

2017 Regular Session

HOUSE BILL NO. 360

BY REPRESENTATIVE IVEY

TAX/CORP INCOME: Levies a flat tax on business income and provides relative to business entities subject to the tax

1 AN ACT

2 To amend and reenact the heading of Part II-A of Chapter 1 of Subtitle II of Title 47 of the

3 Louisiana Revised Statutes of 1950, R.S. 47:287.2, 287.11(A), 287.12, 287.61, and

4 293(1) and to repeal Subpart D of Part II of Chapter 1 of Subtitle II of Title 47 of the

5 Louisiana Revised Statutes of 1950, comprised of R.S. 47:201 through 220.3, and

6 287.732(B), relative to income tax; to provide relative to the rate of the income tax

7 levied on certain business entities; to repeal certain income tax exemptions and

8 exclusions; to require certain business entities to pay the income tax levied on

9 business income; to provide for certain limitations; to provide for certain definitions;

10 to provide for an exclusion for certain income from individual income tax; to repeal

11 certain corporate income tax provisions relative to partnerships; to provide for

12 applicability; to provide for effectiveness; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. The heading of Part II-A of Chapter 1 of Subtitle II of Title 47 of the

15 Louisiana Revised Statutes of 1950, R.S. 47:287.2, 287.11(A), 287.61, and 293(1) are hereby

16 amended and reenacted to read as follows:

17 PART II-A. LOUISIANA CORPORATION AND BUSINESS INCOME TAX

18 * * *

1 §287.2. Short title

2 This Act shall be known as and may be cited as the "Louisiana Corporation
3 and Business Income Tax Act". For purposes of this Title, the term "corporations
4 and entities taxed as corporations" shall include all corporations and all entities
5 which are required to file federal form 1065 relative to U.S. return of partnership
6 income.

7 * * *

8 §287.11. Tax imposed

9 A. (1) There shall be levied, collected, and paid for each taxable year a flat
10 tax upon the Louisiana taxable income of corporations and other entities taxed as
11 corporations, for federal income tax purposes, which entities shall be considered to
12 be corporations for the purposes of this Chapter only, other than insurance
13 companies as hereinafter provided.

14 (2) There shall be levied, collected, and paid for each taxable year a flat tax
15 upon the Louisiana taxable income of other business entities which are required to
16 file federal form 1065, U.S. return of partnership income.

17 * * *

18 §287.61. Gross income defined

19 "Gross income" of a corporation means the same items and the same dollar
20 amount required by federal law to be reported as gross income on the corporation's
21 federal income tax return for the same taxable year, subject to the modifications
22 specified in this Part, whether or not a federal income tax return is actually filed. For
23 entities required to file federal form 1065, U.S. return of partnership income, "gross
24 income" means the sum of lines one through eleven that is reportable in Schedule K,
25 subject to the modifications specified in this Part, whether or not a federal income
26 tax return is actually filed.

27 * * *

1 §293. Definitions

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

4 (1) "Adjusted gross income" means, for any taxable year and for any
5 individual, the adjusted gross income of the individual for the taxable year that is
6 reportable on the individual's federal income tax return less any income or losses
7 subject to corporate or business taxes pursuant to R.S. 47:287.2.

8 * * *

9 Section 2. R.S. 47:287.12 is hereby amended and reenacted to read as follows:

10 §287.12. Rates of tax; corporation and business income

11 The tax to be assessed, levied, collected, and paid upon the Louisiana taxable
12 income of every corporation and other business entities shall be computed at ~~the a~~
13 flat rate of:

14 (1) ~~Four percent upon the first twenty-five thousand dollars of Louisiana~~
15 ~~taxable income.~~

16 (2) ~~Five percent upon the amount of Louisiana taxable income above twenty-~~
17 ~~five thousand dollars but not in excess of fifty thousand dollars.~~

18 (3) ~~Six percent on the amount of Louisiana taxable income above fifty~~
19 ~~thousand dollars but not in excess of one hundred thousand dollars.~~

20 (4) ~~Seven percent on the amount of Louisiana taxable income above one~~
21 ~~hundred thousand dollars but not in excess of two hundred thousand dollars.~~

