

CONFERENCE COMMITTEE REPORT

SB 161

2021 Regular Session

Allain

June 2, 2021

To the Honorable President and Members of the Senate and to the Honorable Speaker and Members of the House of Representatives.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning Senate Bill No. 161 by Senator Allain, recommend the following concerning the Engrossed bill:

- 1. That House Floor Amendment No. 1, proposed by Representative Riser and adopted by the House of Representatives on May 19, 2021, be rejected.
- 2. That the following amendments to the engrossed bill be adopted:

AMENDMENT NO. 1

On page 1, line 2, change "47:601.1(A)(1), relative to the suspension of the corporation" to "47:601(A) and 601.1(A)(1) and to enact R.S. 47:601(D) and 601.2, relative to the corporation franchise tax and the suspension of the corporation"

AMENDMENT NO. 2

On page 1, line 4, after "suspension;" insert:

"to provide for the rates of tax; to provide an automatic rate reduction trigger;"

AMENDMENT NO. 3

On page 1, between lines 6 and 7, insert:

"Section 1. R.S. 47:601(A) is hereby amended and reenacted and R.S. 47:601(D) and 601.2 are hereby enacted to reach as follows:

§601. Imposition of tax

A. Every domestic corporation and every foreign corporation, exercising its charter, or qualified to do business or actually doing business in this state, or owning or using any part or all of its capital, plant, or any other property in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this Chapter shall pay an annual tax at the rate of one dollar and fifty cents for each one thousand dollars, or major fraction thereof on the first three hundred thousand dollars of taxable capital and at the rate of three dollars for each one thousand dollars, or major fraction thereof, which exceeds three hundred thousand dollars of **based on its taxable capital at the rates provided in Subsection D of this Section.** Taxable capital shall be determined as hereinafter provided **in this Chapter.** The tax levied **herein in this Section** is due and payable on any one or all of the following alternative incidents:

* * *

D. (1) For taxable periods beginning before January 1, 2023, the annual rates of tax shall be one dollar and fifty cents for each one thousand dollars, or major fraction thereof on the first three hundred thousand dollars of taxable capital and three dollars for each one

thousand dollars, or major fraction thereof, in excess of three hundred thousand dollars of taxable capital.

(2) Except as otherwise provided in R.S. 47:601.1 or 601.2, for taxable periods beginning on or after January 1, 2023, the annual rate of tax shall be two dollars and fifty cents for each one thousand dollars, or major fraction thereof, in excess of three hundred thousand dollars of taxable capital.

* * *

§601.2. Automatic rate reduction

A.(1) Beginning February 1, 2024, and each February first thereafter, if the prior fiscal year's actual corporation income and franchise tax collections as reported in the state's accounting system exceed the actual corporation income and franchise tax collections for the fiscal year ending June 30, 2019, as reported in the state's accounting system, adjusted annually by the growth factor provided for in Article VII, Section 10(C) of the Constitution, the corporation franchise tax rate in R.S. 47:601 for the tax year beginning the following January first shall be reduced as provided in Paragraph (2) of this Subsection.

(2) The amount of the reduction shall be calculated by multiplying the rate by the difference between one and the percentage change in corporation income and franchise tax collections in excess of the corporation income and franchise tax collections for the 2018-2019 Fiscal Year adjusted annually by the growth factor as provided in Paragraph (1) of this Subsection. This reduction shall be made only if both of the following conditions are met:

(a) The prior fiscal year's total general revenues exceed the total general revenues for the 2018-2019 Fiscal Year, adjusted annually by the growth factor in Article VII, Section 10(C) of the Constitution of Louisiana.

(b) The Budget Stabilization Fund balance is at least two and one-half percent of the total state revenue receipts from the prior fiscal year as reported by the treasurer to the Revenue Estimating Conference.

B. The actual corporation income and franchise tax collections and total general revenues used in the calculations required by this Section shall be certified by the Office of Statewide Reporting and Accounting Policy.

C. (1) "Growth factor provided for in Article VII, Section 10(C) of the Constitution" means the positive growth factor that is the most recent average annual percentage rate of change of personal income for Louisiana as defined and reported by the United States Department of Commerce for the three calendar years prior to the fiscal year for which the limit is calculated.

(2) "Total general revenues" means primary government general revenues from the statement of activities reported in the Comprehensive Annual Financial Report, excluding component units, additions to permanent endowments, and transfers."

AMENDMENT NO. 4

On page 1, line 7, change "Section 1." to "Section 2."

