
HOUSE COMMITTEE AMENDMENTS

2017 Regular Session

Substitute for Original House Bill No. 648 by Representative Havard as proposed by the House Committee on Ways and Means

This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.

To enact Subtitle XII of Title 47 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 47:10001 through 10016, and to repeal Part II-A of Chapter 1 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, comprised of R.S. 47:287.2 through 287.785, and Chapter 5 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, comprised of R.S. 47:601 through 618, relative to the corporation income and franchise taxes; to provide for the imposition of the Louisiana Corporate Flat Tax; to provide for the levy, rate, collection, computation, administration, and enforcement of the tax; to provide for definitions; to provide for the allocation and apportionment of certain business activity; to require the filing of certain tax returns; to authorize certain refunds; to authorize the promulgation of rules and regulations; to provide for certain credits against the Louisiana Corporate Flat Tax; to exempt certain businesses from payment of the tax; to provide for requirements and limitations; to repeal the corporation income and franchise tax; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subtitle XII of Title 47 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 47:10001 through 10016, is hereby enacted to read as follows:

SUBTITLE XII. LOUISIANA CORPORATE FLAT TAX

SUBTITLE XII. LOUISIANA CORPORATE FLAT TAX

§10001. Short title

This Act and Subtitle shall be known as the "Louisiana Corporate Flat Tax Act".

§10002. Levy and imposition

A.(1) There is hereby levied a tax on business activity in Louisiana, which shall be known as the Louisiana Corporate Flat Tax. The tax shall be levied at the rate of three percent upon the adjusted tax base of the following:

(a) Every corporation engaged in business activity in Louisiana.

(b) Every entity taxed as a corporation for federal income tax purposes and engaged in business activity in Louisiana.

(2) The tax levied pursuant to this Section shall not apply to the following:

(a) Corporations classified under Subchapter S of the Internal Revenue Code as an S corporation.

(b) Corporations exempt under Sections 401(a) or 501 of the Internal Revenue Code.

(c) Any corporation required to pay the premium tax under Title 22 of the Louisiana Revised Statutes of 1950.

(d) Any corporation required to pay the bank shares tax under R.S. 47:1967.

B. "Adjusted tax base" means the tax base that can be allocated, apportioned, or attributed to the business activity of a corporation in Louisiana pursuant to R.S. 47:10004.

C. Every corporation liable for the tax assessed, levied, collected, and paid pursuant to this Subtitle shall not be liable to the taxes assessed, levied, collected, and paid pursuant to Part II-A of Chapter 1 and Chapter 5 of Subtitle II of this Title.

§10003. Definitions

For purposes of this Subtitle, the following words and phrases have the meanings ascribed to them in this Section. Terms used in this Subtitle that are not specifically defined shall have the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes in effect for the tax year unless a different meaning is clearly required.

(1) "Affiliated group" means two or more United States corporations, as provided for in Section 7701(a)(3) and (4) of the Internal Revenue Code, one of which owns or controls, directly or indirectly, eighty percent or more of the capital stock with voting rights of the other United States corporation or corporations.

(2) "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, within this state, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others. The term shall not include the services rendered by an employee to his employer, services as a director of a corporation, or a casual transaction. Although an activity of a taxpayer may be incidental to another or other of his business activities, each activity shall be considered to be business engaged in within the meaning of this Subtitle.

(3) "Business income" means federal taxable income. Except as specifically provided for in this Subtitle, business income shall not include any loss carryovers or carrybacks from other tax periods.

(4) "Casual transaction" means a transaction made or engaged in other than in the ordinary course of repeated and successive transactions of a like character. Transactions made or engaged in by a corporation which is incidental to that corporation's regular business activity shall be considered to be a business activity within the meaning of this Subtitle.

(5) "Compensation" means all wages, salaries, fees, bonuses, commissions, or other payments made in the taxable year on behalf of or for the benefit of employees, officers, or directors of the taxpayers and subject to or specifically exempt from withholding under Section 3401 to 3406 of the Internal Revenue Code. Compensation includes, on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income tax purposes, payments under the federal insurance contribution act and similar social insurance programs, payments, including self-insurance, for workmen's compensation insurance, payments to individuals not currently working, payments to dependents and heirs of individuals because of current or former labor services rendered by those individuals, payments to a pension, retirement, or profit sharing plan, and payments for insurance for which employees are the beneficiaries. Compensation does not include discounts on the

price of the taxpayer's merchandise or services sold to the taxpayer's employees, officers, or directors which are not available to other customers.

