

2021 Regular Session

SENATE BILL NO. 157

BY SENATOR ALLAIN AND REPRESENTATIVE BISHOP

TAX EXEMPTIONS. Exempts certain mobile workers from individual income tax and their employers from withholding tax. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:242(1)(g) and (2) and 293(10) and to enact R.S.
3 47:111(A)(12), 112.2, and 248, relative to exemptions from employee withholding
4 and individual income tax for wages received by certain nonresidents; to authorize
5 an exemption from withholding for certain employers; to provide for an exemption
6 from individual income tax for certain nonresident employees in the state for fewer
7 than twenty-five days; to provide for exceptions, limitations, and requirements; to
8 provide for an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:242(1)(g) and (2) and 293(10) are hereby amended and reenacted
11 and R.S. 47:111(A)(12), 112.2, and 248 are hereby enacted to read as follows:

12 §111. Definitions

13 A. Wages. For purposes of this Subpart the term "wages" means all
14 remuneration (other than fees paid to a public official) for services performed by an
15 employee for his employer, including the cash value of all remuneration paid in any
16 medium other than cash; except that such term shall not include remuneration paid:

17 * * *

1 employer did not have actual knowledge of fraud on the part of the employee
2 in making the determination and provided that the employer and the employee
3 did not collude to evade taxation in making the determination.

4 C. For purposes of this Section, an employee shall be considered present
5 and performing employment duties within this state for a day if the employee
6 performs more of the employee's employment duties in this state than in any
7 other state during that day. Any portion of the day during which the employee
8 is in transit shall not be considered in determining the location of an employee's
9 performance of employment duties.

10 * * *

11 §242. Segregation of items of gross income

12 All items of gross income, not otherwise exempted in this Chapter, shall be
13 segregated into two general classes.

14 (1) The class of gross income to be designated as "allocable income" shall
15 include only the following:

16 * * *

17 (g) Salaries, wages, or other compensation received by a nonresident
18 individual for personal services.

19 ~~(i) However, salaries,~~ **Salaries**, wages, or other compensation received by a
20 nonresident individual for personal services rendered during a declared state disaster
21 or emergency as defined in R.S. 47:53.5 shall not be considered an item of gross
22 income to be designated as allocable income.

23 **(ii) Wages, as defined by R.S. 47:111(A), paid to a nonresident individual**
24 **that are exempt pursuant to the mobile workforce provisions of R.S. 47:248**
25 **shall not be considered an item of gross income to be designated as allocable**
26 **income.**

27 * * *

28 (2) The class of income to be designated as "apportionable income" shall
29 include all items of gross income which are not properly includible in allocable

1 income as defined in this Section.

2 ~~(a) However, salaries,~~ **Salaries**, wages, or other compensation received by
 3 a nonresident individual for personal services rendered during a declared state
 4 disaster or emergency and income from construction, repair, or other similar services
 5 received by a nonresident corporation for disaster or emergency-related work
 6 rendered during a declared state disaster or emergency as defined in R.S. 47:53.5
 7 shall not be considered an item of gross income to be designated as apportionable
 8 income.

9 **(b) Wages, as defined by R.S. 47:111(A), paid to a nonresident individual**
 10 **that are exempt pursuant to the mobile workforce provisions of R.S. 47:248**
 11 **shall not be considered an item of gross income to be designated as allocable**
 12 **income.**

13 * * *

14 **§248. Exemption for certain nonresident individuals; mobile workforce**

15 **A. Definitions. As used in this Section:**

16 **(1) "Professional athlete" means an athlete who performs services in a**
 17 **professional athletic event for compensation and includes active players and**
 18 **players on the disabled list if required to travel with the team.**

19 **(2) "Professional entertainer" means a person who performs services in**
 20 **the professional performing arts for compensation on a per-event basis.**

21 **(3) "Public figure" means a person of prominence who performs services**
 22 **at discrete events, such as speeches, public appearances, or similar events, for**
 23 **compensation on a per-event basis.**

