

2023 Regular Session

HOUSE BILL NO. 518

BY REPRESENTATIVE CORMIER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/INCOME TAX: Provides for establishment of substantial nexus for purposes of income tax administration

1 AN ACT

2 To amend and reenact R.S. 47:287.92(B)(2) through (4) and 287.93(A), to enact Subpart B-1
3 of Part I of Chapter 1 of Subtitle II of Title 47 of the Louisiana Revised Statutes of
4 1950, to be comprised of R.S. 47:39.1 through 39.3, and R.S. 47:287.92(B)(5), and
5 to repeal R.S. 47:287.94(H), relative to income tax; to enact provisions for
6 establishing substantial nexus with respect to state income taxes; to provide for
7 standards by which taxpayers are deemed to have substantial nexus with Louisiana;
8 to provide for nexus thresholds; to authorize the secretary of the Department of
9 Revenue to adjust nexus thresholds in certain circumstances; to provide relative to
10 special apportionment methods for measuring against nexus thresholds; to provide
11 for determination of nexus threshold amounts for subchapter S corporations and
12 partnerships; to provide for designation of certain types of income as allocable
13 income for purposes of corporation income tax; to provide for allocation of profits
14 and losses from sales or exchanges of property not made in the regular course of
15 business; to repeal certain provisions relative to computation of net apportionable
16 corporate income; to provide for applicability; to provide for effectiveness; and to
17 provide for related matters.

18 Be it enacted by the Legislature of Louisiana:

19 Section 1. R.S. 47:287.92(B)(2) through (4) and 287.93(A) are hereby amended and
20 reenacted and Subpart B-1 of Part I of Chapter 1 of Subtitle II of Title 47 of the Louisiana

1 Revised Statutes of 1950, comprised of R.S. 47:39.1 through 39.3, and R.S. 47:287.92(B)(5)
2 are hereby enacted to read as follows:

3 SUBPART B-1. SUBSTANTIAL NEXUS

4 §39.1. Definitions and standards

5 As used in this Subpart, the following definitions and standards shall apply:

6 (1) "Consumer price index" means the Consumer Price Index for All Urban
7 Consumers prepared by the United States Department of Labor, Bureau of Labor
8 Statistics.

9 (2) "Nexus threshold" means any of the thresholds for establishing
10 substantial nexus provided for in R.S. 47:39.2(B).

11 (3) Payroll counting toward the threshold provided for in R.S. 47:39.2(B)
12 shall be the total amount paid by the taxpayer for compensation in Louisiana during
13 the taxable period. For purposes of this Paragraph, "compensation" means wages,
14 salaries, commissions, and any other form of remuneration paid to employees and
15 defined as gross income in 26 U.S.C. 61. Compensation shall be deemed as paid in
16 Louisiana if any of the following conditions apply:

17 (a) The individual's service is performed entirely within the state.

18 (b) The individual's service is performed both within and without the state,
19 but the service performed without the state is incidental to the service performed
20 within the state.

21 (c) Some of the service is performed within the state and either of the
22 following conditions apply:

23 (i) The base of operations, or, if there is no base of operations, the place from
24 which the service is directed or controlled, is in the state.

25 (ii) The base of operations or the place from which the service is directed or
26 controlled is not in any state in which some part of the service is performed, but the
27 individual's residence is in Louisiana.

28 (4) Property counting toward the threshold provided for in R.S. 47:39.2(B)
29 shall be the average value of the taxpayer's real property and tangible personal

1 property owned or rented and used in Louisiana during the taxable period. Property
2 owned by the taxpayer shall be valued at its original cost basis. Property rented by
3 the taxpayer shall be valued at eight times the net annual rental rate. For purposes
4 of this Paragraph, "net annual rental rate" means the annual rental rate paid by the
5 taxpayer less any annual rental rate received by the taxpayer from sub-rentals. The
6 average value of property shall be determined by averaging the values at the
7 beginning and ending of the taxable period; however, the secretary of the
8 Department of Revenue may require the averaging of monthly values during the tax
9 period if reasonably required to properly reflect the average value of the taxpayer's
10 property.

11 (5)(a) Sales counting toward the threshold provided for in R.S. 47:39.2(B)
12 shall include the total dollar value of the taxpayer's gross receipts from transactions
13 in the current period from all of the following activities:

14 (i) The sale, lease, or license of real property located in Louisiana.

15 (ii) The lease or license of tangible personal property located in Louisiana.

16 (iii) The sale of tangible personal property received in Louisiana as indicated
17 by receipt at a business location of the seller in Louisiana or by instructions, known
18 to the seller, for delivery or shipment to a purchaser, or to another at the direction of
19 the purchaser, in Louisiana.