(6) "Department" means the Department of Revenue.

(7) "Employee" means an employee as defined in Section 3401(c) of the Internal Revenue Code. A person from whom an employer is required to withhold for federal income tax purposes shall prima facie be deemed an employee.

(8) "Employer" means an employer as defined in Section 3401(d) of the Internal Revenue Code. A person required to withhold for federal income tax purposes shall prima facie be deemed an employer.

(9) "Federal taxable income" means the amount of taxable income reportable by the taxpayer on the federal income tax return for the same tax year.

(10) "Foreign corporation" means a corporation formed under the laws of a foreign country or a political subdivision of a foreign country.

(11) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended. A reference in this Subtitle to the Internal Revenue Code includes other provisions of the laws of the United States relating to federal income taxes.

(12) "Rent" includes a lease payment or other payment for the use of any property to which the taxpayer does not have legal or equitable title.

(13) "Rental business" means a business whose principal business activity consists of the rental or leasing of any property.

(14) "Sale" or "sales" means all receipts arising from a transaction or transactions that constitute consideration for one of the following:

(a) The transfer of title to, or possession of, property that is stock in trade or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(b) The performance of services, which constitute business activities other than those included in Subparagraph (a) of this Paragraph.

(c) Any combination of Subparagraphs (a) or (b) of this Paragraph.

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

(16) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country, or political subdivision of any of the foregoing.

(17)(a) "Tax base" means business income of the tax year, before allocation, apportionment, or attribution even if zero or negative, subject to the following adjustments:

(i) Add, to the extent not already included in the tax base, income classified as unrelated business taxable income or unrelated taxable income as defined in the Internal Revenue Code.

(ii) Add all taxes on or measured by net income and the tax imposed by this Subtitle to the extent the taxes were deducted in arriving at federal taxable income.

(iii) Add, to the extent deducted in arriving at federal taxable income, all of the following:

(aa) All interest and dividends paid or accrued.

(bb) All rents and royalties, except for oil and gas royalties that are excluded in the depletion deduction calculation under the Internal Revenue Code.

(iv) Add fifty percent of the amount of compensation as defined by Paragraph (5) of this Section.

(v) Deduct, to the extent included in arriving at federal taxable income, all of the following:

(aa) All interest and dividends received or deemed received.

(bb) All rents and royalties, except oil and gas royalties that are included in the depletion deduction calculation under the Internal Revenue Code.

(vi) Deduct any capital loss not deducted in arriving at federal taxable income in the year the loss occurred.

(vii) To the extent included in federal taxable income, add the loss or subtract the gain from the tax base that is attributable to another entity whose business activities are taxable under this Subtitle or would be taxable under this Subtitle if the business activities were in this state.

(b) Alternate tax bases.

(i) The tax base of nonprofit corporations not required to pay federal income taxes shall be the net sales of goods or services less the direct material expenses incurred in producing the goods or service, as determined by the secretary.

(ii) The tax base of a rental business is business income subject to the net additions less the net deductions specified in the definition of "tax base" with the exception of the additions and deductions for rent.

(iii) If the tax base calculation provisions of R.S. 47:10003(17) do not fairly represent the business activity of a taxpayer, the taxpayer may petition for or the secretary may require, an alternative method of calculating the tax base to effectuate an equitable calculation of the taxpayer's business activity. The tax base calculation provisions of R.S. 47:10003(17) shall be presumed to fairly represent the taxpayer's business activity unless it can be demonstrated that the business activity attributed to the taxpayer by this method is out of all appropriate proportion to the actual business activity transacted by the taxpayer and leads to a grossly distorted result.

(18) "Tax year" or "taxable year" means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base is computed under this Subtitle. When a return is made for a fractional part of a year, tax year means the period for which the return is made. A taxpayer's tax year shall be for the same period as is covered by his federal income tax return.

(19) "Taxpayer" means a corporation liable for a tax, interest, or penalty under this Subtitle.

(20) "Unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts.

(21) "Unrelated business activity" or "unrelated trade or business" means any business activity that gives rise to unrelated business taxable income as defined in the Internal Revenue Code.

(22) "Wages" means wages as defined in Section 3401 of the Internal Revenue Code. The secretary may expand the definition of wages in rules and regulations promulgated under this Subtitle.

