206,
17 6007(K), and 6022(M) are hereby enacted to read as follows:

18 §55. Deductions from gross income; taxes generally

19 In computing net income, there shall be allowed as deductions all taxes paid
20 or accrued within the taxable year except:

21 * * *

1 (6) Federal income taxes paid by corporations and entities taxed as
2 corporations.

3 * * *

4 §93. Period for which deductions and credits shall be taken

5 * * *

6 B. The proper year in which to claim deductions for federal income and
7 excess profits taxes allowable under the provisions of R.S. 47:55 shall be determined
8 as follows, regardless of the method of accounting regularly employed by the
9 taxpayer:

10 (1) The amount of tax shown to be due upon the federal income tax return of
11 the individual or fiduciary taxpayer, as filed, shall be allowed as a deduction ~~in~~ on
12 the state individual or fiduciary income tax return for the same period as that for
13 which such federal return is filed.

14 (2) Federal income and excess profits taxes paid after the filing of the federal
15 return in addition to the amount disclosed to be due by the return as filed shall be
16 allowed as a deduction ~~in~~ on the state individual or fiduciary income tax return for
17 that period if it is not prescribed. If it is prescribed, the deduction for such additional
18 taxes shall be allowed as a deduction in the state return for the period in which such
19 additional tax is paid. ~~This Subsection shall apply to all such payments after~~
20 ~~December 31, 1973.~~

21 * * *

22 §241. Net income subject to tax

23 A. The net income of a nonresident individual ~~or a corporation~~ subject to the
24 tax imposed by this Chapter shall be the sum of the net allocable income earned
25 within or derived from sources within this state, as defined in R.S. 47:243, and the
26 net apportionable income derived from sources in this state, as defined in R.S.
27 47:244, less the amount of federal income taxes attributable to the net allocable
28 income and net apportionable income derived from sources in this state. The amount
29 of federal income taxes to be so deducted shall be that portion of the total federal

1 income tax which is levied with respect to the particular income derived from
 2 sources in this state to be computed in accordance with rules and regulations of the
 3 collector of revenue. Proper adjustment shall be made for the actual tax rates
 4 applying to different classes of income and for all differences in the computation of
 5 net income for purposes of federal income taxation as compared to the computation
 6 of net income under this Chapter. Where the allocation of the tax is to be based on
 7 a ratio of the amount of net income of a particular class, both the numerator and the
 8 denominator of the fraction used in determining the ratio shall be computed on the
 9 basis that such net income is determined for federal income tax purposes.

10 B. The net income of a corporation subject to the tax imposed by this
 11 Chapter shall be the sum of the net allocable income earned within or derived from
 12 sources within this state, as defined in R.S. 47:243, and the net apportionable income
 13 derived from sources in this state, as defined in R.S. 47:244.

14 * * *

15 §287.12. Rates of tax

16 A. The tax to be assessed, levied, collected, and paid upon the Louisiana
 17 taxable income of every corporation shall be computed at the rate of:

18 ~~(1) Four percent upon the first twenty-five thousand dollars of Louisiana~~
 19 ~~taxable income.~~

20 ~~(2) Five percent upon the amount of Louisiana taxable income above twenty-~~
 21 ~~five thousand dollars but not in excess of fifty thousand dollars.~~

22 ~~(3) Six percent on the amount of Louisiana taxable income above fifty~~
 23 ~~thousand dollars but not in excess of one hundred thousand dollars.~~

24 ~~(4) Seven percent on the amount of Louisiana taxable income above one~~
 25 ~~hundred thousand dollars but not in excess of two hundred thousand dollars.~~

26 ~~(5) Eight percent~~ three and twenty-eight one hundredths of one percent on all
 27 Louisiana taxable income ~~in excess of two hundred thousand dollars.~~

28 B. Beginning in Fiscal Year 2021, if the total state general fund collections
 29 in the forecast adopted by the Revenue Estimating Conference for the ensuing fiscal

1 year used by the division of administration to confect the executive budget exceeds
2 the total state general fund collections in the forecast adopted by the Revenue
3 Estimating Conference for the prior fiscal year by no less than one and one half
4 percent, the rate of the tax provided for in Subsection A of this Section shall be
5 decreased by one-half of one percent beginning in the next calendar year. The rate
6 reduction authorized in this Subsection shall apply in any fiscal year and the rate
7 shall be reduced each calendar year that the revenue threshold is met until the rate
8 of the tax is eliminated.