20 (iv) The sale, lease, or license of services, intangibles, and digital products
21 for primary use by a purchaser known to the seller to be in Louisiana. If the seller
22 knows that a service, intangible, or digital product will be used in multiple states
23 because of separate charges levied for, or measured by, the use at different locations,
24 because of other contractual provisions measuring use or because of other
25 information provided to the seller, the seller shall apportion the receipts according
26 to usage in each state.

27 (b) If the seller does not know where a service, intangible, or digital product
28 will be used or where a tangible item will be received, the receipts shall count toward
29 the threshold of the state indicated by an address for the purchaser that is available

1 from the business records of the seller maintained in the ordinary course of business
2 when such use does not constitute bad faith. If such address information is not
3 known, then the receipts shall count toward the threshold of the state indicated by an
4 address for the purchaser that is obtained during the consummation of the sale, which
5 may include the address of the purchaser's payment instrument if no other address
6 is available, when the use of this address does not constitute bad faith.

7 §39.2. Income tax substantial nexus; establishment and adjustment of nexus
8 thresholds

9 A.(1) Individuals who are residents or domiciliaries of Louisiana and
10 business entities that are organized or commercially domiciled in Louisiana are
11 hereby deemed to have substantial nexus with Louisiana.

12 (2) Nonresident individuals and business entities organized outside of this
13 state that are doing business in Louisiana shall be deemed to have substantial nexus
14 with Louisiana and shall be subject to the taxes provided for in Part II-A and Part III
15 of this Chapter when, in any taxable period, the property, payroll, or sales of the
16 individual or business in the state exceeds the thresholds provided in Subsection B
17 of this Section.

18 B.(1) Substantial nexus is established if any of the following thresholds is
19 exceeded during the taxable period:

20 (a) Fifty thousand dollars of property, computed according to the standard
21 provided in R.S. 47:39.1.

22 (b) Fifty thousand dollars of payroll, computed according to the standard
23 provided in R.S. 47:39.1.

24 (c) Five hundred thousand dollars of sales, computed according to the
25 standard provided in R.S. 47:39.1.

26 (d) Twenty-five percent of the individual's or business entity's total property,
27 total payroll, or total sales.

28 (2)(a) On or before December first each year, the secretary of the
29 Department of Revenue shall determine the cumulative percentage change in the

1 consumer price index since January 1, 2023, and shall adjust the thresholds
2 established in Paragraph (1) of this Subsection for the upcoming year according to
3 the procedure provided in Subparagraph (b) of this Paragraph if the consumer price
4 index has changed by five percent or more since January 1, 2023, or since the date
5 that the thresholds were last adjusted pursuant to this Paragraph.

6 (b) If the secretary of the Department of Revenue determines that the
7 condition provided in Subparagraph (a) of this Paragraph requiring adjustment of
8 thresholds has been met, he shall adjust the original values or the most recent
9 adjusted values, whichever are in effect, of the thresholds established in Paragraph
10 (1) of this Subsection to reflect the cumulative percentage change in the consumer
11 price index. The secretary shall round the dollar value of each adjusted threshold to
12 the nearest multiple of one thousand and shall promulgate the adjusted thresholds in
13 rule. Any adjustment shall apply to taxable periods that begin after the adjustment
14 is made.

15 §39.3. Special apportionment methods; nexus thresholds for S corporations and
16 partnerships; preemption

17 A. Notwithstanding any provision of this Subpart to the contrary, with
18 respect to any taxpayer subject to special apportionment methods, the property,
19 payroll, and sales for measuring against the nexus thresholds shall be defined as they
20 are for the special apportionment methods or regulations associated with that special
21 apportionment method.

22 B.(1) Each entity taxed as a partnership for federal income tax purposes shall
23 determine nexus threshold amounts at the entity level.

24 (2) Any S corporation utilizing the exclusion provided in R.S. 47:287.732(B)
25 shall determine nexus threshold amounts at the entity level prior to excluding any
26 amount authorized therein. If property, payroll, or sales of an entity in Louisiana
27 exceeds the nexus threshold, members, partners, owners, and shareholders of that
28 entity shall be subject to tax on the portion of income earned in Louisiana and passed
29 through to them.

1 C. A state without jurisdiction to impose a tax on or measured by net income
2 on a particular taxpayer because that taxpayer comes within the protections provided
3 in 15 U.S.C. 381 et seq. shall not gain jurisdiction to impose such tax regardless of
4 whether the taxpayer's property, payroll, or sales in the state exceeds a threshold
5 provided for in R.S. 47:39.2(B).

6 D. The legislature hereby recognizes that Public Law 86-272 preempts the
7 state's authority to tax and will therefore cause sales of each protected taxpayer to
8 customers in the state to be thrown back to those sending states that require
9 throwback. If the United States Congress repeals the applicability of Public Law
10 86-272 to Louisiana, an out-of-state business shall not be deemed to have substantial
11 nexus in Louisiana unless its property, payroll, or sales exceeds a threshold provided
12 for in R.S. 47:39.2(B).

