2016 Second Extraordinary Session

HOUSE BILL NO. 34

BY REPRESENTATIVE JACKSON

TAX/CORP INCOME: Reduces the amount of certain corporate income tax exclusions and deductions (Item #37)

AN ACT

To amend and reenact R.S. 47:51, 158(C) and (D), 246(A), 287.71(B)(2) and (3), 287.73(C)(4), 287.86(A), 287.738(F) and (G), and 287.745(B) and R.S. 51:3092, relative to corporate income tax provisions of Act No. 123 of the 2015 Regular Session; to provide for corporate tax expenditures; to provide for corporate income tax exclusions and deductions; to reduce the amount of certain corporate income tax exclusions and deductions; to provide for applicability and an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:51, 158(C) and (D), 246(A), 287.71(B)(2) and (3), 287.73(C)(4), 287.86(A), 287.738(F) and (G), and 287.745(B) are hereby amended and reenacted to read as follows:

§51. Exclusions from gross income; governmental subsidies

~~Seventy-two~~ Fifty percent of funds accrued by a corporation engaged in operating a public transportation system from any federal, state or municipal governmental entity to subsidize the operation and maintenance of such a transportation system shall not be included in gross income and shall be exempt from taxation under this Chapter. All expenses of operating the transit system incurred by the corporation shall be deductible in arriving at net income.

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§158. Basis for depletion

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C. Percentage depletion for oil and gas wells. In the case of oil and gas wells the allowance for depletion under R.S. 47:66 shall be ~~fifteen and eight-tenths of one~~ eleven percent of the gross income from the property during the taxable year, excluding from such gross income an amount equal to ~~eighty~~ fifty percent of any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed ~~thirty-six~~ twenty-five percent of the net income of the taxpayer, computed without allowance for depletion, from the property except that in no case shall the depletion allowance under R.S. 47:66 be less than it would be if computed without reference to this Subsection.

D. Percentage depletion for coal and metal mines and sulphur. The allowance for depletion under R.S. 47:66 shall be, in the case of coal mines, ~~three and six-tenths of one~~ two and one-half percent, in the case of metal mines, ~~ten and eight-tenths of one~~ seven and one-half percent, and in the case of sulphur mines or deposits, ~~fifteen and eight-tenths of one~~ eleven and one-half percent, of the gross income from the property during the taxable year, excluding from such gross income an amount equal to ~~seventy-two~~ fifty percent of any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed ~~thirty-six~~ twenty-five percent of the net income of the taxpayer, computed without allowance for depletion from the property. A taxpayer making his first return under this Chapter or under Act 21 of 1934 in respect of a property, shall state whether he elects to have the depletion allowance for such property for the taxable year for which the return is made computed with or without regard to percentage depletion, and the depletion allowance in respect of such property for such year and all succeeding taxable years shall be computed according to the election thus made. If the taxpayer fails to make such statement in the return, the depletion allowance for such property for all taxable years shall be computed without reference to percentage depletion. This Subsection shall not be construed as granting a new election to any taxpayer relative to any property with respect to which he has filed a return under Act 21 of 1934.

* * *

§246. Corporations; deduction from net income from Louisiana sources

A. Subject to the limitations provided herein, there shall be deducted from any net income from Louisiana sources determined under the provisions of R.S. 47:241 of a corporation for any year following the close of the first taxable year which commenced on or after January 1, 1979, and prior to January 1, 2015, the amount of net Louisiana loss incurred in a preceding year determined as provided in Subsection B of this Section. For taxable years beginning on or after January 1, 2015, <u>and before January 1, 2016,</u> the amount of the deduction allowed shall be seventy-two percent of the amount of net Louisiana loss incurred in a preceding year determined as provided in Subsection B of this Section. <u>For taxable years beginning on or after January 1, 2016, and before July 1, 2018, the amount of the deduction allowed shall be fifty percent of the amount of net Louisiana loss incurred in a preceding year determined as provided in Subsection B of this Section.</u>

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§287.71. Modifications to federal gross income

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B. There shall be subtracted from gross income determined under federal law, unless already excluded therefrom, the following items:

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(2) ~~Seventy-two~~ <u>Fifty</u> percent of the funds accrued by a corporation engaged in operating a public transportation system from any federal, state, or municipal governmental entity to subsidize the operation and maintenance of such a transportation system.

(3) ~~Seventy-two~~ <u>Fifty</u> percent of the refunds of Louisiana corporation income tax received during the taxable year.

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§287.73. Modifications to deductions from gross income allowed by federal law

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C. Additions. The following items are declared allowable as deductions in the computation of net income and shall be added to the deductions allowed under federal law to the extent not already included therein:

* * *

(4) Expenses disallowed by I.R.C. Section 280(C). ~~Seventy-two~~ Fifty percent of expenses which would otherwise be deductible under federal law, but for the disallowance provisions of I.R.C. Section 280(C), relative to certain expenses for which credits are allowable.