9 * * *

10 §287.69. Louisiana taxable income defined

11 "Louisiana taxable income" means Louisiana net income, after adjustments;
12 ~~less the federal income tax deduction allowed by R.S. 47:287.85.~~ "After adjustments"
13 means after the application of the net operating loss adjustment allowed by R.S.
14 47:287.86.

15 * * *

16 §287.442. Exceptions to taxable year of inclusion; taxable year deductions taken

17 * * *

18 B. Period for which deductions and credits shall be taken.

19 ~~(1) The taxable year in which to claim the federal income tax deduction~~
20 ~~allowed by R.S. 47:287.85 shall be determined as follows, regardless of the method~~
21 ~~of accounting regularly employed by the taxpayer:~~

22 ~~(a) The federal income tax deduction may be claimed for the same taxable~~
23 ~~year in which the federal income tax sought to be deducted is incurred, provided the~~
24 ~~taxpayer files a federal income tax return for such taxable year or is included with~~
25 ~~affiliates in a consolidated federal income tax return for such taxable year.~~

26 ~~(b)(i)~~ Taxable year for adjustments to taxpayer's federal income tax return.
27 Except as otherwise provided in this Subparagraph, adjustments affecting federal
28 taxable income which are made to the taxpayer's income tax return subsequent to
29 filing, whether made because of a deficiency proposed by the government, a court

1 order, an amended return, or other appropriate instrument or act, showing an
2 overpayment or a deficiency shall be taken into account for purposes of this Part in
3 the period for which the return was filed, unless the prescriptive period for the
4 collection of tax or the refund or credit of overpayments, as the case may be, has
5 expired. If the applicable prescriptive period has expired, the additional tax paid by
6 the taxpayer in the case of an underpayment or the refund or credit received by the
7 taxpayer in the case of an overpayment shall be for the taxable year such tax was
8 paid, such refund was received, or such credit was allowed, as the case may be.

9 (ii)(b) When a federal refund results from transactions or conditions which
10 arise after the close of the taxable year for which the refund is made, such federal
11 refund shall be taken into account, for purposes of this Part, for the taxable year in
12 which arose the transactions or conditions causing the refund.

13 (c) Taking federal adjustments into account. ~~A payment of additional federal~~
14 ~~tax upon income which has borne Louisiana tax shall be taken into account by~~
15 ~~decreasing taxable income. That portion, if any, of such additional federal tax~~
16 ~~payment which would be disallowed as a deduction under either R.S. 47:287.81 or~~
17 ~~R.S. 47:287.83 shall be excluded from such adjustment.~~ Refunds or credits of federal
18 overpayments, including refunds or credits created by the carryback of a federal net
19 operating loss, shall be taken into account by increasing Louisiana net income or
20 decreasing the Louisiana net loss, as the case may be. That portion, if any, of the
21 federal refund or credit of an overpayment which has not previously been charged
22 against or deducted from Louisiana net income shall be excluded from such
23 adjustment.

24 (d) Adjustments made to the Louisiana return. Adjustments to a return filed
25 pursuant to this Part, whether initiated by the secretary or the taxpayer, shall be taken
26 into account in the taxable year for which the return was filed in accordance with
27 rules, regulations, or forms prescribed by the secretary.

28 * * *

1 §300.6. Louisiana taxable income of resident estate or trust

2 A. Definition. "Louisiana taxable income" of a resident estate or trust means
3 the taxable income of the estate or trust determined in accordance with federal law
4 for the same taxable year, as specifically modified by the provisions contained in
5 Subsection B of this Section, less a federal income tax deduction to be computed
6 ~~following the provisions of R.S. 47:287.83 and 287.85.~~ in accordance with the
7 following provisions:

8 (1) In computing Louisiana taxable income, no federal income tax deduction
9 shall be allowed on net income upon which no Louisiana income tax has been
10 incurred, or upon which, for any reason whatsoever, no Louisiana income tax will
11 be paid. For purposes of this Section, the federal income tax deduction may be
12 recomputed and reduced to reflect the application of a net operating loss adjustment.
13 When computing Louisiana taxable income, the secretary may consider reductions
14 to the federal income tax deduction in accordance with the provisions of this
15 Paragraph.

16 (2) The alternative minimum tax is a federal income tax deductible to the
17 extent that it is applicable to regular federal taxable income. Any alternative
18 minimum tax paid on tax preference items shall not be deductible. In accordance
19 with the provisions of this Paragraph, the secretary may determine the deductible
20 portion of the alternative minimum tax.

