HLS 19RS-1189 ENGROSSED

2019 Regular Session

HOUSE BILL NO. 604

1

BY REPRESENTATIVE STEFANSKI

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

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	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 as provided
10	in 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 income
14	tax purposes may elect to be taxed and to comply with this Part in the same manner
15	as if the entity had been required to file an income tax return with the Internal
16	Revenue Service as a C corporation. S corporations that make this election shall not
17	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 on or
20	before the fifteenth day of the fourth month after the end of the taxable year. The
21	secretary may treat an election made after the fifteenth day of the fourth month after
22	the end of the taxable year as timely made for the taxable year if the secretary
23	determines that there was reasonable cause for the failure to make the election
24	<u>timely.</u>
25	(3) The election shall be effective for the taxable year of the entity for which
26	it is made and for all succeeding taxable years of the entity, until the election is
27	terminated by the secretary.
28	(4)(a) An entity that has made an election pursuant to this Section may apply
29	to the secretary for termination of the election if shareholders, partners, or members

1	holding more than one-half of the ownership interest in the entity on the day on
2	which the revocation is requested consent to the revocation request.
3	(b) The secretary may terminate an entity's election if the entity shows a
4	material change in circumstances. A significant change in federal tax law may be
5	considered by the secretary as a material change in circumstances.
6	B. Notwithstanding any provision of law to the contrary, the tax on the
7	Louisiana taxable income of every entity that makes the election pursuant to this
8	Section shall be computed at the rates of:
9	(1) Two percent upon the first twenty-five thousand dollars of Louisiana
10	taxable income.
11	(2) Four percent upon the amount of net Louisiana taxable income above
12	twenty-five thousand dollars but not in excess of one hundred thousand dollars.
13	(3) Six percent upon the amount of Louisiana taxable income above one
14	hundred thousand dollars.
15	C. An entity that has made the election provided in this Section shall be
16	allowed a deduction in an amount equal to the federal income tax the entity would
17	have paid on its Louisiana net income for the taxable year if the entity had been
18	required to file an income tax return with the Internal Revenue Service as a C
19	corporation for the current and all prior taxable years, in accordance with federal
20	<u>law.</u>
21	D. The secretary may require the electronic filing of tax returns or reports
22	filed by entities making an election pursuant to this Section.
23	E. The provisions of this Part shall apply to all entities making the election
24	under this Section.
25	F. An entity cannot make the election under this Section for the same taxable
26	year if they are filing a composite partnership return.
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§293.	Definitions

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

4 * * *

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

9 * * *

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

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

* * *

1	§297.14. Flow through entity exclusion
2	A. (1) In computing Louisiana tax table income, an individual shall exclude
3	net income or losses received from an entity of which the individual is a shareholder,
4	partner, or member provided that the entity properly filed a Louisiana corporation
5	income tax return pursuant to R.S. 47:287.732.2 that included the net income or loss.
6	(2) No exclusion shall be allowed for any amount that is attributable to
7	income that, for any reason whatsoever, will not bear the tax due pursuant to R.S.
8	<u>47:287.732.2.</u>
9	B. A taxpayer whose federal individual income tax return is adjusted due to
10	S corporation or partnership income or losses for which the taxpayer used this
11	exclusion shall furnish a statement to the secretary, disclosing the nature and
12	amounts of such adjustments within sixty days after the federal adjustments have
13	been made and accepted by the taxpayer, provided that if the taxpayer does not
14	receive a statement of the federal adjustments until after he accepts the adjustments,
15	he shall have sixty days from the receipt of such statement within which to furnish
16	the required statement to the collector. Paying the federal tax shown due or signing
17	a consent to immediate assessment shall constitute an acceptance of the federal
18	adjustments.
19	* * *
20	§1675. General administrative provisions for credits against income and corporation
21	franchise tax
22	* * *
23	F. Credits granted, allocated, or transferred to entities not subject to
24	Louisiana income tax or corporation franchise tax.
25	* * *
26	(4) The provisions of this Subsection shall not apply to entities that make an
27	election pursuant to R.S. 47:287.732.2. Beginning with the taxable year for which
28	the election is first made, the entity shall apply any credits earned at the entity level.
29	G. Credits granted or allocated to Subchapter S Corporations.

1	(1) Credits earned by, allocated to, or transferred to an S corporation during
2	a year in which the corporation operated as a C corporation must shall be used at the
3	corporation level.
4	(2)(a) Unless otherwise provided in the statute granting the credit, credits
5	earned by, allocated to, or transferred to a corporation during a year in which the
6	corporation operates as an S corporation do not flow through to the shareholders, but
7	must shall be used at the corporation level unless the S corporation makes the annual
8	election provided for in Subparagraph (b) of this Paragraph.
9	(b) Flow through election for S corporations. An S corporation that earns
10	or otherwise receives a tax credit through allocation or transfer during a year in
11	which the corporation operates as an S corporation may annually elect to flow
12	through the entire amount of the credit to its shareholders. The election may be
13	made for each credit received by the S corporation and shall be made annually. The
14	election shall be in writing and may not be revoked. S corporations that file their
15	corporation income tax returns pursuant to R.S. 47:287.732.2 shall not be eligible to
16	make this flow through election beginning with the taxable year for which the
17	election is first made.
18	* * *
19	Section 2. This Act shall become effective for all tax years beginning on or after
20	January 1, 2019.
21	Section 3. This Act shall become effective upon signature by the governor or, if not
22	signed by the governor, upon expiration of the time for bills to become law without signature
23	by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
24	vetoed by the governor and subsequently approved by the legislature, this Act shall become
25	effective on the day following such approval.

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.

<u>Present law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.
- 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.

<u>Proposed law</u> 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.

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

<u>Proposed law</u> 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.

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

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

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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.

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

<u>Proposed law</u> retains <u>present law</u> and requires individual income taxpayers who use the <u>proposed law</u> 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.

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

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

<u>Present law</u> 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.

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

<u>Proposed law</u> 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, <u>proposed law</u> 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.

<u>Proposed law</u> prohibits an entity from making an election in accordance with <u>proposed law</u> 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 <u>House Committee on Ways and Means</u> to the <u>original</u> bill:

- 1. Change the timing for an entity to make its S corporation election <u>from</u> on or before the 15th day of the 4th month of the taxable year <u>to</u> 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 <u>proposed law</u> for the same taxable year if they file a composite partnership return.