

2019 Regular Session

HOUSE BILL NO. 604

BY REPRESENTATIVE STEFANSKI

TAX/INCOME TAX: Provides relative to state income taxation of Subchapter S corporations and other flow through entities

1 AN ACT

2 To amend and reenact R.S. 47:287.732(B)(1), 293(10), and 1675(G), and to enact R.S.

3 47:287.732(B)(6), 287.732.2, 293(9)(a)(xviii), 297.14, and 1675(F)(4), relative to

4 income taxation of Subchapter S corporations and other flow through entities; to

5 reduce the tax rates applicable to the income of Subchapter S corporations that elect

6 to be taxed at the corporation level; to authorize certain flow through entities not

7 taxed as corporations to elect to file as corporations for state income tax purposes;

8 to provide for a modification to exclude certain Subchapter S corporation and flow

9 through income from income subject to state individual income tax; to provide for

10 tax credits earned by Subchapter S corporations and other flow through entities; to

11 provide for an effective date; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 47:287.732(B)(1), 293(10), and 1675(G) are hereby amended and

14 reenacted and R.S. 47:287.732(B)(6), 287.732.2, 293(9)(a)(xviii), 297.14, and 1675(F)(4)

15 are hereby enacted to read as follows:

16 §287.732. S Corporations

17 * * *

1 §293. Definitions

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

4 * * *

5 (9)(a) "Tax table income", for resident individuals, means adjusted gross
6 income plus interest on obligations of a state or political subdivision thereof, other
7 than Louisiana and its municipalities, title to which obligations vested with the
8 resident individual on or subsequent to January 1, 1980, and less:

9 * * *

10 (xviii) The pass through entity exclusion provided in R.S. 47:297.14.

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

29 * * *

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 604 Engrossed

2019 Regular Session

Stefanski

Abstract: Reduces the state income tax rate for S Corporations and other flow through entities that elect to be taxed at the corporation level.

Present law requires Subchapter S corporations to pay La. income tax using the corporate income tax rate and bracket schedule as follows:

- (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 requires income from flow through entities such as limited liability companies that elect federal partnership treatment and partnerships (referred to as "flow through entities") to be reported on the partner or member's individual income tax return.

Proposed law provides an election that authorizes S corporations and other flow through entities to file and pay tax on their La. income as if they were C corporations.

Proposed law changes the Subchapter S corporation state income tax rates to the married individual income tax rates and brackets for S corporations that elect to be taxed at the corporate level as follows:

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

Proposed law applies the married individual income tax rates and brackets to the income of all flow through entities that elect to be taxed as corporations for La. tax purposes.

Present law provides a deduction for federal income tax paid on state income for the taxable year.

Proposed law authorizes Subchapter S corporations and other flow through entities that elect to file and pay La. income tax as if they were a corporation a deduction for the amount of federal income tax the entities would have paid on its La. income if it had been taxed as a C corporation for federal income tax purposes.

Present law provides a corporation income tax exclusion for Subchapter S income that is reported on a La. individual resident or nonresident income tax return.

Proposed law retains the present law Subchapter S exclusion for S corporations not making the proposed law election and further provides an individual income tax exclusion for La.

Subchapter S income and flow through entity income that is included in La. individual income taxpayer's federal adjusted gross income for that taxable year.

Present law requires individual income taxpayers to inform the secretary of revenue of federal income tax adjustments.

Proposed law retains present law and requires individual income taxpayers who use the proposed law S corporation and flow through entity exclusion to notify the secretary if changes are made to their federal income tax return due to adjustments to an S corporation's income or losses.

Present law provides that credits earned by flow through entities shall flow through to partners or members as provided in the operating agreement of the entity.

Proposed law provides that credits earned by flow through entities that have made the proposed law election shall not flow through to the partners or members but shall be applied at the entity level.

Present law requires S corporations to use corporation income tax credits at the corporation level unless the S corporation annually elects to flow corporation income tax credits to shareholders.

Proposed law retains present law requiring S corporations to use credits at the corporation level and ends the annual election to flow through credits on Jan. 1, 2019.

Proposed law provides that an election may be made at any time during the preceding taxable year or for the taxable year, anytime on or before the 15th day of the 4th month after the end of the taxable year. Further, proposed law provides that an election that is made untimely may be treated as timely if the secretary determines there was reasonable cause for the failure to make the election timely.

Proposed law prohibits an entity from making an election in accordance with proposed law for the same taxable year if they file a composite partnership return.

Proposed law applies to all taxable years beginning on or after Jan. 1, 2019.

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

(Amends R.S. 47:287.732(B)(1), 293(10), and 1675(G); Adds R.S. 47:287.732(B)(6), 287.732.2, 293(9)(a)(xviii), 297.14, and 1675(F)(4))

Summary of Amendments Adopted by House

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

1. Change the timing for an entity to make its S corporation election from on or before the 15th day of the 4th month of the taxable year to on or before the 15th day of the 4th month *after the end of the taxable year*.
2. Prohibit an entity from making an election in accordance with proposed law for the same taxable year if they file a composite partnership return.