AN ACT

To enact Part II-B of Chapter 2 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, comprised of R.S. 47:288.1 through 288.7, relative to the commercial activity tax; to provide for the rate and calculation of the tax; to provide for definitions; to provide for exemptions; to provide for requirements and limitations; to authorize the promulgation of rules and regulations; to require the filing of consolidated returns under certain circumstances; to provide for administration of the tax; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part II-B of Chapter 2 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, comprised of R.S. 47:288.1 through 288.7, is hereby enacted to read as follows:

PART II-B. LOUISIANA COMMERCIAL ACTIVITY TAX

§288.1. Short title

This Act shall be known as and may be cited as the "Louisiana Commercial Activity Tax".

§288.2. Imposition of Tax

A. Every corporation, partnership, limited liability company, limited liability partnership, limited partnership, estate, trust, or association, whether domestic or foreign, exercising its charter, or qualified to do business or actually doing business
in this state, or owning or using any part or all of its capital, plant, or any other
property in this state, subject to compliance with all other provisions of law, shall
pay an annual commercial activity tax as provided by R.S. 47:288.4. The tax levied
herein is due and payable on any one or all of the following alternative incidents:

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

(2) The exercising of an organization's charter or the continuance of its
charter within this state.

(3) The owning or using any part or all of its capital, plant, or other property
in this state.

B. It is the purpose of this Section to require the payment of this tax to the
state of Louisiana by organizations for the right granted by the laws of this state to
exist and for the enjoyment, under the protection of the laws of this state, of the
powers, rights, privileges, and immunities derived by reason of the organization's
form of existence and operation. The tax hereby imposed shall be in addition to all
other taxes levied by any other statute.

§288.3. Definitions

As used in this Part:

(1) "Bulk delivery costs" means the cost of delivering the product to the
consumer if both of the following apply:

(a) The tangible personal property is delivered in bulk and requires
specialized equipment that generally precludes commercial shipping.

(b) The tangible personal property is taxable under R.S. 47:818.12.

(2) "Business of gaming" means a business that is assigned an industry group
designation by the United States Census Bureau of Sectors 713210 or 713290

CODING: Words in struck through type are deletions from existing law; words underscored
are additions.
pursuant to the North American Industry Classification System and is licensed under the provisions of Title 27 of the Louisiana Revised Statutes of 1950 to conduct gaming activities or gaming operations.

(3) "Business of manufacturing and merchandising" means a business whose gross receipts or gross profits is derived primarily from the manufacture, production, or sale of tangible personal property, whether at wholesale or retail. The term "business of manufacturing or merchandising" shall not include any of the following:

(a) A taxpayer subject to the tax imposed pursuant to Chapter 8 of Subtitle II of this Title.

(b) Any taxpayer whose income is primarily derived from the production or sale of unrefined oil and gas.

(c) Any taxpayer defined as an integrated oil company per the United States Internal Revenue Code 26 U.S.C. 291(b)(4), or integrated oil companies that refine, produce, and have marketing operations, whose income in Louisiana is principally derived from production and sale of unrefined oil and gas, and who also engage in significant marketing of refined petroleum products in Louisiana. Any taxpayer, whose activities during the taxable year do not include any "gross receipts from retail sales of oil or natural gas", or any "refinery activities of oil or natural gas", shall not be considered as an integrated oil company for Louisiana tax purposes, notwithstanding such taxpayer may be a "related party" or a "member of the federal consolidated group" under the United States Internal Revenue Code.

(4) "Cost of goods sold" means either of the following:

(a) Amounts that are both of the following:

(i) Allowable as cost of goods sold pursuant to the United States Internal Revenue Code and any guidelines issued by the Internal Revenue Service relating to cost of goods sold, unless modified by this Section.

(ii) Incurred in acquiring or producing the tangible personal property generating the Louisiana gross receipts.
(b) For entities engaged in the business of manufacturing or merchandising, cost of goods sold shall only include costs directly incurred in acquiring or producing the tangible personal property for sale at wholesale or retail. In determining cost of goods sold:

(i) Labor costs shall be limited to direct labor costs as defined in Paragraph (5) of this Section.

