

2023 Regular Session

SENATE BILL NO. 89

BY SENATOR STINE

TAX/INCOME/PERSONAL. Provides relative to the net capital gains deduction for individual income tax. (8/1/23)

1 AN ACT

2 To amend and reenact R.S. 47:293(9)(a)(xvii), and (10) and to enact R.S. 47:293.1, relative
3 to individual income tax; to provide relative the deduction from income for net
4 capital gain; to require the Department of Revenue to promulgate regulations relative
5 to the net capital gains deduction; to provide for applicability; and to provide for
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:293(9)(a)(xvii) and (10) are hereby amended and reenacted and
9 R.S. 47:293.1 is hereby enacted to read as follows:

10 §293. Definitions

11 The following definitions shall apply throughout this Part, unless the context
12 requires otherwise:

13 * * *

14 (9)(a) "Tax table income", for resident individuals, means adjusted gross
15 income plus interest on obligations of a state or political subdivision thereof, other
16 than Louisiana and its municipalities, title to which obligations vested with the
17 resident individual on or subsequent to January 1, 1980, and less:

1 * * *

2 (xvii) Income from net capital gains, which shall be limited to gains
 3 recognized and treated for federal income tax purposes as arising from the sale or
 4 exchange of an equity interest in or substantially all of the assets of a nonpublicly
 5 traded corporation, partnership, limited liability company, or other business
 6 organization commercially domiciled in this state. The provisions of this Item shall
 7 apply only to the sale or exchange of an equity interest in or the assets of a
 8 nonpublicly traded business that the taxpayer has held for a minimum of five years
 9 immediately prior to the sale or exchange. **The Department of Revenue shall**
 10 **promulgate regulations in accordance with R.S. 47:293.1 relative to the**
 11 **individual income tax deduction for income from net capital gains pursuant to**
 12 **this Item.** The amount of the deduction shall be limited as follows:

13 * * *

14 (10) "Tax table income", for nonresident individuals, means the amount of
 15 Louisiana income, as provided in this Part, allocated and apportioned under the
 16 provisions of R.S. 47:241 through 247, plus the total amount of the personal
 17 exemptions and deductions already included in the tax tables promulgated by the
 18 secretary under authority of R.S. 47:295, less the proportionate amount of excess
 19 federal itemized personal deductions; the temporary teacher deduction; the recreation
 20 volunteer and volunteer firefighter deduction; the construction code retrofitting
 21 deduction; any gratuitous grant, loan, or other benefit directly or indirectly provided
 22 to a taxpayer by a hurricane recovery entity if such benefit was included in federal
 23 adjusted gross income; any gratuitous grant, loan, rebate, tax credit, advance refund,
 24 or other qualified disaster relief benefit directly or indirectly provided to a taxpayer
 25 by the state or federal government as a COVID-19 relief benefit as defined in R.S.
 26 47:297.16 if the benefit was included in the taxpayer's federal adjusted gross income;
 27 the exclusion provided for in R.S. 47:297.3 for S Bank shareholders; the deduction
 28 for expenses disallowed by 26 U.S.C. 280C; salaries, wages, or other compensation
 29 received for disaster or emergency-related work rendered during a declared state

1 disaster or emergency; wages of nonresident individuals who are eligible for the
2 mobile workforce exemption pursuant to R.S. 47:248; the deduction for net capital
3 gains; the pass-through entity exclusion provided in R.S. 47:297.14; the exemption
4 for military survivor benefit plan payments pursuant to R.S. 47:297.17; and personal
5 exemptions and deductions provided for in R.S. 47:294. The proportionate amount
6 is to be determined by the ratio of Louisiana income to federal adjusted gross
7 income. When federal adjusted gross income is less than Louisiana income, the ratio
8 shall be one hundred percent. **The Department of Revenue shall promulgate**
9 **regulations in accordance with R.S. 47:293.1 relative to the individual income**
10 **tax deduction for income from net capital gains pursuant to this Paragraph.**

11 * * *

12 **§293.1. Regulation requirement for capital gains deduction**

13 **A. The secretary of the Louisiana Department of Revenue shall**
14 **promulgate regulations providing for the individual income tax deduction for**
15 **income from net capital gains arising from the sale or exchange of an equity**
16 **interest in or substantially all of the assets of a nonpublicly traded corporation,**
17 **partnership, limited liability company, or other business organization**
18 **commercially domiciled in Louisiana under R.S. 47:293(9)(a)(xvii) and (10).**

19 **B. The purpose of the regulations shall be to reduce the existing**
20 **administrative requirements for eligible taxpayers.**

21 **C. Such regulations shall, at a minimum, provide for the following:**

22 **(1) Documentation requirements applicable to taxpayers claiming the**
23 **deduction.**

24 **(2) A de minimus exception to documentation requirements for small**
25 **transactions eligible for the deduction.**

26 **(3) Restrictions on eligibility for transactions if the majority of physical**
27 **assets are located outside of Louisiana.**

28 **(4) Restrictions on eligibility for transactions between related parties.**

29 Section 2. This Act shall be applicable for taxable periods beginning on or after

1 January 1, 2023.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Danielle B. Clapinski.

DIGEST

SB 89 Engrossed 2023 Regular Session Stine

Present law provides resident individual and nonresident individual a deduction on income from net capital gains. The deduction is limited to gains recognized and treated for federal income tax purposes as arising from the sale or exchange of an equity interest in or substantially all of the assets of a nonpublicly traded corporation, partnership, limited liability company, or other business organization commercially domiciled in this state.

Proposed law retains present law.

Proposed law requires the Department of Revenue to promulgate regulations related to the individual income tax deduction for income from net capital gains. The regulations shall, at a minimum, provide for the following:

- (1) Documentation requirements applicable to taxpayers claiming the deduction.
- (2) A de minimus exception to documentation requirements for small transaction eligible for the deduction.
- (3) Restrictions on eligibility for transactions where the majority of the physical assets are located outside of Louisiana.
- (4) Restrictions on eligibility for transactions between related parties.

Applicable for taxable periods beginning on or after January 1, 2023.

Effective August 1, 2023.

(Amends R.S. 47:293(9)(a)(xvii)) and (10); adds R.S. 47:293.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Requires the Department of Revenue to promulgate regulations relative to the net capital gains deduction and provides for minimum requirements.
2. Makes technical changes.