* * *

§287.86. Net operating loss deduction

A. Deduction from Louisiana net income. Except as otherwise provided, for all claims for this deduction on any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates, there shall be allowed for the taxable year a deduction reducing Louisiana net income in an amount equal to ~~seventy-two~~ fifty percent of the net operating loss carryovers to such year, but the deduction shall never exceed ~~seventy-two~~ fifty percent of Louisiana net income.

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§287.738. Other inclusions and exclusions from gross income

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F. Deduction for interest and dividends.

(1) There shall be allowed for each taxable year a deduction equal to ~~seventy-two~~ fifty percent of the amount of dividends that would otherwise be included in gross income.

(2) ~~Effective for taxable years beginning after December 31, 2005, there~~ There shall be allowed for each taxable year a deduction equal to fifty percent of the amount of interest that would otherwise be included in gross income; however, a corporation may elect to pay tax on interest income from a corporation which is

controlled by the former through ownership of fifty percent or more of the voting stock of the latter and to use the provisions of R.S. 47:287.93(A)(2).

G. Deduction for hurricane recovery benefits. ~~Seventy-two~~ Fifty percent of any gratuitous grant, loan, or other benefit directly or indirectly provided to a taxpayer by a hurricane recovery entity as defined in R.S. 47:293 shall be allowed as a deduction if such benefit was included in federal adjusted gross income.

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§287.745. Deductions from gross income; depletion

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B. In the case of oil and gas wells, the percentage depletion provided for in Subsection A shall be ~~fifteen and eight-tenths of one~~ eleven percent of gross income from the property during the taxable year, excluding from such gross income an amount equal to ~~seventy-two~~ fifty percent of any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed ~~thirty-six~~ twenty-five percent of the net income of the taxpayer, computed without allowance for depletion, from the property. In determining net income from the property, federal income taxes shall be considered an expense.

Section 2. R.S. 51:3092 is hereby amended and reenacted to read as follows:

§3092. Corporation income and franchise tax exemption

Notwithstanding any other provision of law to the contrary, any corporation that is a LCDFI as provided for in this Chapter shall be exempt from the corporation income tax and the corporation franchise tax levied pursuant to Title 47 of the Louisiana Revised Statutes of 1950 for ~~four~~ three consecutive taxable periods. The exemption from the corporation income tax shall commence with the taxable period in which the capital company is certified by the commissioner. The exemption from the corporation franchise tax shall commence with the taxable period next following the taxable period in which certification as a LCDFI is obtained from the commissioner.

Section 3. R.S. 47:51, 158(C) and (D), 246(A), 287.71(B)(2) and (3), 287.73(C)(4), 287.86(A), 287.738(F) and (G), and 287.745(B) are hereby amended and reenacted to read as follows:

§51. Exclusions from gross income; governmental subsidies

~~Fifty percent of funds~~ Funds accrued by a corporation engaged in operating a public transportation system from any federal, state or municipal governmental entity to subsidize the operation and maintenance of such a transportation system shall not be included in gross income and shall be exempt from taxation under this Chapter. All expenses of operating the transit system incurred by the corporation shall be deductible in arriving at net income.

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§158. Basis for depletion

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C. Percentage depletion for oil and gas wells. In the case of oil and gas wells the allowance for depletion under R.S. 47:66 shall be ~~eleven~~ twenty-two percent of the gross income from the property during the taxable year, excluding from such gross income an amount equal to ~~fifty percent of~~ any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed ~~twenty-five~~ fifty percent of the net income of the taxpayer, computed without allowance for depletion, from the property except that in no case shall the depletion allowance under R.S. 47:66 be less than it would be if computed without reference to this Subsection.

D. Percentage depletion for coal and metal mines and sulphur. The allowance for depletion under R.S. 47:66 shall be, in the case of coal mines, ~~two and one-half~~ five percent, in the case of metal mines, ~~seven and one-half~~ fifteen percent, and in the case of sulphur mines or deposits, ~~eleven and one-half~~ twenty-three percent, of the gross income from the property during the taxable year, excluding from such gross income an amount equal to ~~fifty percent of~~ any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

exceed ~~twenty-five~~ fifty percent of the net income of the taxpayer, computed without allowance for depletion from the property. A taxpayer making his first return under this Chapter or under Act 21 of 1934 in respect of a property, shall state whether he elects to have the depletion allowance for such property for the taxable year for which the return is made computed with or without regard to percentage depletion, and the depletion allowance in respect of such property for such year and all succeeding taxable years shall be computed according to the election thus made. If the taxpayer fails to make such statement in the return, the depletion allowance for such property for all taxable years shall be computed without reference to percentage depletion. This Subsection shall not be construed as granting a new election to any taxpayer relative to any property with respect to which he has filed a return under Act 21 of 1934.