24 **(4) "Qualified production employee" means a person who performs**
 25 **services of any nature directly relating to a state-certified production for**
 26 **compensation, provided that the compensation paid to the person are qualified**
 27 **production expenditures under the motion picture production tax credit, R.S.**
 28 **47:6007, and that the compensation is subject to withholding as a condition to**
 29 **treating the compensation as a qualified production expenditure.**

1 §293. Definitions

2 The following definitions shall apply throughout this Part, unless the context
3 requires otherwise:

4 * * *

5 (10) "Tax table income", for nonresident individuals, means the amount of
6 Louisiana income, as provided in this Part, allocated and apportioned under the
7 provisions of R.S. 47:241 through 247, plus the total amount of the personal
8 exemptions and deductions already included in the tax tables promulgated by the
9 secretary under authority of R.S. 47:295, less the proportionate amount of the federal
10 income tax liability, excess federal itemized personal deductions, the temporary
11 teacher deduction, the recreation volunteer and volunteer firefighter deduction, the
12 construction code retrofitting deduction, any gratuitous grant, loan, or other benefit
13 directly or indirectly provided to a taxpayer by a hurricane recovery entity if such
14 benefit was included in federal adjusted gross income, the exclusion provided for in
15 R.S. 47:297.3 for S Bank shareholders, the deduction for expenses disallowed by 26
16 U.S.C. 280C, salaries, wages or other compensation received for disaster or
17 emergency-related work rendered during a declared state disaster or emergency,
18 **wages of nonresident individuals who are eligible for the mobile workforce**
19 **exemption pursuant to R.S. 47:248**, the deduction for net capital gains, the pass-
20 through entity exclusion provided in R.S. 47:297.14, and personal exemptions and
21 deductions provided for in R.S. 47:294. The proportionate amount is to be
22 determined by the ratio of Louisiana income to federal adjusted gross income. When
23 federal adjusted gross income is less than Louisiana income, the ratio shall be one
24 hundred percent.

25 * * *

26 Section 2. This Act shall become effective upon signature by the governor or, if not
27 signed by the governor, upon expiration of the time for bills to become law without signature
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 effective on the day following such approval.

The original instrument was prepared by Leonore Heavey. The following digest, which does not constitute a part of the legislative instrument, was prepared by Carla S. Roberts.

DIGEST

SB 157 Reengrossed 2021 Regular Session Allain

Present law requires nonresident individuals to pay individual income tax to the state for all income earned within or derived from sources in the state.

Proposed law exempts nonresident employees who perform their employment duties in this state for 25 or fewer days during a calendar year.

Proposed law provides that this exemption for employees only applies if all of the following are true:

- (1) The nonresident individual performed employment duties in this state for 25 or fewer days during the year.
- (2) The nonresident individual performed employment duties in more than one state.
- (3) The nonresident individual did not receive the wages for performing duties as a professional athlete, staff member of a professional athletic team, professional entertainer, public figure, or qualified production employee.
- (4) The nonresident individual's state of residence either provides a substantially similar exemption or does not impose an individual income tax.
- (5) The nonresident individual did not have any other Louisiana source income.

Present law requires every employer paying wages to an employee performing services in the state to deduct and remit withholding tax.

Proposed law exempts employers from this requirement for employees who perform employment duties in this state for 25 or fewer days during the year if the employee is exempt from state individual income tax under proposed law.

Proposed law provides that if a nonresident employee performs employment duties in this state for more than 25 days, that the employer is required to remit tax to this state for every day in that calendar year, including the first 25 days.

Proposed law does not allow the Dept. of Revenue to impose penalties or charge interest for failure to withhold by an employer with nonresident employees if the employer relied on:

- (1) Data from a time and attendance system specifically designed to allocate employee wages for income tax purposes among all taxing jurisdictions.
- (2) In the absence of a time and attendance system, on its own records maintained in the regular course of business or on the employee's determination of the time the employee performed employment duties in this state provided that the employer did not have actual knowledge of fraud on the part of the employee.

Effective upon the signature of the governor.

(Amends R.S. 47:242(1)(g) and (2) and 293(10); adds R.S. 47:111(A)(12), 112.2, and 248)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Changes the number of days that nonresident employees are exempt from 30 to 25.