22 (5) ~~Eight~~ six and one-half of one percent on all Louisiana taxable income in
23 ~~excess of two hundred thousand dollars.~~

24 Section 3. R.S. 47:287.12 is hereby amended and reenacted to read as follows:

25 §287.12. Rates of tax; corporation and business income

26 The tax to be assessed, levied, collected, and paid upon the Louisiana taxable
27 income of every corporation and other business entities shall be computed at ~~the a~~
28 flat rate of:

1 ~~(1) Four percent upon the first twenty-five thousand dollars of Louisiana~~
2 ~~taxable income.~~

3 ~~(2) Five percent upon the amount of Louisiana taxable income above twenty-~~
4 ~~five thousand dollars but not in excess of fifty thousand dollars.~~

5 ~~(3) Six percent on the amount of Louisiana taxable income above fifty~~
6 ~~thousand dollars but not in excess of one hundred thousand dollars.~~

7 ~~(4) Seven percent on the amount of Louisiana taxable income above one~~
8 ~~hundred thousand dollars but not in excess of two hundred thousand dollars.~~

9 ~~(5) Eight six percent on all Louisiana taxable income in excess of two~~
10 ~~hundred thousand dollars.~~

11 Section 4. Subpart D of Part II of Chapter 1 of Subtitle II of Title 47 of the Louisiana
12 Revised Statutes of 1950, comprised of R.S. 47:201 through 220.3, and 287.732(B) are
13 hereby repealed in their entirety.

14 Section 5. The provisions of this Act shall be applicable to all tax years beginning
15 on and after January 1, 2018.

16 Section 6. Section 3 of this Act shall become effective and Section 2 of this Act shall
17 not become effective if the proposed amendment of Article VII of the Constitution of
18 Louisiana contained in the Act which originated as House Bill No. ____ of this 2017 Regular
19 Session of the Legislature is adopted at a statewide election and becomes effective.

20 Section 7. Except as provided for in Section 6 of this Act, Sections 1, 2, 4, 5, 6, and
21 7 of this Act shall take effect on January 1, 2018, and only become operative if the proposed
22 amendment of Article VII of the Constitution of Louisiana contained in the Act which
23 originated as House Bill No. 356 of this 2017 Regular Session of the Legislature is adopted
24 at a statewide election and becomes effective and if the Acts which originated as House Bill
25 Nos. 357, 358, 359, 361, 362, 363, and 364 of this 2017 Regular Session of the Legislature
26 are enacted and become effective.

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 360 Engrossed

2017 Regular Session

Ivey

Abstract: Changes the corporate income tax rate from a graduated schedule of rates dependent on the taxable income of the taxpayer to a flat rate of 6.5% and expands the tax to all "business income" and further authorizes a reduction to a flat 6% if certain conditions are met.

Present law provides that the tax to be assessed, levied, collected, and paid on the La. taxable income of every corporation shall be computed at the following rates:

- (1) 4% on the first \$25,000 of La. taxable income.
- (2) 5% on La. taxable income above \$25,000 but not in excess of \$50,000.
- (3) 6% on La. taxable income above \$50,000 but not in excess of \$100,000.
- (4) 7% on La. taxable income above \$100,000 but not in excess of \$200,000.
- (5) 8% on all La. taxable income in excess of \$200,000.

Proposed law changes present law by deleting the graduated schedule of rates dependant on the amount of taxable income of the taxpayer in favor of a flat 6.5% rate. Further expands the levy of this tax to "business income" and makes it applicable to business entities such as partnerships.

Present law provides for an exemption from corporate income for partnerships but requires partnerships with members who are not individuals or not residents of La. to file a partnership return of income.

Proposed law repeals present law thereby making income earned by partnerships subject to the flat business income tax in proposed law.

Present law provides for the filing of composite returns for nonresident partners and members as well as the tax treatment of income earned by partners, partnership computations, distributive shares, and the determination of a partner's interest for purposes of calculating income tax liability.

Proposed law repeals present law.