§10004. Allocation and apportionment of business activity

A. Business activities solely in Louisiana. In the case of a taxpayer whose business activities are not taxable in another state as defined in Subsection C of this Section, the entire tax base of the taxpayer shall be allocated to this state.

B. Business within and outside of Louisiana. A taxpayer whose business activities are taxable both within and outside of the state shall apportion his tax base as provided in this Section. In the case of a foreign corporation, only items effectively connected to business activity in the United States shall be included in the factors.

C. Business outside of state. For purposes of apportionment of the tax base from business activities under this Subtitle, a taxpayer is taxable in another state if either of the following is applicable:

(1) In the other state, the taxpayer is subject to a business privilege tax, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, or a tax of the type imposed under this Subtitle.

(2) The other state has jurisdiction to subject the taxpayer to one or more of the taxes regardless of whether, in fact, the state does or does not.

D. Apportionment method

(1) All of the tax base, other than the tax base derived principally from transportation services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a fraction, the numerator of which is the property factor plus two times the sales factor, and a denominator of which is three. If the

denominator of any of the factors is zero, those factors shall be eliminated from the calculation of the fraction.

(a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned, used, or rented in this state during the tax year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned, used, or rented during the tax year.

(b) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(c) The average value of property shall be determined by averaging the values at the beginning and ending of the tax year, but the secretary may require the periodic averaging of values during the tax year if reasonably required to reflect properly the average value of the taxpayer's property.

(d) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year, and the denominator of which is the total sales of the taxpayer everywhere during the tax year.

(i) Sales of tangible personal property shall be considered sales in this state as follows:

(aa) The property is shipped or delivered to a purchaser, other than the United States government, within this state regardless of the free on board point or other conditions of the sale.

(bb) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States government, or the taxpayer is not taxable in the state of the purchaser. For purposes of this Item only, "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or political subdivision thereof.

(ii) Sales other than sales of tangible personal property, shall be considered sales in this state as follows:

(aa) The business activity is performed in this state.

(bb) The business activity is performed both inside and outside of this state and, based on costs of performance, a greater proportion of the business activity is performed in this state than the proportion performed outside this state.

(iii) Receipts derived from services performed for planning, design, or construction activities within this state shall be deemed Louisiana receipts.

(2) Apportionment of transportation services. The tax base of a taxpayer whose principal business activities consist of transportation services rendered either entirely within or partly within and partly outside of this state shall be apportioned as follows:

(a) When the tax base is derived from transportation services other than that of oil or gas by pipeline, the tax base apportioned to Louisiana sources shall be that portion of the tax base of the taxpayer in the ratio that the revenue miles of the taxpayer in Louisiana bear to the revenue miles of the taxpayer everywhere. A revenue mile means the transportation for one mile for a consideration of one net ton in weight or one passenger. The tax base apportioned to Louisiana in the case of a taxpayer engaged in the transportation both of property and of individuals shall be that portion of the entire tax base of the taxpayer which is equal to the sum of his passenger miles and ton mile fractions, separately computed and individually weighted by the ratio of the tax base from passenger transportation to the total tax base from all transportation, and by the ratio of the tax base from freight transportation to the total tax base from all transportation, respectively.

(b) When the tax base is derived from the transportation of oil by pipeline, the tax base apportioned to Louisiana shall be the tax base of the taxpayer in the ratio that the barrel miles transported in Louisiana bear to the barrel miles transported by the taxpayer everywhere.

(c) When the tax base is derived from the transportation of gas by pipeline, the tax base apportioned to Louisiana shall be the tax base of the taxpayer in the ratio

that one thousand cubic foot miles transported in Louisiana bear to one thousand cubic foot miles transported by the taxpayer everywhere.

(d) Alternative allocation and apportionment. If it is shown to the satisfaction of the secretary that the foregoing information is not available or cannot be obtained without unreasonable expense to the taxpayer, the secretary may use other available data which, in the opinion of the secretary, will result in an equitable allocation and apportionment of the receipts to this state.

§10005. Apportionment not representative of business activity; petition by taxpayer; approval of alternative method

A. If the apportionment provisions of R.S. 47:10004 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the secretary may require, in respect to all or any part of the taxpayer's business activity, any of the following, if reasonable:

(1) Separate accounting.

(2) The exclusion of any one or more of the factors.

(3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state.

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's tax base.