(ii) Bulk delivery costs as defined in Paragraph (1) of this Section may be included.

(iii) Costs allowable under Section 263A of the United States Internal Revenue Code may be included only to the extent the costs are incurred in acquiring or producing the tangible product generating the Louisiana gross receipts, provided however that indirect labor costs allowable under Section 263A shall not be included.

(c) For entities engaged in a service enterprise in which the gross receipts are primarily attributable to service income and the use of property is not a substantial income-producing factor, no costs shall be included in cost of goods sold.

(d) For entities engaged in the business of gaming, costs of goods sold shall only include cash paid out as winnings to patrons.

(5) "Direct labor" means labor that is directly involved in the actual process of manufacturing the tangible personal property sold or is an integral part of the manufacturing or merchandising process.

(6) "Domestic corporation" means a corporation formed under the laws of this state.

(7) "Domestic limited liability company" means an entity that is an unincorporated association having one or more members that is organized and existing under Chapter 22 of Title 12 of the Louisiana Revised Statutes of 1950.

(8) "Domestic limited liability partnership" means a limited liability partnership formed under the laws of this state.
(9) "Estate" means a decedent's estate as provided by Civil Code Article 872 and a bankruptcy estate as provided by Section 541 of Title 11 of the United States Code.

(10) "Foreign corporation" means a corporation formed under the laws of any state other than this state or under the laws of any foreign country.

(11) "Foreign limited liability company" means a limited liability company formed under the laws of any state other than this state or under the laws of any foreign country.

(12) "Foreign limited liability partnership" means a limited liability partnership formed under the laws of any state other than this state or under the laws of any foreign country.

(13) "Gross receipts from all sources" means the sum of the following:

(a) Taxable gross receipts from rents and royalties from immovable or corporeal movable property from all sources.

(b) Taxable gross receipts from royalties or similar revenue from the use of patents, trademarks, copyrights, secret processes, and other similar intangible rights from all sources.

(c) Taxable gross receipts from construction, repair, or other similar services from all sources.

(d) Taxable gross receipts from estates, trusts, and partnerships from all sources.

(e) Taxable gross receipts from all other items and sources of gross income.

(14) "Guidelines issued by the Internal Revenue Service" means regulations, private letter rulings, or any other guidance issued by the Internal Revenue Service that may be relied upon by taxpayers under reliance standards established by the Internal Revenue Service.

(15) "Immovable property" means land and all things permanently affixed to the land.
(16) "Louisiana gross profits" means Louisiana gross receipts reduced by cost of goods sold attributable to Louisiana gross receipts. If the amount of cost of goods sold attributable to Louisiana gross receipts is zero, then "Louisiana gross profits" shall mean Louisiana gross receipts.

(17) "Louisiana gross receipts" means the sum of the following:

(a) Taxable gross receipts from rents and royalties from immovable or corporeal movable property allocable to this state.

(b) Taxable gross receipts from royalties or similar revenue from the use of patents, trademarks, copyrights, secret processes, and other similar intangible rights allocable to this state.

(c) Taxable gross receipts from construction, repair, or other similar services allocable to this state.

(d) Taxable gross receipts from estates, trusts, and partnerships allocable to this state.

(e) Taxable gross receipts from all other items and sources of gross income attributable to this state determined in a manner consistent with the provisions of R.S. 47:287.95 and any related administrative regulations.

(18) "Partnership" means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on.

(19) "Secretary" means the secretary of the Department of Revenue.

(20) "Tangible personal property" means and includes personal property, other than immovable property, which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses.

(21) "Taxable gross receipts" means gross receipts less the sum of returns and allowances, cash discounts allowed and taken, and unpaid balances on an account previously included in gross receipts and subsequently found to be bad in accordance with Section 166 of the United States Internal Revenue Code and that are actually charged off for federal income tax purposes.
(22) "Trust" shall have the same meaning as provided by R.S. 9:1731 and
includes "electing small business trusts" as defined by Section 1361 of the United
States Internal Revenue Code.