21 (3) For purposes of this Section, federal income taxes shall include taxes
22 based on net income, accumulated earnings, war profits, excess profits, personal
23 holding company income, and tax from recomputation of investment credit. The
24 amount of the federal income tax deduction shall be that portion of the total federal
25 income tax, after application of all credits, which is levied on income derived solely
26 from sources in this state as computed under rules and regulations prescribed by the
27 secretary. For purposes of federal income taxation as compared to the computation
28 of net income under this Part, proper adjustment shall be made for the actual tax

1 rates as applied to different classes of income and for all differences in the
2 computation of net income.

3 (4) As used in this Subsection, the term "credits" shall not include
4 overpayments of prior year taxes allowed as a credit, estimated tax payments or
5 similar prepayments, credit for prior year alternative minimum tax that is allowed as
6 a credit against the current regular federal income tax, or federal income tax credits
7 determined by the secretary to be presidential disaster area disaster relief credits.

8 * * *

9 §300.7. Louisiana taxable income of nonresident estate or trust

10 A. Definition. "Louisiana taxable income" of a nonresident estate or trust
11 means ~~such~~ the portion of the taxable income of the nonresident estate or trust
12 determined in accordance with federal law for the same taxable year, as specifically
13 modified by the provisions contained in Subsection C of this Section, that was earned
14 within or derived from sources within this state, less a federal income tax deduction
15 to be computed following the provisions of ~~R.S. 47:287.83 and 287.85~~ R.S. 47:300.6.

16 * * *

17 §3206. Application deadline

18 A. The Board of Commerce and Industry shall not enter into any contract of
19 exemption from taxation pursuant to the provisions of this Chapter on or after
20 January 1, 2020, nor shall the Board of Commerce and Industry renegotiate or
21 approve the renewal of an existing contract granted pursuant to the provisions of this
22 Chapter on or after January 1, 2020. However, contracts entered into prior to
23 January 1, 2020, shall continue to receive tax exemptions pursuant to the terms of its
24 agreement with the state as long as the conditions of the contract continue to be met.

25 B. The provisions of this Section shall not apply to contracts of exemption
26 of ad valorem property taxes entered into or approved by the Board of Commerce
27 and Industry pursuant to the provisions of Article VII, Section 21(F) of the
28 Constitution of Louisiana.

29 * * *

1 §6007. Motion picture production tax credit

2 * * *

3 K. Termination of the credit. The credit authorized pursuant to the
4 provisions of this Section shall terminate and have no effect beginning on January
5 1, 2020. No credit shall be granted pursuant to the provisions of this Section for
6 applications received on or after January 1, 2020.

7 * * *

8 §6020. Angel Investor Tax Credit Program

9 * * *

10 G. No credits shall be granted or reserved under this program for reservation
11 applications received by the department on or after ~~July 1, 2021~~ July 1, 2020.

12 * * *

13 §6022. Digital interactive media and software tax credit

14 * * *

15 M. The credit authorized pursuant to the provisions of this Section shall
16 terminate and have no effect beginning on January 1, 2020. No credit shall be
17 granted pursuant to the provisions of this Section for applications received on or after
18 January 1, 2020.

19 * * *

20 §6023. Sound recording investor tax credit

21 * * *

22 I. No credits shall be granted or allowed pursuant to the provisions of this
23 Section for applications received on or after ~~July 1, 2021~~ July 1, 2020.

24 * * *

25 §6034. Musical and theatrical production income tax credit

26 * * *

27 K. No credit shall be granted pursuant to this Section for applications
28 received on or after ~~July 1, 2025~~ January 1, 2020.

1 Section 2. R.S. 51:1787(K) and 2461 are hereby amended and reenacted to read as
2 follows:

3 §1787. Enterprise zone incentives

4 * * *

5 K. The department shall not accept any advance notification on or after
6 ~~July 1, 2021~~ July 1, 2020.

7 * * *

8 §2461. Application deadline

9 On and after ~~July 1, 2022~~ July 1, 2020, no new advance notifications under
10 this Chapter shall be accepted by the Department of Economic Development.
11 However, an employer which, prior to ~~July 1, 2022~~ July 1, 2020, has been approved
12 by the department to receive incentive tax credits or rebates under the program shall
13 continue to receive tax credits or rebates pursuant to the terms of its agreement with
14 the state of Louisiana as long as the employer retains its eligibility.

15 Section 3. R.S. 47:44.1(A), 287.79, 287.83, 287.85, 287.442(B)(1), and Chapter 5
16 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, comprised of R.S. 47:601
17 through 618, are hereby repealed in its entirety.

