

2021 Regular Session

SENATE BILL NO. 157

BY SENATOR ALLAIN AND REPRESENTATIVE BISHOP

TAX EXEMPTIONS. Exempts certain mobile workers from individual income tax and their employers from withholding tax. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:242(1)(g) and (2) and 293(10) and to enact R.S.

3 47:111(A)(12), 112.2, and 248, relative to exemptions from employee withholding

4 and individual income tax for wages received by certain nonresidents; to authorize

5 an exemption from withholding for certain employers; to provide for an exemption

6 from individual income tax for certain nonresident employees in the state for fewer

7 than thirty days; to provide for exceptions, limitations, and requirements; to provide

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

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:242(1)(g) and (2) and 293(10) are hereby amended and reenacted
11 and R.S. 47:111(A)(12), 112.2, and 248 are hereby enacted to read as follows:

12 §111. Definitions

13 A. Wages. For purposes of this Subpart the term "wages" means all

14 remuneration (other than fees paid to a public official) for services performed by an

15 employee for his employer, including the cash value of all remuneration paid in any

16 medium other than cash; except that such term shall not include remuneration paid:

17 * * *

1 **(12) That is exempt from this provision pursuant to the mobile workforce**
2 **employer exemption from withholding and reporting requirement provided in**
3 **R.S. 47:112.2.**

4 * * *

5 **§112.2. Mobile workforce employer exemption from withholding and reporting**
6 **requirement**

7 **A. Beginning January 1, 2022, except as otherwise provided in this**
8 **Section, an employer is not required to withhold taxes under R.S. 47:112 on**
9 **wages that are paid to an employee described in R.S. 47:248. If, during the**
10 **calendar year, the number of days an employee spends performing employment**
11 **duties for the employer and any entity related to the employer in this state**
12 **exceeds the thirty-day threshold described in R.S. 47:248(B)(1)(a), an employer**
13 **shall withhold and remit tax to this state for every day in that calendar year,**
14 **including the first thirty days during which the employee performed**
15 **employment duties in this state.**

16 **B. The Department of Revenue shall not require the payment of any**
17 **penalties or interest otherwise applicable for failing to deduct and withhold**
18 **income taxes as required under this Subpart if, when determining whether**
19 **withholding was required, the employer met either of the following conditions:**

20 **(1) The employer at its sole discretion maintained a time and attendance**
21 **system specifically designed to allocate employee wages for income tax purposes**
22 **among all taxing jurisdictions in which the employee performs employment**
23 **duties for the employer, and the employer relied on data from that system.**

24 **(2) The employer did not maintain a time and attendance system, and the**
25 **employer relied on either:**

26 **(a) Its own records, maintained in the regular course of business, of the**
27 **employee's location.**

28 **(b) The employee's reasonable determination of the time the employee**
29 **expected to spend performing employment duties in this state provided the**

1 employer did not have actual knowledge of fraud on the part of the employee
2 in making the determination and provided that the employer and the employee
3 did not collude to evade taxation in making the determination.

4 C. For purposes of this Section, an employee shall be considered present
5 and performing employment duties within this state for a day if the employee
6 performs more of the employee's employment duties in this state than in any
7 other state during that day. Any portion of the day during which the employee
8 is in transit shall not be considered in determining the location of an employee's
9 performance of employment duties.

10 * * *

11 §242. Segregation of items of gross income

12 All items of gross income, not otherwise exempted in this Chapter, shall be
13 segregated into two general classes.

14 (1) The class of gross income to be designated as "allocable income" shall
15 include only the following:

16 * * *

17 (g) Salaries, wages, or other compensation received by a nonresident
18 individual for personal services.

19 (i) However, salaries, **Salaries**, wages, or other compensation received by a
20 nonresident individual for personal services rendered during a declared state disaster
21 or emergency as defined in R.S. 47:53.5 shall not be considered an item of gross
22 income to be designated as allocable income.

23 (ii) Wages, as defined by R.S. 47:111(A), paid to a nonresident individual
24 that are exempt pursuant to the mobile workforce provisions of R.S. 47:248
25 shall not be considered an item of gross income to be designated as allocable
26 income.

27 * * *

28 (2) The class of income to be designated as "apportionable income" shall
29 include all items of gross income which are not properly includible in allocable

1 income as defined in this Section.

2 (a) However, salaries, **Salaries**, wages, or other compensation received by
 3 a nonresident individual for personal services rendered during a declared state
 4 disaster or emergency and income from construction, repair, or other similar services
 5 received by a nonresident corporation for disaster or emergency-related work
 6 rendered during a declared state disaster or emergency as defined in R.S. 47:53.5
 7 shall not be considered an item of gross income to be designated as apportionable
 8 income.

9 (b) Wages, as defined by R.S. 47:111(A), paid to a nonresident individual
 10 that are exempt pursuant to the mobile workforce provisions of R.S. 47:248
 11 shall not be considered an item of gross income to be designated as allocable
 12 income.

13 * * *

14 §248. Exemption for certain nonresident individuals; mobile workforce

15 A. Definitions. As used in this Section:

16 (1) "Professional athlete" means an athlete who performs services in a
 17 professional athletic event for compensation and includes active players and
 18 players on the disabled list if required to travel with the team.

19 (2) "Professional entertainer" means a person who performs services in
 20 the professional performing arts for compensation on a per-event basis.

21 (3) "Public figure" means a person of prominence who performs services
 22 at discrete events, such as speeches, public appearances, or similar events, for
 23 compensation on a per-event basis.

