

2019 Regular Session

SENATE BILL NO. 223

BY SENATOR ALLAIN

TAX/TAXATION. Provides relative to state income taxation of Subchapter S corporations and other flow through entities. (gov sig)

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; and

11 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 B. S corporation exclusion. This Subsection provides an exclusion to
2 corporations classified as S corporations under federal law for the taxable year, as
3 follows:

4 (1) In computing Louisiana taxable income pursuant to this Part, an S
5 corporation that does not make an election pursuant to R.S. 47:287.732.2 may
6 exclude such percentage of its Louisiana net income for the taxable year as is
7 provided in R.S. 47:287.732(B)(2).

8 * * *

9 (6) S corporations that elect to pay tax at the corporation level pursuant
10 to R.S. 47:287.732.2 shall not be eligible for this exclusion.

11 * * *

12 §287.732.2. Election for S corporations and other flow through entities

13 A.(1) Any S corporation or entity taxed as a partnership for federal
14 income tax purposes may elect to be taxed and to comply with this Part in the
15 same manner as if the entity had been required to file an income tax return with
16 the Internal Revenue Service as a C corporation. S corporations that make this
17 election shall not be eligible for the exclusion provided in R.S. 47:287.732.

18 (2) The election shall be made in writing and may be made at any time
19 during the preceding taxable year, or at any time during the taxable year and
20 on or before the fifteenth day of the fourth month after the close of the taxable
21 year. The secretary may treat an election made after the fifteenth day of the
22 fourth month after the close of the taxable year as timely made for the taxable
23 year if the secretary determines that there was reasonable cause for the failure
24 to make the election timely.

25 (3) The election shall be effective for the taxable year of the entity for
26 which it is made and for all succeeding taxable years of the entity, until the
27 election is terminated by the secretary.

28 (4)(a) An entity that has made an election pursuant to this Section may
29 apply to the secretary for termination of the election if shareholders, partners,

1 or members holding more than one-half of the ownership interest in the entity
2 on the day on which the revocation is requested consent to the revocation
3 request.

4 (b) The secretary may terminate an entity's election if the entity shows
5 a material change in circumstances. A significant change in federal tax law may
6 be considered by the secretary as a material change in circumstances.

7 B. Notwithstanding any provision of law to the contrary, the tax on the
8 Louisiana taxable income of every entity that makes the election pursuant to
9 this Section shall be computed at the rates of:

10 (1) Two percent upon the first twenty-five thousand dollars of Louisiana
11 taxable income.

12 (2) Four percent upon the amount of Louisiana taxable income above
13 twenty-five thousand dollars but not in excess of one hundred thousand dollars.

14 (3) Six percent upon the amount of Louisiana taxable income above one
15 hundred thousand dollars.

16 C. An entity that has made the election provided in this Section shall be
17 allowed a deduction in an amount equal to the federal income tax the entity
18 would have paid on its Louisiana net income for the taxable year if the entity
19 had been required to file an income tax return with the Internal Revenue
20 Service as a C corporation for the current and all prior taxable years, in
21 accordance with federal law.

22 D. The secretary may require the electronic filing of tax returns or
23 reports filed by entities making an election pursuant to this Section.

24 E. Unless otherwise provided in this Section, the provisions of this Part
25 shall apply to all entities making an election pursuant to this Section.

26 F. Any entity filing a composite partnership return pursuant to R.S.
27 47:201.1 is prohibited from making the election pursuant to this Section for the
28 same tax year.

29 * * *

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 federal
16 income tax liability, excess federal itemized personal deductions, the temporary
17 teacher deduction, the recreation volunteer and volunteer firefighter deduction, the
18 construction code retrofitting deduction, any gratuitous grant, loan, or other benefit
19 directly or indirectly provided to a taxpayer by a hurricane recovery entity if such
20 benefit was included in federal adjusted gross income, the exclusion provided for in
21 R.S. 47:297.3 for S Bank shareholders, the deduction for expenses disallowed by
22 I.R.C. Section 280C, salaries, wages or other compensation received for disaster or
23 emergency-related work rendered during a declared state disaster or emergency, the
24 deduction for net capital gains, **the pass through entity exclusion provided in R.S.**
25 **47:297.14**, and personal exemptions and deductions provided for in R.S. 47:294. The
26 proportionate amount is to be determined by the ratio of Louisiana income to federal
27 adjusted gross income. When federal adjusted gross income is less than Louisiana
28 income, the ratio shall be one hundred percent.