* * *

§246. Corporations; deduction from net income from Louisiana sources

A. Subject to the limitations provided herein, there shall be deducted from any net income from Louisiana sources determined under the provisions of R.S. 47:241 of a corporation for any year following the close of the first taxable year which commenced on or after January 1, 1979, ~~and prior to January 1, 2015,~~ the amount of net Louisiana loss incurred in a preceding year determined as provided in Subsection B of this Section. ~~For taxable years beginning on or after January 1, 2015, and before January 1, 2016, the amount of the deduction allowed shall be seventy-two percent of the amount of net Louisiana loss incurred in a preceding year determined as provided in Subsection B of this Section. For taxable years beginning on or after January 1, 2016 the amount of the deduction allowed shall be fifty percent of the amount of net Louisiana loss incurred in a preceding year determined as provided in Subsection B of this Section.~~

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§287.71. Modifications to federal gross income

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CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

B. There shall be subtracted from gross income determined under federal law, unless already excluded therefrom, the following items:

* * *

(2) ~~Fifty percent of the funds~~ Funds accrued by a corporation engaged in operating a public transportation system from any federal, state, or municipal governmental entity to subsidize the operation and maintenance of such a transportation system.

(3) ~~Fifty percent of the refunds~~ Refunds of Louisiana corporation income tax received during the taxable year.

* * *

§287.73. Modifications to deductions from gross income allowed by federal law

* * *

C. Additions. The following items are declared allowable as deductions in the computation of net income and shall be added to the deductions allowed under federal law to the extent not already included therein:

* * *

(4) Expenses disallowed by I.R.C. Section 280(C). ~~Fifty percent of expenses~~ Expenses which would otherwise be deductible under federal law, but for the disallowance provisions of I.R.C. Section 280(C), relative to certain expenses for which credits are allowable.

* * *

§287.86. Net operating loss deduction

A. Deduction from Louisiana net income. Except as otherwise provided, for all claims for this deduction on any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates, there shall be allowed for the taxable year a deduction reducing Louisiana net income in an amount equal to ~~fifty~~ seventy-two percent of the net operating loss carryovers to such year, but the deduction shall never exceed ~~fifty~~ seventy-two percent of Louisiana net income.

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§287.738. Other inclusions and exclusions from gross income

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F. Deduction for interest and dividends.

(1) There shall be allowed for each taxable year a deduction equal to ~~fifty percent of~~ the amount of dividends that would otherwise be included in gross income.

(2) There shall be allowed for each taxable year a deduction equal to ~~fifty percent of~~ the amount of interest that would otherwise be included in gross income; however, a corporation may elect to pay tax on interest income from a corporation which is controlled by the former through ownership of fifty percent or more of the voting stock of the latter and to use the provisions of R.S. 47:287.93(A)(2).

G. Deduction for hurricane recovery benefits. ~~Fifty percent of any~~ <u>Any</u> gratuitous grant, loan, or other benefit directly or indirectly provided to a taxpayer by a hurricane recovery entity as defined in R.S. 47:293 shall be allowed as a deduction if such benefit was included in federal adjusted gross income.

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§287.745. Deductions from gross income; depletion

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B. In the case of oil and gas wells, the percentage depletion provided for in Subsection A shall be ~~eleven~~ <u>twenty-two</u> percent of gross income from the property during the taxable year, excluding from such gross income an amount equal to ~~fifty percent of~~ any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed ~~twenty-five~~ <u>fifty</u> percent of the net income of the taxpayer, computed without allowance for depletion, from the property. In determining net income from the property, federal income taxes shall be considered an expense.

Section 4. R.S. 51:3092 is hereby amended and reenacted to read as follows:

§3092. Corporation income and franchise tax exemption

Notwithstanding any other provision of law to the contrary, any corporation that is a LCDFI as provided for in this Chapter shall be exempt from the corporation income tax and the corporation franchise tax levied pursuant to Title 47 of the Louisiana Revised Statutes of 1950 for ~~three~~ five consecutive taxable periods. The exemption from the corporation income tax shall commence with the taxable period in which the capital company is certified by the commissioner. The exemption from the corporation franchise tax shall commence with the taxable period next following the taxable period in which certification as a LCDFI is obtained from the commissioner.

Section 5. The provisions of Sections 1 and 2 of this Act shall apply to any return filed for any taxable year beginning on or after January 1, 2016, and before January 1, 2019. The provisions of Sections 3 and 4 of this Act shall apply to any return filed for any taxable year beginning on or after January 1, 2019.