24 (4) "Qualified production employee" means a person who performs
 25 services of any nature directly relating to a state-certified production for
 26 compensation, provided that the compensation paid to the person are qualified
 27 production expenditures under the motion picture production tax credit, R.S.
 28 47:6007, and that the compensation is subject to withholding as a condition to
 29 treating the compensation as a qualified production expenditure.

1 **(5) "Staff member of a professional athletic team" means any person**
 2 **required to travel with and perform services on behalf of a professional athletic**
 3 **team, including but not limited to coaches, managers, and trainers.**

4 **(6) "Time and attendance system" means a system through which an**
 5 **employee is required, on a contemporaneous basis, to record the employee's**
 6 **work location for every day worked outside the state where the employee's**
 7 **employment duties are primarily performed and that is designed to allow the**
 8 **employer to allocate the employee's compensation for income tax purposes**
 9 **among all states in which the employee performs employment duties for the**
 10 **employer.**

11 **B.(1) Beginning January 1, 2022, wages, as defined by R.S. 47:111(A),**
 12 **paid to a nonresident individual are exempt from the tax levied under R.S.**
 13 **47:290 if all of the following conditions apply:**

14 **(a) The compensation is paid for employment duties performed by the**
 15 **individual in this state for thirty or fewer days in the calendar year.**

16 **(b) The individual performed employment duties in more than one state**
 17 **during the calendar year.**

18 **(c) The wages are not paid for employment duties performed by the**
 19 **individual in the individual's capacity as a professional athlete, staff member of**
 20 **a professional athletic team, professional entertainer, public figure, or qualified**
 21 **production employee.**

22 **(d) The individual's income is exempt from taxation by this state under**
 23 **the United States Constitution or federal statute or the nonresident individual's**
 24 **state of residence either provides a substantially similar exemption or does not**
 25 **impose an individual income tax.**

26 **(2) The exemption provided in this Subsection shall not apply if the**
 27 **nonresident individual has any other income derived from sources within this**
 28 **state for the taxable year.**

29 * * *

1 §293. Definitions

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

4 * * *

5 (10) "Tax table income", for nonresident individuals, means the amount of
6 Louisiana income, as provided in this Part, allocated and apportioned under the
7 provisions of R.S. 47:241 through 247, plus the total amount of the personal
8 exemptions and deductions already included in the tax tables promulgated by the
9 secretary under authority of R.S. 47:295, less the proportionate amount of the federal
10 income tax liability, excess federal itemized personal deductions, the temporary
11 teacher deduction, the recreation volunteer and volunteer firefighter deduction, the
12 construction code retrofitting deduction, any gratuitous grant, loan, or other benefit
13 directly or indirectly provided to a taxpayer by a hurricane recovery entity if such
14 benefit was included in federal adjusted gross income, the exclusion provided for in
15 R.S. 47:297.3 for S Bank shareholders, the deduction for expenses disallowed by 26
16 U.S.C. 280C, salaries, wages or other compensation received for disaster or
17 emergency-related work rendered during a declared state disaster or emergency,
18 wages of nonresident individuals who are eligible for the mobile workforce
19 exemption pursuant to R.S. 47:248, the deduction for net capital gains, the pass-
20 through entity exclusion provided in R.S. 47:297.14, and personal exemptions and
21 deductions provided for in R.S. 47:294. The proportionate amount is to be
22 determined by the ratio of Louisiana income to federal adjusted gross income. When
23 federal adjusted gross income is less than Louisiana income, the ratio shall be one
24 hundred percent.

25 * * *

26 Section 2. This Act shall become effective upon signature by the governor or, if not
27 signed by the governor, upon expiration of the time for bills to become law without signature
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 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 157 Original 2021 Regular Session Allain

Present law requires nonresident individuals to pay individual income tax to the state for all income earned within or derived from sources in the state.

Proposed law exempts nonresident employees who perform their employment duties in this state for 30 or fewer days during a calendar year.

Proposed law provides that this exemption for employees only applies if all of the following are true:

- (1) The nonresident individual performed employment duties in this state for 30 or fewer days during the year.
- (2) The nonresident individual performed employment duties in more than one state.
- (3) The nonresident individual did not receive the wages for performing duties as a professional athlete, staff member of a professional athletic team, professional entertainer, public figure, or qualified production employee.
- (4) The nonresident individual's state of residence either provides a substantially similar exemption or does not impose an individual income tax.
- (5) The nonresident individual did not have any other Louisiana source income.

Present law requires every employer paying wages to an employee performing services in the state to deduct and remit withholding tax.

Proposed law exempts employers from this requirement for employees who perform employment duties in this state for 30 or fewer days during the year if the employee is exempt from state individual income tax under proposed law.

Proposed law provides that if a nonresident employee performs employment duties in this state for more than 30 days, that the employer is required to remit tax to this state for every day in that calendar year, including the first 30 days.

Proposed law does not allow the Dept. of Revenue to impose penalties or charge interest for failure to withhold by an employer with nonresident employees if the employer relied on:

- (1) Data from a time and attendance system specifically designed to allocate employee wages for income tax purposes among all taxing jurisdictions.
- (2) In the absence of a time and attendance system, on its own records maintained in the regular course of business or on the employee's determination of the time the employee performed employment duties in this state provided that the employer did not have actual knowledge of fraud on the part of the employee.

Effective upon the signature of the governor.

(Amends R.S. 47:242(1)(g) and (2) and 293(10); adds R.S. 47:111(A)(12), 112.2, and 248)