29 * * *

1 **§297.14. Flow through entity exclusion**

2 **A.(1) In computing Louisiana tax table income, an individual shall**
3 **exclude net income or losses received from an entity of which the individual is**
4 **a shareholder, partner, or member provided that the entity properly filed a**
5 **Louisiana corporation income tax return pursuant to R.S. 47:287.732.2 that**
6 **included the net income or loss.**

7 **(2) No exclusion shall be allowed for any amount that is attributable to**
8 **income that, for any reason whatsoever, will not bear the tax due pursuant to**
9 **R.S. 47:287.732.2.**

10 **B. A taxpayer whose federal individual income tax return is adjusted due**
11 **to S corporation or partnership income or losses for which the taxpayer used**
12 **this exclusion shall furnish a statement to the secretary, disclosing the nature**
13 **and amounts of such adjustments within sixty days after the federal**
14 **adjustments have been made and accepted by the taxpayer, provided that if the**
15 **taxpayer does not receive a statement of the federal adjustments until after he**
16 **accepts the adjustments, he shall have sixty days from the receipt of such**
17 **statement within which to furnish the required statement to the collector.**
18 **Paying the federal tax shown due or signing a consent to immediate assessment**
19 **shall constitute an acceptance of the federal adjustments.**

20 * * *

21 §1675. General administrative provisions for credits against income and corporation
22 franchise tax

23 * * *

24 F. Credits granted, allocated, or transferred to entities not subject to Louisiana
25 income tax or corporation franchise tax.

26 * * *

27 **(4) The provisions of this Subsection shall not apply to entities that make**
28 **an election pursuant to R.S. 47:287.732.2. Beginning with the taxable year for**
29 **which the election is first made, the entity shall apply any credits earned at the**

1 **entity level.**

2 G. Credits granted or allocated to Subchapter S Corporations.

3 (1) Credits earned by, allocated to, or transferred to an S corporation during
4 a year in which the corporation operated as a C corporation ~~must~~ **shall** be used at the
5 corporation level.

6 (2)(a) Unless otherwise provided in the statute granting the credit, credits
7 earned by, allocated to, or transferred to a corporation during a year in which the
8 corporation operates as an S corporation do not flow through to the shareholders, but
9 ~~must~~ **shall** be used at the corporation level unless the S corporation makes the annual
10 election provided for in Subparagraph (b) of this Paragraph.

11 (b) Flow through election for S corporations. An S corporation that earns or
12 otherwise receives a tax credit through allocation or transfer during a year in which
13 the corporation operates as an S corporation may annually elect to flow through the
14 entire amount of the credit to its shareholders. The election may be made for each
15 credit received by the S corporation and shall be made annually. The election shall
16 be in writing and may not be revoked. **S corporations that file their corporation**
17 **income tax returns pursuant to R.S. 47:287.732.2 shall not be eligible to make**
18 **this flow through election beginning with the taxable year for which the election**
19 **is first made.**

20 * * *

21 Section 2. This Act shall be effective for all tax years beginning on or after
22 January 1, 2019.

23 Section 3. This Act shall become effective upon signature by the governor or, if not
24 signed by the governor, upon expiration of the time for bills to become law without signature
25 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
26 vetoed by the governor and subsequently approved by the legislature, this Act shall become
27 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Leonore Heavey.

DIGEST

SB 223 Engrossed 2019 Regular Session Allain

Present law requires Subchapter S corporations to pay Louisiana 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.

Present law requires income from flow through entities such as partnerships and limited liabilities companies that elect federal partnership treatment (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 Louisiana 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:

- (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 Louisiana tax purposes.

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

Proposed law authorizes Subchapter S corporations and other flow through entities that elect to file and pay Louisiana income tax as if they were a corporation a deduction for the amount of federal income tax the entities would have paid on its Louisiana 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 Louisiana individual resident or nonresident income tax return.

Proposed law retains present law Subchapter S exclusion for S corporations not making the proposed law election and further provides an individual income tax exclusion for Louisiana Subchapter S income and flow through entity income that is included in Louisiana individual income taxpayer's federal adjusted gross income for that taxable year.

Proposed law provides that all provisions in the corporation income taxation law apply to entities making the proposed law election.

Proposed law prohibits an entity from making the proposed law election if the entity files a composite partnership return for the same tax 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 the 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 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 Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Makes technical corrections.
2. Provides that all provisions of corporation income tax law applies to entities electing to be taxed as corporations.
3. Prohibits entities from electing to be taxed as a corporation and then also filing a composite partnership return for the same tax year.