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## DIGEST

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HB 19 Reengrossed

2016 First Extraordinary Session

James

**Abstract:** Expands definition of "domestic corporation" for purposes of the corporate franchise tax and authorizes a holding company deduction from taxable capital for certain investments. Further increases the rate of the initial franchise tax.

Present law establishes the corporation franchise tax. The tax is levied on every domestic and foreign corporation exercising its charter, qualified to do business, or actually doing business in La.

Present law levies 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 establishes that, with respect to state income tax, limited liability companies are treated and taxed in the same manner that it is treated and taxed for federal income tax purposes.

Proposed law expands present law so that, for purposes of the franchise tax, limited liability companies are treated and taxed in the same manner that it is treated and taxed for federal income tax purposes.

Proposed law changes present law relative to taxable capital from owning or using part or all of an entity's capital, plant, or other property in La. in a corporate capacity to owning or using part or all of an entity's capital, plant, or other property in La. whether owned directly or indirectly by or through a partnership, joint venture, or any other business organization.

Present law defines "domestic corporation" as a corporation, joint stock company or association, or other business organization organized under the laws of this state that has privileges, powers, rights, or immunities not possessed by individuals or partnerships.

Proposed law retains present law and adds Subchapter C entities taxed as corporations pursuant to federal law to the definition of "domestic corporation". Further requires that these entities be treated and taxed in the same manner that they are taxed for federal income tax purposes.

Proposed law prohibits application of the franchise tax liability to any limited liability company qualified and eligible to make an election to be taxed as a Subchapter S corporation.

Proposed law authorizes a holding company deduction to be applied towards a company's taxable capital whereby a corporation as defined in proposed law that has one or more subsidiaries may deduct from its taxable capital any amounts of investments in or advances to one or more of its subsidiaries.

Proposed law defines "subsidiaries" as a corporation in which at least 80% of the voting and nonvoting power of all classes of their stock, membership, partnership, or other ownership interests are owned by a corporation subject to the franchise tax.

Present law requires every newly taxable corporation to pay an initial franchise tax of \$10 for the first accounting period.

Proposed law increases the rate of the initial franchise tax in present law from \$10 to \$110.

Proposed law requires that any entity in existence and conducting business in La. during the prior calendar year shall pay an initial tax based on its corporate books on the first day of the calendar or fiscal year in which the tax levied under proposed law becomes due and payable.

Proposed law applies to all taxable periods beginning on or after Jan. 1, 2017.

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

(Amends R.S. 12:1368 and R.S. 47:601(A)(3) and (C)(1) and 602(G); Adds R.S. 47:601(C)(3) and 602(H))

#### Summary of Amendments Adopted by House

##### The House Floor Amendments to the engrossed bill:

1. With respect to franchise tax, require limited liability companies to be taxed in the same manner in which they are taxed for federal income tax purposes.
2. With respect to the definition of "domestic corporation", add the qualification that entities taxed as corporations for federal income tax purposes be taxed as Subchapter C corporations.
3. Require entities be treated and taxed the same as they are treated and taxed for federal income tax purposes.
4. Authorize a holding company deduction that allows corporations who invest taxable capital in a subsidiary to deduct the amount invested from the corporations taxable capital.

5. Define "subsidiary" as a corporation subject to the corporation franchise tax, for which 80% of the voting and nonvoting power are owned by a corporation subject to the corporation franchise tax.
6. Increase the initial rate of franchise tax in from \$10 to \$110.
7. Require an existing entity conducting business in La. during the previous calendar year to remit an initial tax based on its corporate books from the first day of the calendar year or fiscal year in which the tax is levied and becomes due and payable, rather than the initial tax of \$110 in proposed law.
8. Prohibit application of franchise tax liability to any limited liability company qualified and eligible to make an election to be taxed as a Subchapter S corporation.