

2016 First Extraordinary Session

HOUSE BILL NO. 19

BY REPRESENTATIVE JAMES

TAX/CORP FRANCHISE: Provides relative to the entities to which corporate franchise tax applies (Item #28)

1 AN ACT

2 To amend and reenact R.S. 12:1368 and R.S. 47:601(A)(3) and (C)(1), 602(G), and 611 and
3 to enact R.S. 47:601(C)(3) and 602(H), relative to corporate franchise tax; to provide
4 relative to the entities to which the tax applies; to provide for applicability; to
5 provide for certain deductions for taxable capital; to provide for initial payment of
6 the franchise tax; to provide for an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 12:1368 is hereby amended and reenacted to read as follows:

9 §1368. Taxation

10 A limited liability company created under this Chapter or entering the state
11 pursuant to this Chapter shall pay such taxes as are imposed by the laws of this state
12 or any political subdivision thereof on domestic and foreign limited partnerships on
13 an identical basis therewith. ~~However, for~~ For state income and franchise tax
14 purposes, a limited liability company shall be treated and taxed in the same manner
15 that it is treated and taxed for federal income tax purposes.

16 Section 2. R.S. 47:601(A)(3) and (C)(1), 602(G), and 611 are hereby amended and
17 reenacted and R.S. 47:601(C)(3) and 602(H) are hereby enacted to read as follows:

18 §601. Imposition of tax

19 A. Every domestic corporation and every foreign corporation, exercising its
20 charter, or qualified to do business or actually doing business in this state, or owning

1 or using any part or all of its capital, plant, or any other property in this state, subject
2 to compliance with all other provisions of law, except as otherwise provided for in
3 this Chapter shall pay an annual tax at the rate of one dollar and fifty cents for each
4 one thousand dollars, or major fraction thereof on the first three hundred thousand
5 dollars of taxable capital and at the rate of three dollars for each one thousand
6 dollars, or major fraction thereof, which exceeds three hundred thousand dollars of
7 taxable capital. Taxable capital shall be determined as hereinafter provided. The tax
8 levied herein is due and payable on any one or all of the following alternative
9 incidents:

10 * * *

11 (3) The owning or using any part or all of its capital, plant, or other property
12 in this state ~~in a corporate capacity~~; whether owned directly or indirectly by or
13 through a partnership, joint venture, or any other business organization.

14 * * *

15 C.(1) As used herein the term "domestic corporation" shall mean and include
16 all any of the following:

17 (a) ~~corporations~~; Corporations, joint stock companies or associations, or
18 other business organizations organized under the laws of this state which have
19 privileges, powers, rights, or immunities not possessed by individuals or
20 partnerships.

21 (b) All entities taxed as corporations pursuant to 26 U.S.C. Subtitle A,
22 Chapter 1, Subchapter C for federal income tax purposes, notwithstanding any
23 provision of law to the contrary. Such entities shall be treated and taxed in the same
24 manner that such entities are treated and taxed for federal income tax purposes.

25 (c) Nothing in this Subsection shall extend franchise tax liability to any
26 limited liability company qualified and eligible to make an election to be taxed in
27 accordance with the provisions of 26 U.S.C. Subtitle A, Chapter 1, Subchapter S on
28 the first day of its fiscal or annual year.

29 * * *

1 (3) For purposes of this Chapter, "corporation" shall mean a domestic
2 corporation or foreign corporation as provided for in this Section.

3 * * *

4 §602. Determination of taxable capital

5 * * *

6 G. Holding company deduction

7 (1) Any corporation, as defined in R.S. 47:601(C), that is subject to the
8 franchise tax imposed by R.S. 47:601(A) and that is not subject to R.S. 47:602(B),
9 (C), (D), (E), or (F), that has one or more subsidiaries as defined hereinbelow, shall
10 be entitled to deduct from its taxable capital, as defined in this Chapter, its
11 investments in and advances to one or more subsidiaries, whether made directly or
12 indirectly, in computing its franchise tax as provided herein.

13 (2) For purposes of this Subsection, "subsidiaries" shall be defined as any
14 corporation, as provided for in R.S. 47:601(C), that is subject to the franchise tax
15 imposed by R.S. 47:601(A), and in which at least eighty percent of the voting and
16 nonvoting power of all classes of their stock, membership, partnership, or other
17 ownership interests are owned, directly or indirectly, by a corporation subject to the
18 franchise tax imposed by R.S. 47:601(A).

19 (3) The amount of the deductions allowed by this Subsection shall be the
20 sum of the amounts determined by multiplying the parent corporation's investments
21 in and advances to each subsidiary by each subsidiary's average ratio, as determined
22 pursuant to R.S. 47:606.

23 (4) Any direct or indirect subsidiary of a regulated company, as provided for
24 in R.S. 47:602(C), that directly owns at least eighty percent of the voting power of
25 the stock, membership, partnership, or other ownership interests in a "public-utility
26 company", as defined by the Public Utility Holding Company Act of 1935 prior to
27 its repeal, may use the holding corporation deduction provided in this Subsection
28 with respect to investments in and advances to subsidiary corporations or subsidiary
29 limited liability companies to calculate its taxable capital.