Present law provides for the levy, collection, and payment for each taxable year a tax on the La. taxable income of corporations and other entities taxed as corporations, for federal income tax purposes.

Proposed law retains present law but clarifies that the corporate income tax shall apply to corporations and entities taxed as corporations and includes all corporations and entities required to file federal form 1065 relative to U.S. return of partnership income.

Present law requires that income earned by corporations classified under Subchapter S provisions of federal law shall be taxed and required to comply with provisions of present law the same as any other corporation if the S corporation had been required to file an income tax return with the I. R. S. as a C corporation for the current and all prior taxable years in accordance with federal law.

Present law provides for an exclusion from corporate income tax for corporations classified as S corporations under federal law for the taxable year. Further provides that in computing La. taxable income, an S corporation may exclude the percentage of its La. net income for the taxable year.

Present law provides for a formula for the calculation of the percentage of La. net income that is not subject to La. corporate income tax.

Proposed law repeals the present law S corporation exclusion thereby making this income subject to the flat income tax levied on business income as provided for in proposed law.

Present law defines the "gross income" of a corporation as the same items and the same dollar amount required by federal law to be reported as gross income on the corporation's federal income tax return for the same taxable year, subject to the modifications specified in present law whether or not a federal income tax return is actually filed.

Proposed law retains present law but clarifies that for entities required to file federal form 1065, U.S. return of partnership income, "gross income" shall mean the sum of lines one through eleven that is reportable in Schedule K, subject to the modifications specified in present law whether or not a federal income tax return is actually filed.

Present law defines "adjusted gross income" for any individual for any taxable year as as the gross income of the individual for the taxable year that is reportable on the individual's federal income tax return.

Proposed law retains present law but eliminates any income or losses subject to corporate or business taxes pursuant to present and proposed law.

Applicable to all tax years beginning on and after Jan. 1, 2018.

Proposed law with respect to the reduction in the corporate income tax rate to a flat 6.5% rate shall be effective on Jan. 1, 2018. Proposed law provides for the further reduction of the flat corporate income tax rate from 6.5% to a flat rate of 6% if the proposed amendment of Article VII of the Constitution of La. contained in the Act which originated as House Bill No. 356 of the 2017 R.S. of the Legislature is adopted at a statewide election and becomes effective.

Effective Jan 1, 2018, if the proposed amendment of Article VII of the Constitution of Louisiana contained in the Act which originated as House Bill No. 356 of this 2017 R.S. of the Legislature is adopted at a statewide election and becomes effective and if the Acts which originated as House Bill Nos. 357, 358, 359, 361, 362, 363, and 364 of this 2017 R.S. of the Legislature are enacted and become effective.

(Amends the heading of Part II-A of Chapter 1 of Subtitle II of Title 47, R.S. 47:287.2, 287.11(A), 287.12, 287.61, and 293(1); Repeals R.S. 47:201-220.3 and 287.732(B))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Repeal provisions of present law relating to partnerships and income earned by partnerships for purposes of corporate income tax including the filing of composite returns and the computation of partnership income.
2. Clarify that for purposes of corporate income tax, the term "corporations and entities taxed as corporations" shall include all corporations and entities required to file federal form 1065 relative to U.S. return of partnership income.
3. Clarify that for purposes of the levy of the corporate income tax, business entities which are required to file federal form 1065, U.S. return of partnership income shall be subject to the state corporate income tax levied on the taxable income of business entities.
4. Clarify that for entities required to file federal form 1065, U.S. return of partnership income, "gross income" means the sum of lines one through eleven that is reportable in Schedule K, subject to modifications specified in present law.
5. Eliminate income or losses subject to corporate or business taxes from the calculation of adjusted gross income for purposes of calculating individual income tax liability.
6. Add contingent effectiveness on Jan 1, 2018, for proposed law if the proposed amendment of Article VII of the Constitution of Louisiana contained in the Act which originated as House Bill No. 356 of this 2017 R.S. of the Legislature is adopted at a statewide election and becomes effective and if the Acts which originated as House Bill Nos. 357, 358, 359, 361, 362, 363, and 364 of this 2017 R.S. of the Legislature are enacted and become effective.