

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 R.S. 47:93(B), 241, 287.12, 287.69, 287.442(B)(1), 300.6(A), and

3 300.7(A), to enact R.S. 47:55(6), and to repeal R.S. 47:287.79, 287.83, and 287.85,

4 relative to income tax; to provide relative to the rate of the corporation income tax;

5 to provide relative to the deductibility of federal income taxes; to repeal deductibility

6 of federal income taxes paid for purposes of calculating corporate income taxes; to

7 provide for applicability; to provide for effectiveness; and to provide for related

8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:93(B), 241, 287.12, 287.69, 287.442(B)(1), 300.6(A), and

11 300.7(A) are hereby amended and reenacted and R.S. 47:55(6) is hereby enacted to read as

12 follows:

13 §55. Deductions from gross income; taxes generally

14 In computing net income, there shall be allowed as deductions all taxes paid

15 or accrued within the taxable year except:

16 \* \* \*

17 (6) Federal income taxes paid by corporations and entities taxed as

18 corporations.

19 \* \* \*

1 §93. Period for which deductions and credits shall be taken

2 \* \* \*

3 B. The proper year in which to claim deductions for federal income and  
4 excess profits taxes allowable under the provisions of R.S. 47:55 shall be determined  
5 as follows, regardless of the method of accounting regularly employed by the  
6 taxpayer:

7 (1) The amount of tax shown to be due upon the federal income tax return  
8 of the individual or fiduciary taxpayer, as filed, shall be allowed as a deduction ~~in~~ on  
9 the state individual or fiduciary income tax return for the same period as that for  
10 which such federal return is filed.

11 (2) Federal income and excess profits taxes paid after the filing of the federal  
12 return in addition to the amount disclosed to be due by the return as filed shall be  
13 allowed as a deduction ~~in~~ on the state individual or fiduciary income tax return for  
14 that period if it is not prescribed. If it is prescribed, the deduction for such additional  
15 taxes shall be allowed as a deduction in the state return for the period in which such  
16 additional tax is paid. ~~This Subsection shall apply to all such payments after~~  
17 ~~December 31, 1973.~~

18 \* \* \*

19 §241. Net income subject to tax

20 A. The net income of a nonresident individual ~~or a corporation~~ subject to the  
21 tax imposed by this Chapter shall be the sum of the net allocable income earned  
22 within or derived from sources within this state, as defined in R.S. 47:243, and the  
23 net apportionable income derived from sources in this state, as defined in R.S.  
24 47:244, less the amount of federal income taxes attributable to the net allocable  
25 income and net apportionable income derived from sources in this state. The amount  
26 of federal income taxes to be so deducted shall be that portion of the total federal  
27 income tax which is levied with respect to the particular income derived from  
28 sources in this state to be computed in accordance with rules and regulations of the  
29 collector of revenue. Proper adjustment shall be made for the actual tax rates

1 applying to different classes of income and for all differences in the computation of  
2 net income for purposes of federal income taxation as compared to the computation  
3 of net income under this Chapter. Where the allocation of the tax is to be based on  
4 a ratio of the amount of net income of a particular class, both the numerator and the  
5 denominator of the fraction used in determining the ratio shall be computed on the  
6 basis that such net income is determined for federal income tax purposes.

7 B. The net income of a corporation subject to the tax imposed by this  
8 Chapter shall be the sum of the net allocable income earned within or derived from  
9 sources within this state, as defined in R.S. 47:243, and the net apportionable income  
10 derived from sources in this state, as defined in R.S. 47:244.

11 \* \* \*

12 §287.12. Rates of tax

13 The tax to be assessed, levied, collected, and paid upon the Louisiana taxable  
14 income of every corporation shall be computed at the rate of:

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

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

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

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

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

25 \* \* \*

26 §287.69. Louisiana taxable income defined

27 "Louisiana taxable income" means Louisiana net income; after adjustments;  
28 ~~less the federal income tax deduction allowed by R.S. 47:287.85. "After adjustments"~~

1 means after the application of the net operating loss adjustment allowed by R.S.  
2 47:287.86.