§288.4. Commercial Activity Tax Calculation

A. Except as hereinafter provided, for taxable years beginning on or after
January 1, 2018, an annual commercial activity tax shall be paid by every business
in accordance with this Part on all Louisiana gross receipts.

B. Corporations classified under Subchapter S of the United States Internal
Revenue Code as an S corporation shall be subject to the provisions of Subsection
C of this Section provided the S corporation excludes all Louisiana taxable income
pursuant to R.S. 47:287.732. If the S corporation fails to exclude all Louisiana
taxable income pursuant to R.S. 47:287.732, the S corporation shall be subject to the
provisions of Subsection D of this Section.

C. Except as hereinafter provided, for entities other than corporations, the
tax shall be based on gross receipts from all sources, as follows:

(1) If gross receipts from all sources is one hundred and fifty thousand
dollars or more, but equal to or less than five hundred thousand dollars, the tax shall
be two hundred fifty dollars.

(2) If gross receipts from all sources is greater than five hundred thousand
dollars, but equal to or less than one million dollars, the tax shall be five hundred
dollars.

(3) If gross receipts from all sources is greater than one million dollars, but
equal to or less than one million five hundred thousand dollars, the tax shall be seven
hundred fifty dollars.

(4) If gross receipts from all sources is greater than one million five hundred
thousand dollars, but equal to or less than three million dollars, the tax shall be one
thousand five hundred dollars.
(5) If gross receipts from all sources is greater than three million dollars, but
equal to or less than six million dollars, the tax shall be three thousand two hundred
gross receipts.

(6) If gross receipts from all sources is greater than six million dollars, but
equal to or less than twelve million dollars, the tax shall be six thousand five hundred
dollars.

(7) If gross receipts from all sources are greater than twelve million dollars,
the tax shall be twelve thousand five hundred dollars.

D. Except as hereinafter provided, for corporations, or those entities electing
to be treated and taxed as corporations for federal income tax purposes, the tax shall
be the greater of the following:

1. Louisiana corporation income tax as provided by Part II-A of Chapter 1
    of this Subtitle, after the application of all available credit carryforwards,
    nonrefundable credits, and refundable credits.

2. An amount, based on gross receipts from all sources, as follows:
   
   (a) If gross receipts from all sources are one hundred fifty thousand dollars
       or more, but equal to or less than five hundred thousand dollars, the tax shall be two
       hundred fifty dollars.

   (b) If gross receipts from all sources is greater than five hundred thousand
       dollars, but equal to or less than one million dollars, the tax shall be five hundred
       dollars.

   (c) If gross receipts from all sources is greater than one million dollars, but
       equal to or less than one million five hundred thousand dollars, the tax shall be seven
       hundred fifty dollars.

3. If gross receipts from all sources is greater than one million five hundred
   thousand dollars, an amount equal to thirty-five cents per one hundred dollars of the
   entity's Louisiana gross receipts.

E. For corporations, or those entities electing to be treated and taxed as
corporations for federal income tax purposes, engaged in the business of
manufacturing or merchandising or the business of gaming, the tax shall be the
greater of the following:

(1) Louisiana corporation income tax as provided by Part II-A of Chapter 1
of this Subtitle, after the application of all available credit carryforwards,
nonrefundable credits, and refundable credits.

(2) An amount, based on gross receipts from all sources, as follows:

(a) If gross receipts from all sources are one hundred fifty thousand dollars
or more, but equal to or less than five hundred thousand dollars, the tax shall be two
hundred fifty dollars.

(b) If gross receipts from all sources is greater than five hundred thousand
dollars, but equal to or less than one million dollars, the tax shall be five hundred
dollars.

(c) If gross receipts from all sources is greater than one million dollars, but
equal to or less than one million five hundred thousand dollars, the tax shall be seven
hundred fifty dollars.

