

2016 Second Extraordinary Session

HOUSE BILL NO. 33

BY REPRESENTATIVE STOKES

TAX/INCOME TAX: Repeals the state income tax deduction for federal income taxes paid for purposes of calculating individual and corporate income taxes (Item #40)

1 AN ACT

2 To amend and reenact Act No. 30 of the 2016 First Extraordinary Session of the Legislature,
3 relative to income tax; to provide for the deductibility of federal income taxes; to
4 repeal deductibility of federal income taxes paid for purposes of calculating
5 corporate income taxes; to repeal deductibility of federal income taxes paid for
6 purposes of calculating individual income taxes; to provide for applicability; to
7 provide for an effective date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Act No. 30 of the 2016 First Extraordinary Session of the Legislature is
10 hereby amended and reenacted to read to read as follows:

11 Section 1. R.S. 47:93(A) and (B), 241, 287.69, 287.442(B)(1), 300.6(A), and
12 300.7(A) are hereby amended and reenacted and R.S. 47:55(6) is hereby enacted to
13 read as follows:

14 §55. Deductions from gross income; taxes generally

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

17 * * *

18 (6) Federal income taxes paid by corporations and entities taxed as
19 corporations.

20 * * *

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

2 A. Except as hereinafter provided in this ~~section~~ Section, the
3 deductions and credits provided for in this Chapter shall be taken for the
4 taxable year in which "paid or accrued" or "paid or incurred", dependent
5 upon the method of accounting upon the basis of which the net income is
6 computed, unless in order to clearly reflect the income the deductions or
7 credits should be taken as of a different period.

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

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

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

23 * * *

24 §241. Net income subject to tax

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

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

14 B. The net income of a corporation subject to the tax imposed by this
 15 Chapter shall be the sum of the net allocable income earned within or derived
 16 from sources within this state, as defined in R.S. 47:243, and the net
 17 apportionable income derived from sources in this state, as defined in R.S.
 18 47:244. Proper adjustment shall be made for the actual tax rates applying to
 19 different classes of income and for all differences in the computation of net
 20 income for purposes of federal income taxation as compared to the
 21 computation of net income under this Chapter. Where the allocation of the
 22 tax is to be based on a ratio of the amount of net income of a particular class,
 23 both the numerator and the denominator of the fraction used in determining
 24 the ratio shall be computed on the basis that such net income is determined
 25 for federal income tax purposes.

26 * * *

27 §287.69. Louisiana taxable income defined

28 "Louisiana taxable income" means Louisiana net income; after
 29 adjustments, ~~less the federal income tax deduction allowed by R.S.~~

1 federal income tax deduction to be computed ~~following the provisions of~~
2 ~~R.S. 47:287.83 and 287.85~~; in accordance with the following provisions:

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

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

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

27 (4) As used in this Subsection, the term "credits" shall not include
28 overpayments of prior year taxes allowed as a credit, estimated tax payments
29 or similar prepayments, credit for prior year alternative minimum tax that is

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

3 * * *

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

5 A. Except as hereinafter provided in this ~~section~~ Section, the
6 deductions and credits provided for in this Chapter shall be taken for the
7 taxable year in which "paid or accrued" or "paid or incurred", dependent
8 upon the method of accounting upon the basis of which the net income is
9 computed, unless in order to clearly reflect the income the deductions or
10 credits should be taken as of a different period.

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

15 (1) The amount of tax shown to be due upon the federal income tax
16 return of the corporate taxpayer, as filed, shall be allowed as a deduction in
17 the state corporate income tax return for the same period as that for which
18 such federal return is filed.

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

26 * * *

27 §241. Net income subject to tax

28 A. The net income of a nonresident ~~individual or a corporation~~
29 subject to the tax imposed by this Chapter shall be the sum of the net

1 allocable income earned within or derived from sources within this state, as
 2 defined in R.S. 47:243, and the net apportionable income derived from
 3 sources in this state, as defined in R.S. 47:244, less the amount of federal
 4 income taxes attributable to the net allocable income and net apportionable
 5 income derived from sources in this state. The amount of federal income
 6 taxes to be so deducted shall be that portion of the total federal income tax
 7 which is levied with respect to the particular income derived from sources in
 8 this state to be computed in accordance with rules and regulations of the
 9 collector of revenue. Proper adjustment shall be made for the actual tax rates
 10 applying to different classes of income and for all differences in the
 11 computation of net income for purposes of federal income taxation as
 12 compared to the computation of net income under this Chapter. Where the
 13 allocation of the tax is to be based on a ratio of the amount of net income of
 14 a particular class, both the numerator and the denominator of the fraction
 15 used in determining the ratio shall be computed on the basis that such net
 16 income is determined for federal income tax purposes.

17 B. The net income of a corporation subject to the tax imposed by this
 18 Chapter shall be the sum of the net allocable income earned within or derived
 19 from sources within this state, as defined in R.S. 47:243, and the net
 20 apportionable income derived from sources in this state, as defined in R.S.
 21 47:244. Proper adjustment shall be made for the actual tax rates applying to
 22 different classes of income and for all differences in the computation of net
 23 income for purposes of federal income taxation as compared to the
 24 computation of net income under this Chapter. Where the allocation of the
 25 tax is to be based on a ratio of the amount of net income of a particular class,
 26 both the numerator and the denominator of the fraction used in determining
 27 the ratio shall be computed on the basis that such net income is determined
 28 for federal income tax purposes.