B. An alternate method shall be effective only if it is approved in writing by the secretary.

C. The apportionment provisions of R.S. 47:10004 shall be presumed to fairly represent the extent of the taxpayer's business activity in this state unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business transacted in this state and leads to a grossly distorted result.

§10006. Estimated tax return; filing

A. Estimated tax return. A taxpayer who reasonably expects liability for the tax year to exceed five thousand dollars shall file an estimated tax return and pay an estimated tax for each quarter of the taxpayer's tax year.

B. Time for filing estimated payment. For taxpayers paying the tax on a calendar year basis, the quarterly returns and estimated payments shall be made by March fifteenth, June fifteenth, September fifteenth, and December fifteenth. Taxpayers not paying taxes on a calendar year basis shall file quarterly returns and make estimated payments on the appropriate due date which, in the taxpayer's fiscal year, corresponds to the calendar year.

C. Amounts of estimated payments. The estimated payment made with each quarterly return of each tax year shall be one-fourth of the estimated tax liability for the tax year. The second, third, and fourth estimated payments in each tax year shall include adjustments, if necessary, to correct underpayments or overpayments from previous quarterly payments.

D. Interest assessed on underpayment of estimated tax. Estimated tax due but not paid shall bear interest at the rate provided for in R.S. 47:1601.

E. Interest; when not assessed. The interest provided by this Section shall not be assessed if any of the following occur:

(1) If the sum of the estimated payments equals at least eighty-five percent of the liability and the amount of each estimated payment reasonably approximates the tax liability incurred during the quarter for which the estimated payment was made.

(2) If the preceding year's tax liability was greater than five thousand dollars and the taxpayer submitted four equal installments of which equal the previous year's tax liability.

F. Form; contents. Each estimated return shall be made in a manner prescribed by the secretary and shall include any information required by the secretary. The secretary may require electronic filing, electronic payment, or both by any taxpayer.

G. Return for tax year less than twelve months. With respect to a taxpayer filing an estimated tax return for the taxpayer's first tax year of less than twelve months, the amounts paid with each return shall be proportional to the number of payments made in the first tax year.

H. Credit of payments against tax. Payments made under this Section shall be a credit against the payment required with the annual tax return required in R.S. 47:10007.

I. Filing and payment at other periods. When the secretary considers it necessary to insure payment of the tax or to provide a more efficient administration of the tax, the secretary may require filing of the returns and payment of the tax for other than quarterly or annual periods.

§10007. Final return; contents; due date; payment of balance; exception

A. Due date of tax. The tax imposed by this Subtitle shall be due on the day after the last day of the taxpayer's taxable year.

B. An annual or final return shall be filed with the secretary, in the form and content prescribed by the secretary, by the fifteenth day of the fourth month after the end of the taxpayer's tax year. Any final liability shall be remitted with this return.

C. The secretary may extend the date for filing an annual return; however, a filing extension shall not extend the time for payment of the tax.

D.(1) The secretary may grant a reasonable extension of time for filing returns, not to exceed seven months from the date the Louisiana tax return is due or the extended due date of the federal income tax return, whichever is later.

(2) The secretary may accept a photocopy or duplicate original of the taxpayer's federal application for an extension of time to file a return, or the application for an automatic extension of time to file a federal return.

(3) The secretary may otherwise provide for the automatic extension of time to file a return not to exceed seven months.

§10008. Furnishing copy of federal income tax return to state

A. A taxpayer required to file a return under this Subtitle may be required to furnish a true and correct copy of any return or portion of any return which he has filed under the provisions of the Internal Revenue Code.

B. A taxpayer shall file an amended return showing any alteration in or modification of his federal income tax return which affects his tax base under this

Subsection. The amended return shall be filed within sixty days after a final determination by the Internal Revenue Service.

§10009. Information return of income paid to others; copies of federal tax returns

At the request of the secretary, a corporation required by the Internal Revenue Code to file or submit an information return of income paid to others shall, to the extent the information is applicable to residents of this state, at the same time file or submit the information in a form and content prescribed by the secretary.

§10010. Combined return

A corporation engaged in a unitary business with one or more other corporations shall file a combined report that includes the business income of all corporations that are members of the unitary business. However, the combined reporting shall not cause the separate identities of the members of the combined group to be disregarded. The secretary may promulgate rules and regulations in accordance with the provisions of the Administrative Procedures Act to implement the provisions of this Section.