(3) If gross receipts from all sources is greater than one million five hundred
thousand dollars, the lesser of the following:

(a) Thirty-five cents per one hundred dollars of the entity's Louisiana gross
receipts.

(b) Two dollars and seventy-six cents per one hundred dollars of the entity's
Louisiana gross profits.

§288.5. Requirement to File Consolidated Returns

A. Entities shall file consolidated returns in any of the following situations:

(1) Except in the case of a single member limited liability company electing
to be treated and taxed as a corporation for federal income tax purposes, if a
corporation is the sole member of one or more single member limited liability
companies, then the corporation shall file a consolidated return and treat the single
member limited liability company or companies as a division of the corporation. The
corporation shall include the gross receipts of the single member limited liability
company or companies in the corporation's calculation as provided by R.S. 47:288.4(D) or (E), and each single member limited liability company or companies shall file a return as provided by R.S. 47:288.4(A), but shall pay only the amount required by R.S. 47:288.4(C)(1), provided the single member limited liability company has the requisite nexus to this state.

(2) If a corporation is the sole shareholder of one or more qualified Subchapter S subsidiaries and elects to treat the qualified Subchapter S subsidiary or subsidiaries as disregarded entities for state income tax purposes, then the corporation shall file a consolidated return and treat the qualified Subchapter S subsidiary or subsidiaries as disregarded entities. The corporation shall include the gross receipts of the qualified Subchapter S subsidiary or subsidiaries in the corporation's tax calculation as provided by R.S. 47:288.4(D) or (E), and each qualified Subchapter S subsidiary or subsidiaries shall file a return as provided by R.S. 47:288.4(A), but shall pay only the amount as required by R.S. 47:288.4(C)(1), provided the qualified Subchapter S subsidiary has the requisite nexus to this state.

(3) Publicly traded partnerships as defined by Section 7704(b) of the United States Internal Revenue Code shall file a consolidated return and include the gross receipts of their publicly traded partnership affiliates in the publicly traded partnership's tax calculation as provided by R.S. 47:288.4(D) or (E), and each publicly traded partnership affiliate shall file a return as provided by R.S. 47:288.4(A), but shall pay only the amount as required by R.S. 47:288.4(C)(1), provided the publicly traded partnership affiliate has the requisite nexus to this state.

For purposes of this subsection, "publicly traded partnership affiliates" means any limited liability company or limited partnership for which at least eighty percent of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership.

§288.6. Administrative Provisions

A. Entities subject to the tax imposed in this Part shall file a return, on forms prepared by the secretary, on or before the fifteenth day of the fifth month following
the close of the entity’s taxable year. The secretary may grant a reasonable extension
of time for filing returns, not to exceed six months, from the date the return is due.
Requests for filing extensions and returns shall be filed electronically by all entities.

B. Entities subject to the tax shall make payments of estimated tax in the
same manner as provided by R.S. 47:287.654. Any tax remaining due after making
the payments of estimated tax shall be paid by the original due date of the return,
subject to the applicable penalties for underpayment of estimated tax as provided by
R.S. 47:287.655.

C. The secretary may promulgate rules and regulations pursuant to the
Administrative Procedure Act for the purposes of administration and enforcement
of this Part. Such regulations shall have the full force and effect of law.

§288.7. Entities exempt from the tax

A. The tax imposed by this Part shall not apply to any of the following:

(1) Mutual savings banks, national banking corporations, and banking
corporations organized under the laws of the state of Louisiana who pay a tax for
their shareholders or whose shareholders pay a tax on their shares of stock under
other laws of this state and building and loan associations.

(2) Insurance corporations paying a premium tax under Title 22 of the
Louisiana Revised Statutes of 1950.

(3) Corporations or other entities exempt under Sections 401(a) or 501 of the
United States Internal Revenue Code.

(4) Religious, educational, charitable, or like corporations not organized or
conducted for pecuniary profit.