29 * * *

1 §287.69. Louisiana taxable income defined

2 "Louisiana taxable income" means Louisiana net income; after
3 adjustments; ~~less the federal income tax deduction allowed by R.S.~~
4 ~~47:287.85.~~ "After adjustments" means after the application of the net
5 operating loss adjustment allowed by R.S. 47:287.86.

6 * * *

7 §287.442. Exceptions to taxable year of inclusion; taxable year deductions
8 taken

9 * * *

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

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

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

19 (b)(i) Taxable year for adjustments to taxpayer's federal income tax
20 return. Except as otherwise provided in this Subparagraph, adjustments
21 affecting federal taxable income which are made to the taxpayer's income tax
22 return subsequent to filing, whether made because of a deficiency proposed
23 by the government, a court order, an amended return, or other appropriate
24 instrument or act, showing an overpayment or a deficiency shall be taken into
25 account for purposes of this Part in the period for which the return was filed,
26 unless the prescriptive period for the collection of tax or the refund or credit
27 of overpayments, as the case may be, has expired. If the applicable
28 prescriptive period has expired, the additional tax paid by the taxpayer in the
29 case of an underpayment or the refund or credit received by the taxpayer in

1 the case of an overpayment shall be for the taxable year such tax was paid,
2 such refund was received, or such credit was allowed, as the case may be.

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

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

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

25 * * *

26 §300.6. Louisiana taxable income of resident estate or trust

27 A. Definition. "Louisiana taxable income" of a resident estate or
28 trust means the taxable income of the estate or trust determined in
29 accordance with federal law for the same taxable year, as specifically

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 modified by the provisions contained in Subsection B of this Section, less a
2 federal income tax deduction to be computed ~~following the provisions of~~
3 ~~R.S. 47:287.83 and 287.85.~~ in accordance with the following provisions:

4 (1) In computing Louisiana taxable income, no federal income tax
5 deduction shall be allowed on net income upon which no Louisiana income
6 tax has been incurred, or upon which, for any reason whatsoever, no
7 Louisiana income tax will be paid. When computing Louisiana taxable
8 income, the secretary may consider reductions to the federal income tax
9 deduction in accordance with the provisions of this Paragraph.

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

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

26 (4) As used in this Subsection, the term "credits" shall not include
27 overpayments of prior year taxes allowed as a credit, estimated tax payments
28 or similar prepayments, credit for prior year alternative minimum tax that is
29 allowed as a credit against the current regular federal income tax, or federal

1 income tax credits determined by the secretary to be presidential disaster area
2 disaster relief credits.

3 * * *

4 §300.7. Louisiana taxable income of nonresident estate or trust

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

12 * * *

13 Section 6. R.S. 47:287.79, 287.83, 287.85, and 298 are hereby
14 repealed in their entirety.

15 Section 7. The provisions of Sections 5 and 6 of this Act shall be
16 applicable for all taxable periods beginning on and after January 1, 2017.

17 Section 8. This Section and Sections 5, 6, and 7 of this Act shall only
18 become operative and take effect on January 1, 2017, if the proposed
19 amendment of Article VII of the Constitution of Louisiana contained in the
20 Act which originated as House Bill No. ___ of the 2016 Second
21 Extraordinary Session of the Legislature is adopted at a statewide election
22 and becomes effective and if the Act which originated as House Bill No. 17
23 from the 2016 Second Extraordinary Session of the Legislature is adopted by
24 both Houses of the Legislature 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 33 Engrossed

2016 Second Extraordinary Session

Stokes

Abstract: Repeals the deductibility of federal income taxes paid for purposes of calculating individual and corporate income taxes.

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 present law provisions that authorize a state deduction for federal income taxes paid for purposes of calculating corporate and individual income taxes.

Present law provides for the determination of "Louisiana taxable income" of a resident estate or trust means which includes provisions for the federal income tax deduction.

Proposed law includes provisions for the computation of La. taxable income for a resident estate or trust, including 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.

Applicable for all taxable periods beginning on or after Jan. 1, 2017.

The provisions relative to the deductibility of federal income taxes paid for purposes of calculating corporate income taxes are effective Jan. 1, 2017, if the proposed amendment of Article VII of the Constitution of La. contained in the Act which originated as House Bill No. 31 of this 1st E.S. of 2016 of the Legislature is adopted at a statewide election and becomes effective.

The provisions relative to the deductibility of federal income taxes paid for purposes of calculating individual income taxes are effective Jan. 1, 2017, if the proposed amendment of Article VII of the Constitution of La. contained in the Act which originated as House Bill No. 7 of this 2nd E.S. of 2016 of the Legislature is adopted at a statewide election and becomes effective, and if the Act which originated as House Bill No. 17 of the 2016 Second Extraordinary Session is enacted into law and becomes effective.

(Amends Act No. 30 of the 2016 1st E.S. of the Legislature)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Add effectiveness for proposed law contingent upon enactment of House Bill No. 17 of the 2016 2nd E.S.