3 \* \* \*  
4 §287.442. Exceptions to taxable year of inclusion; taxable year deductions taken  
5 \* \* \*

6 B. Period for which deductions and credits shall be taken.

7 (1) ~~The taxable year in which to claim the federal income tax deduction~~  
8 ~~allowed by R.S. 47:287.85 shall be determined as follows, regardless of the method~~  
9 ~~of accounting regularly employed by the taxpayer:~~

10 (a) ~~The federal income tax deduction may be claimed for the same taxable~~  
11 ~~year in which the federal income tax sought to be deducted is incurred, provided the~~  
12 ~~taxpayer files a federal income tax return for such taxable year or is included with~~  
13 ~~affiliates in a consolidated federal income tax return for such taxable year.~~

14 (b)(i) Taxable year for adjustments to taxpayer's federal income tax return.  
15 Except as otherwise provided in this Subparagraph, adjustments affecting federal  
16 taxable income which are made to the taxpayer's income tax return subsequent to  
17 filing, whether made because of a deficiency proposed by the government, a court  
18 order, an amended return, or other appropriate instrument or act, showing an  
19 overpayment or a deficiency shall be taken into account for purposes of this Part in  
20 the period for which the return was filed, unless the prescriptive period for the  
21 collection of tax or the refund or credit of overpayments, as the case may be, has  
22 expired. If the applicable prescriptive period has expired, the additional tax paid by  
23 the taxpayer in the case of an underpayment or the refund or credit received by the  
24 taxpayer in the case of an overpayment shall be for the taxable year such tax was  
25 paid, such refund was received, or such credit was allowed, as the case may be.

26 (ii) (b) When a federal refund results from transactions or conditions which  
27 arise after the close of the taxable year for which the refund is made, such federal  
28 refund shall be taken into account, for purposes of this Part, for the taxable year in  
29 which arose the transactions or conditions causing the refund.

1 (c) Taking federal adjustments into account. ~~A payment of additional federal~~  
 2 ~~tax upon income which has borne Louisiana tax shall be taken into account by~~  
 3 ~~decreasing taxable income. That portion, if any, of such additional federal tax~~  
 4 ~~payment which would be disallowed as a deduction under either R.S. 47:287.81 or~~  
 5 ~~R.S. 47:287.83 shall be excluded from such adjustment.~~ Refunds or credits of federal  
 6 overpayments, including refunds or credits created by the carryback of a federal net  
 7 operating loss, shall be taken into account by increasing Louisiana net income or  
 8 decreasing the Louisiana net loss, as the case may be. That portion, if any, of the  
 9 federal refund or credit of an overpayment which has not previously been charged  
 10 against or deducted from Louisiana net income shall be excluded from such  
 11 adjustment.

12 (d) Adjustments made to the Louisiana return. Adjustments to a return filed  
 13 pursuant to this Part, whether initiated by the secretary or the taxpayer, shall be taken  
 14 into account in the taxable year for which the return was filed in accordance with  
 15 rules, regulations, or forms prescribed by the secretary.

16 \* \* \*

17 §300.6. Louisiana taxable income of resident estate or trust

18 A. Definition. "Louisiana taxable income" of a resident estate or trust means  
 19 the taxable income of the estate or trust determined in accordance with federal law  
 20 for the same taxable year, as specifically modified by the provisions contained in  
 21 Subsection B of this Section, less a federal income tax deduction to be computed  
 22 ~~following the provisions of R.S. 47:287.83 and 287.85.~~ in accordance with the  
 23 following provisions:

24 (1) In computing Louisiana taxable income, no federal income tax deduction  
 25 shall be allowed on net income upon which no Louisiana income tax has been  
 26 incurred, or upon which, for any reason whatsoever, no Louisiana income tax will  
 27 be paid. For purposes of this Section, the federal income tax deduction may be  
 28 recomputed and reduced to reflect the application of a net operating loss adjustment.  
 29 When computing Louisiana taxable income, the secretary may consider reductions

1 to the federal income tax deduction in accordance with the provisions of this  
2 Paragraph.

3 (2) The alternative minimum tax is a federal income tax deductible to the  
4 extent that it is applicable to regular federal taxable income. Any alternative  
5 minimum tax paid on tax preference items shall not be deductible. In accordance  
6 with the provisions of this Paragraph, the secretary may determine the deductible  
7 portion of the alternative minimum tax.