AMENDMENT NO. 5

On page 1, line 15, change "December 31, 2025" to "July 1, 2023"

AMENDMENT NO. 6

On page 1, between lines 16 and 17, insert:

"Section 3. Section 1 of this Act shall take effect for franchise taxable periods beginning on and after January 1, 2023 if the proposed amendment of Article VII, Section 4(A) of the Constitution of Louisiana contained in the Act which originated as Senate Bill No. 159 of this 2021 Regular Session of the Legislature or the Act which originated as House Bill No. 274 of this 2021 Regular Session of this Legislature is adopted at the statewide election to be held on October 9, 2021, and becomes effective and if both of the Acts that originated as House Bill No. 278 and House Bill No. 292 of this 2021 Regular Session of the Legislature are enacted and become law."

AMENDMENT NO. 7

On page 1, line 17, change "Section 2. This Act" to "Section 4. Section 2 of this Act"

Respectfully submitted,

Senators:

Representatives:

President Patrick Page Cortez

Representative Stuart J. Bishop

Senator R. L. Bret Allain II

Representative Neil Riser

Senator Mike Reese

Representative Bacala

The legislative instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Leonore Heavey.

CONFERENCE COMMITTEE REPORT DIGEST

SB 161

2021 Regular Session

Allain

Keyword and summary of the bill as proposed by the Conference Committee

TAX/FRANCHISE/CORPORATE. Extends the termination date of the exemption from corporate franchise tax for small business corporations, reduces the rate of tax, and provides for the phase-out of the tax. (See Act)

Report rejects House amendments which would have:

1. Changed the effective date.

Report amends the bill to:

1. Change the sunset date of the suspension of the first tier of the tax for small business corporations to July 1, 2023.
2. Permanently eliminate the tax on the first \$300,000 of taxable capital for all taxpayers beginning Jan. 1, 2023.
3. Reduce the rate of tax on taxable capital in excess of \$300,000 from 3% to 2.5%.
4. Include a rate reduction trigger that will further reduce the franchise tax rate if certain tax revenue growth targets are met.
5. Provide an effective date for the rate reduction and rate reduction trigger that is contingent upon the adoption of the proposed constitutional amendment in House Bill No. 274 or Senate Bill No. 159 and the enactment of House Bill Nos. 278 and 292.

Digest of the bill as proposed by the Conference Committee

Present law levies the corporation franchise tax on domestic and foreign corporations exercising their charter, qualified to do business, or actually doing business in the state. Corporation 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 suspends the corporation franchise tax on the first \$300,000 of taxable capital for small business corporations.

Present law defines "small business corporation" as an entity that is subject to the corporation franchise tax and that has taxable capital of \$1,000,000 or less.

Present law applies only to taxable periods beginning between July 1, 2020, and June 30, 2021.

Proposed law extends the suspension of the corporation franchise tax on the first \$300,000 of taxable capital for small business corporations for all franchise taxable periods beginning before July 1, 2023.

Effective upon signature of the governor or lapse of time for gubernatorial action.

Present law provides that the franchise tax is levied at the following rates:

- (1) \$1.50 per \$1,000 of taxable capital, up to \$300,000.
- (2) \$3.00 per \$1,000 of taxable capital above \$300,000.

Proposed law eliminates the first bracket of the corporation franchise tax and provides that no tax will be due on the first \$300,000 of taxable capital for all taxpayers beginning Jan. 1, 2023.

Proposed law reduces the corporation franchise tax rate of \$3 per \$1,000 on taxable capital above \$300,000 to 2.5% beginning Jan. 1, 2023.

Proposed law provides for an automatic corporation franchise tax rate reduction in any year that corporation income and franchise tax collections exceed the fiscal year 2018-19 corporation income and franchise tax collections, adjusted annually by the growth factor in Article VII, Section 10(C) of the Constitution of Louisiana if both:

- (1) Overall tax, license, and fee collections have grown for the same period.
- (2) The Rainy Day Fund is funded at a minimum of 62.5% of its maximum.

Proposed law provides for the automatic rate reduction to be calculated by multiplying multiplying the current tax rate by the difference between one and the percentage change in corporation income and franchise tax collections in excess of the corporation income and franchise tax collections for the 2018-19 fiscal year.

Effective if and when the proposed amendment of Article VII, Section 4(A) of the Constitution of Louisiana contained in the Act which originated as SB 159 or HB 274 of the 2021 RS is adopted at the statewide election to be held on October 9, 2021, and becomes effective and HB 278 and HB 292 are enacted and become law.

(Amends R.S. 47:601(A), 601.1(A)(1); adds R.S. 47:601(D) and 601.2)