

2019 Regular Session

HOUSE BILL NO. 523

BY REPRESENTATIVE IVEY

TAX: Phases-out the corporate franchise tax and repeals certain income and corporate franchise tax credits

1 AN ACT

2 To amend and reenact R.S. 47:601(A), (B), and (C)(2) and 6006(B), (C)(3), and (D)(5), to
3 enact R.S. 47:611(C) and 6006(D)(6), and to repeal R.S. 47:34, 297(H), 297.6, 6005,
4 6009, 6012, 6019, 6020, 6023, 6025, 6034, 6035, Part VI of Chapter 39 of Title 51
5 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:2351 through 2364,
6 and Chapter 39-C of Title 51 of the Louisiana Revised Statutes of 1950, comprised
7 of R.S. 51:2399.1 through 2399.6, relative to income and corporation franchise taxes;
8 to modify certain income and corporation franchise tax credits; to repeal certain
9 income and corporation franchise tax credits; to provide for certain limitations; to
10 provide for the rate of the corporate franchise tax; to provide for a reduction and
11 eventual elimination of the corporate franchise tax; to prohibit the levy of an initial
12 tax under certain circumstances; to provide for applicability; to provide for an
13 effective date; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 47:601(A), (B), and (C)(2) and 6006(B), (C)(3), and (D)(5), are
16 hereby amended and reenacted and R.S. 47:611(C) and 6006(D)(6) are hereby enacted to
17 read as follows:

18 §601. Imposition of tax

19 A.(1) Except as provided for in Paragraph (2) of this Subsection, every
20 ~~Every~~ domestic corporation and every foreign corporation, exercising its charter, or

1 qualified to do business or actually doing business in this state, or owning or using
2 any part or all of its capital, plant, or any other property in this state, subject to
3 compliance with all other provisions of law, except as otherwise provided for in this
4 Chapter shall pay an annual tax at the rate of one dollar and fifty cents for each one
5 thousand dollars, or major fraction thereof on the first three hundred thousand dollars
6 of taxable capital and at the rate of three dollars for each one thousand dollars, or
7 major fraction thereof, which exceeds three hundred thousand dollars of taxable
8 capital. Taxable capital shall be determined as hereinafter provided. The tax levied
9 herein is due and payable on any one or all of the following alternative incidents:

10 ~~(1)~~(a) The qualification to carry on or do business in this state or the actual
11 doing of business within this state in a corporate form. The term "doing business"
12 as used herein shall mean and include each and every act, power, right, privilege, or
13 immunity exercised or enjoyed in this state, as an incident to or by virtue of the
14 powers and privileges acquired by the nature of such organizations, as well as, the
15 buying, selling, or procuring of services or property.

16 ~~(2)~~(b) The exercising of a corporation's charter or the continuance of its
17 charter within this state.

18 ~~(3)~~(c) The owning or using any part or all of its capital, plant, or other
19 property in this state whether owned directly or indirectly by or through a
20 partnership, joint venture, or any other business organization of which the domestic
21 or foreign corporation is a related party as defined in R.S. 47:605.1.

22 (2) The tax levied pursuant to the provisions of this Chapter shall be limited
23 to the following percentages of the amount otherwise levied pursuant to the
24 provisions of this Chapter:

25 (a) For taxable years beginning on or after January 1, 2020, and before
26 January 1, 2021, seventy-five percent.

27 (b) For taxable years beginning on or after January 1, 2021, and before
28 January 1, 2022, fifty percent.

1 B.~~(1)~~ Credit for taxes paid by corporations shall be applied to state corporate
2 income and corporation franchise taxes. Credit for taxes paid by unincorporated
3 persons shall be applied to state personal income taxes. ~~The secretary shall make a~~
4 ~~refund to the taxpayer in the amount to which he is entitled from the current~~
5 ~~collections of the taxes collected pursuant to Chapter 1 and Chapter 5 of Subtitle H~~
6 ~~of this Title.~~ If the amount of the credit authorized pursuant to Subsection A of this
7 Section exceeds the amount of tax liability for the tax year, ~~the following amounts~~
8 ~~of the excess credit shall either be refundable or may be carried forward as a credit~~
9 ~~against subsequent Louisiana income or corporation franchise tax liability for a~~
10 ~~period not to exceed five years, as follows:~~

11 ~~(a) Taxpayers whose ad valorem taxes eligible for the credit authorized~~
12 ~~pursuant to this Section paid to all political subdivisions in the taxable year was less~~
13 ~~than or equal to five hundred thousand dollars shall be refunded all of the excess~~
14 ~~credit.~~

15 ~~(c) Taxpayers whose ad valorem taxes eligible for the credit authorized~~
16 ~~pursuant to this Section paid to all political subdivisions in the taxable year was more~~
17 ~~than one million dollars shall be refunded seventy-five percent of the first one~~
18 ~~million dollars of excess credit, and the remaining amount of the credit shall be~~
19 ~~carried forward as a credit against subsequent tax liability for a period not to exceed~~
20 ~~five years.~~