1 (H) The deduction for "investments in and advances to" as provided for in
2 this Section shall only include amounts included in the taxable capital of the
3 recipient.

4 * * *

5 §611. Newly taxable corporation

6 A. Every corporation or other entity subject to the franchise tax shall pay
7 only an initial tax of one hundred ten dollars in the first accounting period or fraction
8 thereof in which it becomes subject to the tax levied herein. The tax is first due
9 immediately on the corporation's becoming taxable under this Chapter and is payable
10 on or before the fifteenth day of the third month after the month in which the tax is
11 due. After the first closing of the corporate books, the tax is payable as provided in
12 R.S. 47:609, subject to the minimum tax as provided in this Subsection.

13 B. Notwithstanding the provisions of this Section, the initial tax of an entity
14 in existence and actually conducting business in Louisiana during its previous
15 calendar or fiscal year shall be calculated pursuant to R.S. 47:609, based on its
16 corporate books on the first day of the calendar or fiscal year in which the tax levied
17 under this Chapter becomes due and shall be payable on or before the date otherwise
18 required by this Section.

19 Section 3. The provisions of this Act shall be applicable to taxable periods beginning
20 on or after January 1, 2017.

21 Section 4. 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 19 Reengrossed

2016 First Extraordinary Session

James

Abstract: Expands definition of "domestic corporation" for purposes of the corporate franchise tax and authorizes a holding company deduction from taxable capital for certain investments. Further increases the rate of the initial franchise tax.

Present law establishes the corporation franchise tax. The tax is levied on every domestic and foreign corporation exercising its charter, qualified to do business, or actually doing business in La.

Present law levies corporation franchise tax on a corporation when any of the following occurs:

- (1) An organization does business within this state in a corporate form.
- (2) A corporation exercises its charter or the continuance of its charter within La.
- (3) An entity owns or uses part or all of its capital, plant, or other property in La. in a corporate capacity.

Present law establishes that, with respect to state income tax, limited liability companies are treated and taxed in the same manner that it is treated and taxed for federal income tax purposes.

Proposed law expands present law so that, for purposes of the franchise tax, limited liability companies are treated and taxed in the same manner that it is treated and taxed for federal income tax purposes.

Proposed law changes present law relative to taxable capital from owning or using part or all of an entity's capital, plant, or other property in La. in a corporate capacity to owning or using part or all of an entity's capital, plant, or other property in La. whether owned directly or indirectly by or through a partnership, joint venture, or any other business organization.

Present law defines "domestic corporation" as a corporation, joint stock company or association, or other business organization organized under the laws of this state that has privileges, powers, rights, or immunities not possessed by individuals or partnerships.

Proposed law retains present law and adds Subchapter C entities taxed as corporations pursuant to federal law to the definition of "domestic corporation". Further requires that these entities be treated and taxed in the same manner that they are taxed for federal income tax purposes.

Proposed law prohibits application of the franchise tax liability to any limited liability company qualified and eligible to make an election to be taxed as a Subchapter S corporation.

Proposed law authorizes a holding company deduction to be applied towards a company's taxable capital whereby a corporation as defined in proposed law that has one or more subsidiaries may deduct from its taxable capital any amounts of investments in or advances to one or more of its subsidiaries.

Proposed law defines "subsidiaries" as a corporation in which at least 80% of the voting and nonvoting power of all classes of their stock, membership, partnership, or other ownership interests are owned by a corporation subject to the franchise tax.

Present law requires every newly taxable corporation to pay an initial franchise tax of \$10 for the first accounting period.

Proposed law increases the rate of the initial franchise tax in present law from \$10 to \$110.

Proposed law requires that any entity in existence and conducting business in La. during the prior calendar year shall pay an initial tax based on its corporate books on the first day of the calendar or fiscal year in which the tax levied under proposed law becomes due and payable.

Proposed law applies to all taxable periods beginning on or after Jan. 1, 2017.

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

(Amends R.S. 12:1368 and R.S. 47:601(A)(3) and (C)(1) and 602(G); Adds R.S. 47:601(C)(3) and 602(H))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. With respect to franchise tax, require limited liability companies to be taxed in the same manner in which they are taxed for federal income tax purposes.
2. With respect to the definition of "domestic corporation", add the qualification that entities taxed as corporations for federal income tax purposes be taxed as Subchapter C corporations.
3. Require entities be treated and taxed the same as they are treated and taxed for federal income tax purposes.
4. Authorize a holding company deduction that allows corporations who invest taxable capital in a subsidiary to deduct the amount invested from the corporations taxable capital.
5. Define "subsidiary" as a corporation subject to the corporation franchise tax, for which 80% of the voting and nonvoting power are owned by a corporation subject to the corporation franchise tax.
6. Increase the initial rate of franchise tax in from \$10 to \$110.
7. Require an existing entity conducting business in La. during the previous calendar year to remit an initial tax based on its corporate books from the first day of the calendar year or fiscal year in which the tax is levied and becomes due and payable, rather than the initial tax of \$110 in proposed law.
8. Prohibit application of franchise tax liability to any limited liability company qualified and eligible to make an election to be taxed as a Subchapter S corporation.