18 Section 4. The provisions of this Act shall be applicable for all taxable periods
19 beginning on or after January 1, 2020.

20 Section 5. This Act shall take effect and become operative if and when the proposed
21 amendment of Article 4 of the Constitution of Louisiana contained in the Act which
22 originated as House Bill No. 329 and Article 21 of the Constitution of Louisiana contained
23 in the Act which originated as House Bill No. 330 of this 2019 Regular Session of the
24 Legislature are adopted at a statewide election and becomes effective, and when the Act
25 which originated as House Bill No. ____ of this 2019 Regular Session of the Legislature is
26 enacted and becomes effective.

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 608 Original

2019 Regular Session

Wright

Abstract: Reduces the rate of the corporate income tax from a graduated system of rates and brackets to a flat rate of 3.28%, repeals the corporate franchise tax, and repeals the deduction for federal income taxes paid and terminates certain corporate income tax credits.

Present law provides that the tax to be assessed, levied, collected, and paid on the La. taxable income of every corporation shall be computed at the following rates:

- (1) 4% on the first \$25,000 of La. taxable income.
- (2) 5% on La. taxable income above \$25,000 but not in excess of \$50,000.
- (3) 6% on La. taxable income above \$50,000 but not in excess of \$100,000.
- (4) 7% on La. taxable income above \$100,000 but not in excess of \$200,000.
- (5) 8% on all La. taxable income in excess of \$200,000.

Proposed law changes present law by deleting the graduated schedule of rates dependant on the amount of taxable income of the taxpayer in favor of a flat 3.28% corporate income tax rate.

Proposed law includes a mechanism for the corporate income tax rate to be reduced in .5% increments if certain revenue thresholds are met until the tax is eliminated.

Present constitution and present law authorize a state deduction for federal income taxes paid for purposes of computing income taxes for the same period.

Proposed law repeals the present law provisions that authorize a state deduction for federal income taxes paid for purposes of calculating corporate income taxes.

Present law provides for the computation of La. taxable income for a resident estate or trust, including provisions for the federal income tax deduction, limitations of deductions for net income, provisions for the federal deduction for alternative minimum tax, and the authority of the secretary of the Dept. of Revenue to consider reductions to the federal income tax deduction and the determination of the deductible portion of an alternative minimum tax.

Proposed law retains present law except as it applies to the deductibility of federal income taxes.

Present law (R.S. 47:601 et seq.) establishes the corporation franchise tax which is levied on every domestic and foreign corporation exercising its charter, qualified to do business, or actually doing business in La. Corporate franchise tax is also levied on any domestic or foreign corporation owning or using any part of its capital, plant, or other property in Louisiana.

Present law provides that the tax shall be levied at the following rates:

- (1) \$1.50 per \$1,000 of taxable capital, up to \$300,000.

- (2) \$3 per \$1,000 of taxable capital above \$300,001.

Proposed law repeals present law.

Present law requires every corporation or other entity subject to the franchise tax to pay only an initial tax of \$110 in the first accounting period in which it becomes subject to the tax.

Proposed law repeals present law.

Present law authorizes the Board of Commerce and Industry, with approval of the governor, to enter into exemption contracts with manufacturing establishments, headquarters, or warehousing and distribution establishments seeking such exemption if requirements of present law are met regarding the location of the entity seeking the exemption for tax equalization.

Proposed law prohibits the Board of Commerce and Industry from entering into any exemption contract on or after Jan. 1, 2020, nor shall the Board of Commerce and Industry renegotiate or approve the renewal of an existing contract on or after Jan. 1, 2020. However, contracts entered into prior to Jan. 1, 2020, shall continue to receive tax exemptions pursuant to the terms of its agreement with the state as long as the conditions of the contract continue to be met. Proposed law shall not apply to contracts of exemption of ad valorem property taxes entered into or approved by the Board of Commerce and Industry pursuant to the present constitution.

Present law authorizes the following tax credits for state-certified motion picture productions:

- (1) A 25% tax credit if the base investment is in excess of \$300,000 or if the production is a La. screenplay production.
- (2) An additional 5% base investment credit for projects filmed outside the New Orleans Metro Zone, but not including St. John the Baptist Parish.
- (3) An additional 10% base investment credit for certain expenditures equal to or greater than \$50,000 but less than \$5 million for projects meeting certain La. screenplay criteria.
- (4) A 15% credit for La. resident payroll expenditures.
- (5) A 5% credit for certain La.-based visual effects expenditures meeting certain requirements.

Proposed law retains present law but terminates the motion picture production tax credit beginning Jan. 1, 2020 and prohibits credits from being granted for applications received on or after Jan. 1, 2020.