21 ~~(2) Each taxpayer allowed a credit under this Section shall claim the credit~~
22 ~~on its separately filed income or corporate franchise tax return; however, for~~
23 ~~purposes of the application of the limitations on refundability of excess credit~~
24 ~~provided for in Subparagraphs (1)(a) through (c) of this Subsection, all taxpayers~~
25 ~~included in one consolidated federal income tax return filed under the Internal~~
26 ~~Revenue Code shall be treated as a single taxpayer. The secretary shall promulgate~~
27 ~~rules to ensure that taxpayers included in one consolidated federal income tax return~~
28 ~~shall be considered one taxpayer for the purpose of the limitations on refunds~~
29 ~~provided for in Subparagraphs (1)(a) through (c) of this Subsection.~~

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 523 Original

2019 Regular Session

Ivey

Abstract: Phase-out the corporate franchise tax and repeals certain income and corporate franchise tax credits.

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. The 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 La.

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.

Present law levies the corporation franchise tax on a corporation when any of the following occurs:

- (1) An organization does business within this state in a corporate form.
- (2) A corporation exercises its charter or the continuance of its charter within La.
- (3) An entity owns or uses part or all of its capital, plant, or other property in La. in a corporate capacity.

Present law provides for the determination of taxable capital for purposes of levying the corporation franchise tax as well as the tax treatment of capital stock, surplus and undivided profits, and the allocation of taxable capital. Present law further provides for the administration of the tax as well as the collection and payment of the tax.

Proposed law provides for the phase-out of the corporate franchise tax for taxable years beginning on or after Jan. 1, 2020, by reducing the amount of the tax by 25% each year until no tax is levied on the taxable capital of corporations for tax years beginning on or after Jan. 1, 2023.

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. After the first closing of the corporate books, the tax is payable as provided in present law.

Proposed law retains present law but clarifies that no initial tax shall be levied or collected by the state nor paid by domestic or foreign corporations for taxable years beginning on and after Jan. 1, 2023.

Proposed law applies to all corporate franchise tax periods beginning on and after Jan. 1 2020.

Present law (R.S. 47:6006) provides for an income or corporation franchise tax credit for ad valorem taxes paid to political subdivisions on inventory held by manufacturers, distributors, and retailers and on natural gas held, used, or consumed in providing natural gas storage services or operating natural gas storage facilities.

Present law requires full refundability of any amount in excess of the taxpayer's state tax liability for taxpayers whose total payments of ad valorem tax eligible for the credit is less

than \$500,000 and for taxpayers formed or first registered to do business in La. after April 1, 2016 whose payments of ad valorem taxes paid to all political subdivisions was less than \$10,000.

Present law requires that 75% of any amount in excess of the taxpayer's state tax liability be refunded and the remaining 25% be carried forward as a credit against subsequent tax liability for five years for the following taxpayers:

- (1) Taxpayers whose total payments of ad valorem tax eligible for the credit is at least \$500,000, but less than or equal to \$1M.
- (2) Taxpayers first registered to do business in La. after April 1, 2016, and whose total payments of ad valorem tax is at least \$10,000 or more, but no more than \$1M.

Present law requires that, for taxpayers whose total payments of ad valorem taxes eligible for the credit is \$1M or more, 75% of the first \$1,000,000 of excess credit shall be refunded and the remaining amount shall be carried forward as a credit against subsequent tax liability for five years.

Present law requires that, 75% of the first \$1,000,000 of excess credit be refunded and the remaining amount be carried forward as a credit against subsequent tax liability for five years.

Present law requires taxpayers that are members of a federal consolidated group combine their ad valorem taxes paid in order to determine the amount of the excess credit that is refundable.

Proposed law changes present law and makes the excess credit for any taxpayer nonrefundable. Further requires the remaining amount to be carried forward as a credit against subsequent tax liability for five years.

Present law defines "manufacturer" as one of the following:

- (1) A person engaged in the business of working raw materials into wares suitable for use or which give new shapes, qualities, or combinations to matter which already has gone through some artificial process.
- (2) A person who meets the qualifications of (1) and who claimed the ad valorem exemption under present constitution during the taxable year in which the local inventory taxes were levied.

Proposed law repeals the portion of present law defining a manufacturer as one who claimed the ad valorem exemption under present constitution during the taxable year in which the local inventory taxes were levied.

Present law requires any excess credit claimed by a manufacturer who received an ad valorem tax exemption under present constitution to be carried forward as a credit against subsequent tax liability for five years. This carry-forward requirement is applicable to all related parties, affiliates, subsidiaries, parent companies, or owners of the manufacturer that held inventory related to the business of the manufacturer.

Proposed law repeals present law.