(5) Agencies, instrumentalities, or political subdivisions of the state.

(6) Farmers cooperatives as defined in R.S. 47:287.521(A), homeowners
associations including those described in Section 528 of the United States Internal
Revenue Code, political organizations as defined in Section 527 of the United States
Internal Revenue Code, and rural electric and rural telephone cooperatives.
(7) Cooperative, nonprofit membership corporations organized for the purpose of supplying electrical energy and promoting and extended the use thereof as defined in Part I of Chapter 4 of Title 12 of the Louisiana Revised Statutes of 1950.

B. As used in this Section, "qualified exempt organization" means an entity listed in this Section and shall not include any entity whose exempt status has been disallowed by the Internal Revenue Service. The Department of Revenue may promulgate rules and regulations pursuant to the Administrative Procedure Act to further define "qualified exempt organization" to include an entity for which exemption is constitutionally or legally required, or to exclude any entity created primarily for tax avoidance purposes with no legitimate business purpose.

C. Notwithstanding any provision to the contrary, any entity that is owned in whole or in part by a qualified exempt organization shall, in calculating its Louisiana gross receipts or Louisiana gross profits, exclude the proportionate share of its Louisiana gross receipts or Louisiana gross profits attributable to the ownership interest of the qualified exempt organization.

Section 2. This Act shall become effective January 1, 2018.
(3) $750 if the entity's gross receipts are more than $1M, but equal to or less than $1.5M.

(4) $1,500 if the entity's gross receipts are more than $1.5M, but equal to or less than $3M.

(5) $3,250 if the entity's gross receipts are more than $3M, but equal to or less than $6M.

(6) $6,500 if the entity's gross receipts are more than $6M, but equal to or less than $12M.

(7) $12,500 if the entity's gross receipts are more than $12M.

Proposed law requires corporations and entities that are taxed as corporations for federal income tax purposes, except for corporations engaged in the business of manufacturing or merchandising, to pay the greater of the following:

(1) The net corporation income tax due after the application of all credit carryforwards, nonrefundable credits, and refundable credits.

(2) One of the following amounts:
   (a) $250 if the entity's gross receipts are at least $150K, but equal to or less than $500K.
   (b) $500 if the entity's gross receipts are more than $500K, but equal to or less than $1M.
   (c) $750 if the entity's gross receipts are more than $1M, but equal to or less than $1.5M.
   (d) 0.35% of the amount of gross receipts if the entity's gross receipts are greater than $1.5M.

Proposed law requires corporations and entities that are taxed as corporations for federal income tax purposes that are engaged in the business of manufacturing or merchandising or gaming to pay the greater of the following:

(1) The net corporation income tax due after the application of all credit carryforwards, nonrefundable credits, and refundable credits.

(2) One of the following amounts:
   (a) $250 if the entity's gross receipts are at least $150K, but equal to or less than $500K.
   (b) $500 if the entity's gross receipts are more than $500K, but equal to or less than $1M.
   (c) $750 if the entity's gross receipts are more than $1M, but equal to or less than $1.5M.
   (d) 0.35% of the amount of gross receipts if the entity's gross receipts are greater than $1.5M.

(3) The lesser of the following:
   (a) 0.35% of the amount of gross receipts if the entity's gross receipts are greater than $1.5M.
   (b) 2.76% of the amount of the entity's La. gross profits.
Proposed law requires consolidated returns to be filed by the following:

1. A corporation that is the sole member of one or more single member LLCs.

2. A corporation that is the sole shareholder of one or more qualified Subchapter S subsidiaries.

3. Certain publicly traded partnerships.

Proposed law exempts from the CAT the following entities:

1. Entities with less than $150K in gross receipts.

2. Non-profit organizations and certain organizations not formed for pecuniary profit.

3. Certain public utilities.

4. Certain financial institutions.

5. Certain insurance companies.


7. Political organizations.

8. Rural electric and telephone cooperatives.


(Adds R.S. 47:288.1-288.7)