Present law establishes the Angel Investor Tax Credit program which authorizes a 25% income or corporate franchise tax credit on investments in La. small businesses that are certified by La. Economic Development as "Louisiana Entrepreneurial Businesses."

Present law limits the total amount of credits granted under the program to \$3.6 million per year but authorizes the department to carry forward residual unused credits in any calendar year to subsequent calendar years without regard to the annual credit cap.

Proposed law retains present law but prohibits credits from being granted or reserved under the program for reservation applications received by the Dept. of Economic Development (DED) on or after July 1, 2020.

Present law authorizes an income tax credit for applications for state-certified digital media productions submitted to the office of entertainment industry development on or after July 1, 2017, and subsequently approved by the office and secretary, that shall be earned by a company at the time funds are expended in La on a state-certified production. The amount of the credit shall be equal to 18% of the base investment and an additional 7% tax credit to the extent the base investment is expended on payroll for La. residents employed in connection with a state-certified production

Proposed law retains present law but terminates the credit beginning on Jan. 1, 2020 and prohibits credits from being granted for applications received on or after Jan. 1, 2020.

Present law authorizes a state income tax credit for investments made in state-certified productions until July 1, 2021. The tax credit shall be earned by investors at the time expenditures are certified by the DED according to the total base investment certified for the sound recording production company per calendar year. The aggregate amount of credits that can be certified each year is limited to \$2,160,000; however, 50% of the credits certified each year shall be reserved for QMCs.

Present law provides that the amount of the credit for each investor for state-certified productions received on or after July 1, 2017, is 18% of the base investment made by that investor in excess of \$25,000 or, if a resident of this state, in excess of \$10,000. Present law provides for the following additional tax credits for state-certified productions:

- (1) QMC Tier 1 payroll credit of 10% for each new job with a salary of \$35,000 through \$66,000 per year.
- (2) QMC Tier 2 payroll credit of 15% for each new job with a salary of \$66,000 or more.

Proposed law retains present law but prohibits credits from being allowed or granted for applications received on or after July 1, 2020.

Present law provides for income tax credits for state-certified productions and state-certified musical or theatrical facility infrastructure projects with annual limitations on the amount of credits that can be granted each year of \$10 million and a per project cap of \$1 million. Further provides that if the available cap is not used in any fiscal year then any amount of cap remaining shall be available for use in subsequent fiscal years.

Present law reserves 50% of the annual credit cap for state-certified musical or theatrical productions by approved nonprofit organizations.

Proposed law retains present law but prohibits credits from being allowed or granted for applications received on or after July 1, 2020.

Present law provides for the Enterprise Zone Program under which the Board of Commerce and Industry can enter into contracts after consultation with the secretary of DED and the secretary of the Dept. of Revenue with qualified applicants for rebates of state and local sales and use tax or a refundable investment income tax credit equal to 1.5% of the amount of qualified expenditures.

Present law prohibits DED from accepting new advance notifications for the Enterprise Zone Program on or after July 1, 2021.

Proposed law retains present law but changes the deadline for DED to accept new advance notifications from on or after July 1, 2021, to July 1, 2020.

Present law authorizes the Competitive Projects Payroll Incentive Program whereby DED, with approval of the Joint Legislative Committee on the Budget, may enter into a contract

with a business to provide a payroll rebate not to exceed 15% if the business meets specific requirements as provided for in present law. Present law prohibits new contracts from being approved on or after July 1, 2022; however existing contracts may continue and may be renewed.

Proposed law retains present law but changes the deadline for DED to enter into new contracts from on or after July 1, 2022, to July 1, 2020.

Applicable for all taxable periods beginning on or after Jan. 1, 2020.

Effective if and when the proposed amendment of Article 4 of the Constitution of La. contained in the Act which originated as House Bill No. 329 and Article 21 of the Constitution of La. contained in the Act which originated as House Bill No. 330 of this 2019 R.S. of the Legislature is adopted at a statewide election and becomes effective and if House Bill No. __ of this 2019 R.S. is enacted and becomes effective.

(Amends R.S. 47:93(B), 241, 287.12, 287.69, 287.442(B)(1), 300.6(A), 300.7(A), 6020(G), 6023(I), and 6034(K), and R.S. 51:1787(K) and 2461; Adds R.S. 47:55(6), 3206, 6007(K), and 6022(M); Repeals R.S. 47:44.1(A), 287.79, 287.83, 287.85, 287.442(B)(1), and 601-618)