13 * * *

14 §287.92. Segregation of items of gross income

15 * * *

16 B. Allocable income. The class of gross income to be designated as
17 "allocable income" shall include only the following:

18 * * *

19 (2) Profits or losses from sales or exchanges of property, including such
20 items as stocks, bonds, notes, land, machinery, and mineral rights, not made in the
21 regular course of business.

22 (3) Royalties or similar revenue from the use of patents, trademarks,
23 copyrights, secret processes, and other similar intangible rights.

24 ~~(3)~~ (4) Income from estates, trusts, and partnerships.

25 ~~(4)~~ (5) Income from construction, repair, or other similar services.

26 * * *

1 §287.93. Computation of net allocable income from Louisiana sources

2 A. Allocation of items of gross allocable income. Items of gross allocable
3 income or loss shall be allocated directly to the states within which such items of
4 income are earned or derived, as follows:

5 (1) Rents and royalties from immovable or corporeal movable property and
6 profit or losses from sales or exchanges of capital assets consisting of immovable or
7 corporeal movable property shall be allocated to the state where ~~such~~ the property
8 is located at the time the income is derived.

9 (2) Profits or losses from sales or exchanges not made in the regular course
10 of business of property, other than capital assets consisting of incorporeal property
11 or rights, shall be allocated to the state where the property is located at the time of
12 the sale. A mineral lease, royalty interest, oil payment, or other mineral interest shall
13 be located in the state in which the property subject to the mineral interest is situated.

14 (3) ~~If the corporation~~ Profit or losses from sales or exchanges of capital
15 assets consisting of incorporeal property or rights, and interest received by a
16 corporation which elects to pay tax on interest income as provided in R.S.
17 47:287.738(F)(2), ~~interest received by the corporation,~~ shall be allocated to the state
18 in which the securities or credits producing ~~such~~ the income have their situs, which
19 shall be at the business situs of ~~such~~ the securities or credits if they have been so
20 used in connection with the taxpayer's business as to acquire a business situs, or in
21 the absence of ~~such~~ a business situs, shall be at the commercial domicile of the
22 taxpayer, provided that interest on securities and credits having a situs in Louisiana
23 received by a corporation from another corporation which is controlled by the former
24 through ownership of fifty percent or more of the voting stock of the latter, shall be
25 allocated to the state or states in which the real and tangible personal property of the
26 controlled corporation is located, on the basis of the ratio of the value of such
27 property located in Louisiana to the total value of such property within and without
28 the state.

Proposed law provides that individuals who are residents or domiciliaries of La. and business entities that are organized or commercially domiciled in La. have substantial nexus with La. Proposed law provides that nonresident individuals and business entities organized outside of this state that are doing business in La. shall be deemed to have substantial nexus with La. and shall be subject to La. income tax when, in any taxable period, the property, payroll, or sales of the individual or business in the state exceeds the following thresholds:

- (1) \$50,000 of property.
- (2) \$50,000 of payroll.
- (3) \$500,000 of sales.
- (4) 25% of the individual's or business entity's total property, total payroll, or total sales.

Proposed law establishes standards for calculating quantities of property, payroll, and sales that are countable toward the nexus thresholds provided in proposed law.

Proposed law requires the secretary of the Dept. of Revenue, on annual basis, to determine the cumulative percentage change in the consumer price index (CPI) since Jan. 1, 2023, and to adjust the nexus thresholds provided in proposed law according to a procedure provided in proposed law if the CPI has changed by 5% or more since Jan. 1, 2023, or since the date that the secretary last adjusted the thresholds.

Present law provides for designation of certain types of income as allocable income for purposes of corporation income tax. Proposed law retains present law and adds to the types of allocable income profits or losses from sales or exchanges of property, including such items as stocks, bonds, notes, land, machinery, and mineral rights, not made in the regular course of business.

Present law requires that, for purposes of corporation income tax, items of gross allocable income or loss shall be allocated directly to the states within which such items of income are earned or derived according to requirements provided in present law. Proposed law makes additions to and revisions within present law relative to allocation of items of gross allocable corporate income.

Present law requires that when net apportionable income is computed by means of a separate accounting method authorized by present law, or at any time the La. apportionment percentage is zero, profits or losses ("P & L") from sales or exchanges of property not made in the regular course of business shall be apportioned to La. on the ratio of gross income from La. sources, other than such P & L, to gross income of the corporation, other than such P & L. Provides that when all of the gross income of the corporation is from such P & L, the portion of P & L from sales or exchanges of property not made in the regular course of business attributable to La. shall be determined in accordance with a specific procedure set forth in Present law. Proposed law repeals present law.

Proposed law applies to taxable periods beginning on or after Jan. 1, 2023.

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

(Amends R.S. 47:287.92(B)(2)-(4) and 287.93(A); Adds R.S. 47:39.1-39.3 and 287.92(B)(5); Repeals R.S. 47:287.94(H))