Section 6. Notwithstanding any contrary provision of Section 6 of Act No. 123 of the 2015 Regular Session of the Legislature, the provisions of Sections 1 and 2 of Act No. 123 of the 2015 Regular Session of the Legislature shall cease to be effective on the effective date of Sections 1 and 2 of this Act and Sections 3 and 4 of Act No. 123 of the 2015 Regular Session of the Legislature shall not become effective.

Section 7.A. Sections 1, 2, 5, 6, and this Section of this Act shall become effective upon signature of this Act by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If this Act is vetoed by the governor and subsequently approved by the legislature, Sections 1, 2, 5, 6, and this Section of this Act shall become effective on the day following such approval.

B. Sections 3 and 4 of this Act shall become effective on July 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 34 Original 2016 Second Extraordinary Session Jackson

Abstract: Reduces the amount of certain corporate income tax deductions and exclusions through July 1, 2018.

Present law (R.S. 47:51) excludes from corporation gross income any funds received by a corporation from a governmental entity to subsidize the operation and maintenance of a public transportation system.

Present law provides an exclusion for 72% of the funds received.

Proposed law reduces the exclusion from 72% of the funds received to 50% of the funds received by a corporation.

Proposed law, effective July 1, 2018, provides for an exclusion of 100% of the funds received.

Present law (R.S. 47:158 and R.S. 47:287.745) provides an additional deduction in determining net income for oil and gas depletion.

Present law provides a deduction equal to 15.8% of gross income from the property, excluding 72% of any rents or royalties paid or incurred by the taxpayer due to the property. The deduction is further limited to 36% of the net income from the property calculated without the deduction for depletion.

Proposed law reduces the deduction from 15.8% of the gross income from the property during the taxable year, excluding 72% of any rents or royalties, to 11% of the gross income from the property during the taxable year, excluding 50% of rents or royalties. Further reduces allowable deduction from an amount not to exceed 36% of the net income of the taxpayer to an amount not to exceed 25% of the net income.

Proposed law, effective July 1, 2018, provides for a deduction of 22% of the gross income from the property during the taxable year, excluding 100% of any rents or royalties. Further limits the allowable deduction to an amount not to exceed 50% of the net income of the taxpayer.

Present law (R.S. 47:246) provides a deduction for net operating loss of a corporation.

Present law provides that the amount of the deduction is equal to 72% of the amount of the net operating loss.

Proposed law reduces the amount of the deduction from 72% of the amount of the net operating loss to 50% of the net operating loss.

Proposed law, effective July 1, 2018, provides for a deduction of 100% of the net operating loss.

Present law (R.S. 47:287.71) excludes from corporate gross income funds received from a governmental entity to subsidize the operation and maintenance of a public transportation system and the refunds of Louisiana corporation income tax received during the taxable year.

Present law provides an exclusion for 72% of the funds and refunds received.

Proposed law reduces the exclusion from 72% of the funds and refunds received to 50% of the funds received by a corporation.

Proposed law, effective July 1, 2018, provides for an exclusion of 100% of the funds received by a corporation.

Present law (R.S. 47:287.73) provides for a deduction from corporate income tax expenses disallowed under I.R.C. Section 280C. Further requires a taxpayer who elects to claim certain credits that are based on an expense to reduce the federal deduction for the expense by the dollar amount of the credit claimed.

Present law provides a deduction for 72% of the disallowed expenses.

Proposed law reduces the amount of the deduction from 72% of the disallowed expenses to 50% of the disallowed expenses.

Proposed law, effective July 1, 2018, provides for a deduction of 100% of the disallowed expenses.

Present law (R.S. 47:287.86) provides a deduction from corporate income for the amount of the net operating loss incurred in La.

Present law provides a deduction for 72% of the net operating loss.

Proposed law reduces the amount of the deduction from 72% of the amount of the net operating loss to 50% of the net operating loss.

Proposed law, effective July 1, 2018, provides for a deduction of 72% of the net operating loss.

Present law (R.S. 47:287.738) authorizes a deduction from gross income of an amount equal to interest and dividend income included on the federal income tax return.

Present law provides for a deduction of 72% of the amount of interest and dividend income.

Proposed law reduces the amount of the deduction from 72% to 50%.

Proposed law, effective July 1, 2018, provides for a deduction of 100% of the amount of interest and dividend income.

Present law (R.S. 51:3092) exempts from corporation income and franchise taxes certain La. Community Development Financial Institutions.

Present law provides an exemption for four consecutive taxable periods, commencing with the taxable period in which the capital company is certified by the commissioner.

Proposed law reduces the exemption from four consecutive taxable periods to three consecutive taxable periods.

Proposed law, effective July 1, 2018, provides for an exemption for five consecutive taxable periods.

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

(Amends R.S. 47:51, 158(C) and (D), 246(A), 287.71(B)(2) and (3), 287.73(C)(4), 287.86(A), 287.738(F) and (G), and 287.745(B), and R.S. 51:3092)