8 (3) For purposes of this Section, federal income taxes shall include taxes  
9 based on net income, accumulated earnings, war profits, excess profits, personal  
10 holding company income, and tax from recomputation of investment credit. The  
11 amount of the federal income tax deduction shall be that portion of the total federal  
12 income tax, after application of all credits, which is levied on income derived solely  
13 from sources in this state as computed under rules and regulations prescribed by the  
14 secretary. For purposes of federal income taxation as compared to the computation  
15 of net income under this Part, proper adjustment shall be made for the actual tax  
16 rates as applied to different classes of income and for all differences in the  
17 computation of net income.

18 (4) As used in this Subsection, the term "credits" shall not include  
19 overpayments of prior year taxes allowed as a credit, estimated tax payments or  
20 similar prepayments, credit for prior year alternative minimum tax that is allowed as  
21 a credit against the current regular federal income tax, or federal income tax credits  
22 determined by the secretary to be presidential disaster area disaster relief credits.

23 \* \* \*

24 §300.7. Louisiana taxable income of nonresident estate or trust

25 A. Definition. "Louisiana taxable income" of a nonresident estate or trust  
26 means ~~such~~ the portion of the taxable income of the nonresident estate or trust  
27 determined in accordance with federal law for the same taxable year, as specifically  
28 modified by the provisions contained in Subsection C of this Section, that was earned

1 within or derived from sources within this state, less a federal income tax deduction  
2 to be computed following the provisions of ~~R.S. 47:287.83 and 287.85~~ R.S. 47:300.6.

3 \* \* \*

4 Section 2. R.S. 47:287.79, 287.83, and 287.85 are hereby repealed in their entirety.

5 Section 3. The provisions of this Act shall be applicable to all tax years beginning  
6 on and after January 1, 2018.

7 Section 4. This Act shall become effective on January 1, 2018, if the proposed  
8 amendment of Article VII of the Constitution of Louisiana contained in the Act which  
9 originated as House Bill No. 356 of this 2017 Regular Session of the Legislature is adopted  
10 at a statewide election and becomes effective.

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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)]

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HB 360 Reengrossed                      2017 Regular Session                      Ivey

**Abstract:** Repeals the deductibility of federal income taxes paid for purposes of calculating corporate income taxes and 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%.

Present constitution and present law authorize a state deduction for federal income taxes paid for purposes of computing income taxes for the same period.

Proposed law repeals the present law provisions that authorize a state deduction for federal income taxes paid for purposes of calculating corporate income taxes.

Present law provides for the computation of La. taxable income for a resident estate or trust, including provisions for the federal income tax deduction, limitations of deductions for net income, provisions for the federal deduction for alternative minimum tax, and the authority of the secretary of the Dept. of Revenue to consider reductions to the federal income tax deduction and the determination of the deductible portion of an alternative minimum tax.

Proposed law retains present law except as it applies to the deductibility of federal income taxes.

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% corporate income tax rate.

Applicable for all taxable periods beginning on or after Jan. 1, 2018.

Effective Jan. 1, 2018, if the proposed amendment of Article VII of the Constitution of La. 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.

(Amends R.S. 47:93(B), 241, 287.12, 287.69, 287.442(B)(1), 300.6(A), and 300.7(A); Adds R.S. 47:55(6); Repeals R.S. 47:287.79, 287.83, and 287.85)

#### 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 La. 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.

The House Floor Amendments to the engrossed bill:

1. Remove proposed law provisions relative to expanding the corporate income tax to all "business income".

2. Delete proposed law repeal of partnership exemptions from corporate income taxes that would have made income carved by partnerships subject to the flat business income tax.
3. Delete proposed law repeal of the S corporation exclusion that would have made income earned by S corporation subject to the flat business income tax.
4. Change 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%.
5. Add repeal of present law provisions relative to the deductibility of federal income tax paid for purposes of calculating corporate income taxes.
6. Delete the reduction of the flat corporate income tax rate that was dependent on passage of the proposed amendment of Article VII of the Constitution of La. contained in the Act that originated as House Bill No. 356 of the 2017 R.S. of the Legislature.
7. Delete the contingent effectiveness on Jan. 1, 2018, for proposed law if the proposed amendment of Article VII of the Constitution of La. 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.
8. Add contingent effectiveness on Jan. 1, 2018, for proposed law if the proposed amendment of Article VII of the Constitution of La. 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.