§10011. Administrative provisions

A. Except as specifically provided to the contrary in this Subtitle, all matters pertaining to the administration of this Subtitle shall be governed by the provisions of Chapter 18 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 in the same manner as they apply to the taxes imposed by Subtitle II.

B. Refunds of overpayments.

(1) In addition to the authority given to the secretary to refund overpayments under R.S. 47:1621, the secretary may refund overpayments resulting from unintentional errors by the taxpayer. This provision shall apply to all taxes imposed by Subtitle II of Title 47 that are administered by the secretary.

(2) Interest on refunds of overpayments of the tax imposed by this Subtitle shall not begin to accrue until ninety days from the later of the filing date of the return showing the overpayment or the due date of the return showing the overpayment. An overpayment of the tax imposed by this Subtitle shall bear no interest if credit is given for the overpayment.

C. The secretary may provide for the rounding to whole dollars of any amount required to be reported under this Subtitle.

D. Keeping of records; powers of secretary. A corporation liable for any tax imposed under this Subtitle shall keep and maintain accurate records in such form as to make it possible to determine the tax due under this Subtitle. When deemed necessary, the secretary may require a corporation, by notice served upon him, to make a return, render under oath statements, or keep records as the secretary deems sufficient to show whether or not the corporation is liable for tax under this Subtitle.

E. Transfer of business; liability of successor. If a corporation liable for the tax levied by this Subtitle, or any employer required to deduct or withhold a tax from salaries or wages, sells out his business or stock of goods or ceases his business activity, his successor or succeeding successors shall withhold sufficient of the purchase money to satisfy the amount of tax which may be due and unpaid until the former owner produces a certificate from the department stating that a tax is not due. A successor who fails to withhold purchase money is liable personally for any tax accruing by virtue of the business of the former owner.

§10012. Records, books, and accounts; examination by secretary; violation, misdemeanor, penalty

A taxpayer shall keep records, books, and accounts as may be necessary to determine the amount of tax for which the corporation is liable under this Subtitle and as the secretary requires until the tax prescribes. The records, books, and accounts shall be open for examination at any time during regular business hours of the taxpayer by the secretary and his agents. A taxpayer who violates this Section shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars, or imprisoned for not more than one year, or both.

§10013. Administration of tax; forms; rules

A. The tax imposed by this Subtitle shall be administered by the secretary. The secretary shall prescribe forms for use by taxpayers and shall have the authority to adopt and promulgate rules for the maintenance by taxpayers of records, books, and accounts, and for the computation of the tax, the manner and time of changing

or electing accounting methods and of exercising the various options contained in this Subtitle, the making of returns, and the ascertainment, assessment, collection, and administration of the tax imposed.

B. In addition to the returns authorized and required in this Subtitle, the secretary may prescribe alternate forms and instructions deemed practicable for the purpose of simplifying compliance. Forms and instructions may contain arithmetical shortcuts and abbreviated formulae which do not precisely trace the computational scheme of this Subtitle.

§10014. Imposition in addition to other taxes

The tax imposed by this Subtitle shall be in addition to all other taxes for which the taxpayer may be liable.

§10015. Corporate income and franchise tax credits; disposition

For taxable years beginning on or after January 1, 2020, and on or before January 1, 2023, corporate income and franchise tax credits earned on or before December 31, 2017 shall be allowed to be claimed against the tax imposed by this Subtitle. The amount of the earned credit that may be applied shall be not more than twenty-five percent of the earned credit in each of the four tax years. However, application of the credit shall not reduce a corporation's tax liability under this Subtitle to less than zero.

§10016. Corporate net operating loss carryovers; disposition

A. For taxable years beginning on or after January 1, 2020, and on or before January 1, 2029, there shall be allowed an adjustment reducing the adjusted tax base in an amount equal to the amount of Louisiana net operating loss carryovers available on or before December 31, 2017. The adjustment allowed pursuant to this Section shall not reduce the adjusted tax base to less than zero.

B. For taxable years beginning on or after January 1, 2030, there shall be allowed an adjustment reducing the adjusted tax base in an amount equal to the amount of Louisiana net operating loss that occurred during the taxable year. The adjustment allowed pursuant to this Section shall not reduce the adjusted tax base to

less than zero. Any excess of the amount of the loss over the adjusted tax base shall not be allowed to be carried over or carried back to any other taxable year.

Section 2. Part II-A of Chapter 1 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, comprised of R.S. 47:287.2 through 287.785, and Chapter 5 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, comprised of R.S. 47:601 through 618, are hereby repealed in their entirety.