Present law provides for the following income and corporation franchise tax credits:

- (1) R.S. 47:34 Corporation tax credit
- (2) R.S. 47:287.749 Jobs credit

- (3) R.S. 47:297(H) Reduction to tax due for small town doctors
- (4) R.S. 47:297.6 Credit for rehabilitation of residential structures
- (5) R.S. 47:6005 Qualified new recycling manufacturing equipment and service contracts
- (6) R.S. 47:6009 Louisiana Basic Skills Training Tax Credit
- (7) R.S. 47:6012 Employer tax credits for donations of materials, equipment, advisors, or instructors
- (8) R.S. 47:6019 Credit for rehabilitation of historic structures (commercial)
- (9) R.S. 47:6020 Angel Investor tax credit program
- (10) R.S. 47:6023 Sound recording investor tax credit
- (11) R.S. 47:6025 Credit for La. Citizens Property Insurance Corp. assessment
- (12) R.S. 47:6034 Musical and theatrical production income tax credit
- (13) R.S. 47:6035 Credit for conversion of vehicles to alternative fuel usage
- (14) R.S. 51:2354 Technology commercialization credit
- (15) R.S. 51:2399.3 Modernization tax credit

Present law (R.S. 47:34 and R.S. 47:287.749) provides for an income tax credit to be used against the tax liability of corporate income taxpayers who generate new full-time and part-time jobs in the state. This tax credit is allowed in lieu of any tax exemptions granted pursuant to the Louisiana Enterprise Zone Act, any ad valorem property tax exemptions for business or industry, or any ad valorem tax exemption allowed through the State Board of Commerce and Industry pursuant to La. Const. Art. VII, Sec. 21(F). The amount of the credit is equal to the number of new employees multiplied by varying amounts.

Present law (R.S. 47:297(H)) provides for an income tax credit for certain medical doctors and dentists who practice in designated rural areas.

Present law (R.S. 47:297.6) provides for an income tax credit for individual income tax for the amount of eligible costs and expenses incurred during the rehabilitation of an owner-occupied residential or owner-occupied mixed use structure located in certain specific locations.

Present law (R.S. 47:6005) provides an income tax or corporation franchise tax credit for taxpayers who purchase qualified new recycling manufacturing or process equipment or qualified service contracts to be used or performed exclusively in the state.

Present law (R.S. 47:6009) provides for an income or corporation franchise tax credit for a La. business or industry that supports and encourages employee basic skills training by satisfying criteria established in present law and that submits proper and complete applications.

Present law (R.S. 47:6012) provides for an income and corporation franchise tax credit for employers within the state to donate materials, equipment, or instructors to public training providers registered with the La. Workforce Commission, or community colleges to assist in the development of training programs designed to meet industry needs.

Present law (R.S. 47:6019) provides for an income or corporation franchise tax credit for the amount of eligible costs and expenses incurred during the rehabilitation of a historic structure located in a downtown development district or a cultural district.

Present law (R.S. 47:6020) provides for an income tax credit for qualifying individuals or entities that invest in a La. Entrepreneurial Business. This income tax credit is known as the Angel Investor tax credit.

Present law (R.S. 47:6023) provides for an income or franchise tax credit for La. taxpayers for investment in state-certified productions for sound recordings earned at the time expenditures are made on a state-certified production.

Present law (R.S. 47:6025) provides an income tax credit against La. income tax for 25% amount of surcharges, market equalization charges, or assessments paid by a taxpayer for the La. Citizens Property Insurance Corporation assessments due to Hurricanes Katrina and Rita.

Present law (R.S. 47:6034) provides for an individual or corporate income tax credit for qualified production expenditures on investments in a state-certified musical or theatrical production or infrastructure project.

Present law (R.S. 47:6035) provides for an income tax credit for qualified clean-burning motor vehicle fuel property purchased and installed on certain motor vehicles.

Present law (R.S. 51:2354) provides an income and corporation franchise tax credit for investments by the taxpayer in commercialization costs for certain business locations.

Present law (R.S. 51:2399.3) provides for an income or corporation franchise tax credit for amounts of qualified expenditures incurred by an employer for modernization.

Applicable to income tax periods beginning on or after Jan. 1, 2020 and franchise tax periods beginning on or after Jan. 1, 2020.

Effective Jan. 1, 2020, if the proposed amendment of Article VII of the Constitution of La. contained in the Act which originated as House Bill No. ___ of this 2019 R.S. of the Legislature is adopted at a statewide election and becomes effective.

(Amends R.S. 47:601(A), (B), and (C)(2) and 6006(B), (C)(3), and (D)(5); Adds R.S. 47:611(C) and 6006(D)(6); Repeals R.S. 47:34, 297(H), 297.6, 6005, 6009, 6012, 6019, 6020, 6023, 6025, 6034, 6035, R.S. 51:2351-2364 and 2399.1-2399.6)