Section 3. Section 2 shall become effective on September 1, 2020 if the Revenue Estimating Conference certifies that collections of the avails of the tax imposed by this Act are sufficient to offset the loss of revenue that the state will forgo if the corporate income and franchise taxes are repealed. At the Revenue Estimating Conference meeting held no later than August 15, 2020, and subsequent to the final adjournment of the 2020 Regular Session, as provided for in R.S. 39:26(A)(4), the Revenue Estimating Conference shall determine the average of the annual collections for the tax imposed by this Act as reported by the Department of Revenue in the Annual Report for the tax year beginning January 1, 2018, and on or before January 1, 2019. The Revenue Estimating Conference shall also determine the average of the net annual collections for the corporate income and franchise taxes for the five taxable years immediately preceding January 1, 2018. If the average of the annual collections for the tax imposed by this Act exceeds by at least twenty-five percent of the average of the net annual collections for the corporate income and franchise taxes, the Revenue Estimating Conference shall certify that the collection amount of the tax imposed by this Act is sufficient to offset the amount of revenue the state will forgo if the corporate income and franchise taxes are repealed.

Section 4. Sections 1, 3 and 4 of this Act shall become effective on January 1, 2018.

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 Draft

2017 Regular Session

Abstract: Levies the La. Corporate Flat Tax on the adjusted tax base of corporate taxpayers and provides for exemptions and administration of the tax.

Present law imposes an income tax on corporations and provides for the collection, computation, administration, and enforcement of the tax. Further imposes a franchise tax on the capital assets of corporations.

Proposed law levies the La. Corporate Flat Tax on corporations and entities taxed as corporations for federal income tax purposes. The tax shall be levied at the rate of 3% on the adjusted tax base of a corporation. Corporations liable for the tax in proposed law are not required to pay the corporate income and franchise tax in present law.

Proposed law provides that the tax shall not apply to any of the following:

- (1) Subchapter S corporations.
- (2) 401(a) and 501 corporations.
- (3) Corporations paying the La. premium tax.
- (4) Corporations paying the bank shares tax.

Proposed law defines "business income" to mean federal taxable income. Further provides that business income shall not include any loss carryforwards or carrybacks from other tax periods.

Proposed law defines "adjusted tax base" as business income plus interest, dividends, rents and royalties, and 50% of the amount of compensation.

Proposed law apportions income to La. using the following calculation:

$$\frac{\text{Property} + 2 \times \text{Sales}}{3}$$

Therefore, single weight is given to the property factor and double weight is given to the sales factor as follows:

Property factor: $\frac{\text{value of property in La.}}{\text{value of all property}}$

Sales factor: $\frac{\text{total sales in La.}}{\text{total sales everywhere}}$

Proposed law provides an alternative apportionment method for transportation services.

Proposed law allows the secretary to authorize an alternate method of apportionment if the taxpayer is able to demonstrate that the apportionment provisions in proposed law do not fairly represent the extent of the taxpayer's business activity in this state.

Proposed law requires quarterly payment of an entity's estimated tax, with a final tax return due on the day after the last day of the taxpayer's taxable year.

Proposed law requires combined reporting for corporations engaged in a unitary business.

Proposed law authorizes any income tax credits earned by the taxpayer on or before Dec. 1, 2017 to be claimed against the tax owed pursuant to proposed law beginning with tax years on or after Jan. 1, 2020, and on or before Jan. 1, 2023. The amount of the credit applied each tax year shall not exceed 25% of the amount of the credit and application of the credit shall not reduce tax liability to less than zero.

Proposed law authorizes any net operating loss accumulated on or before Dec. 1, 2017 to be deducted from the adjusted tax base of the taxpayer determined pursuant to proposed law beginning with tax years on or after Jan. 1, 2020, and on or before Jan. 1, 2029. Beginning tax year Jan. 1, 2030, a taxpayer may deduct from his adjusted tax base the net amount of loss occurring during the tax year.

Proposed law repeals the corporation income and franchise tax provisions in present law effective September 1, 2020, if the Revenue Estimating Conference certifies that the amount of revenue collected for the tax imposed in proposed law is sufficient to offset the amount of revenue lost if present law is repealed.

Effective Jan. 1, 2018.

(Adds R.S. 47:10001-10016; Repeals R.S. 47:287.2-287.785 and 601-618)