2016 First Extraordinary Session

HOUSE BILL NO. 19

## BY REPRESENTATIVE JAMES

| 1  | AN ACT   |
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| 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     |
| 21 | or using any part or all of its capital, plant, or any other property in this state, subject |
| 22 | to compliance with all other provisions of law, except as otherwise provided for in          |
| 23 | this Chapter shall pay an annual tax at the rate of one dollar and fifty cents for each      |
| 24 | one thousand dollars, or major fraction thereof on the first three hundred thousand          |
| 25 | dollars of taxable capital and at the rate of three dollars for each one thousand            |

CODING: Words in struck through type are deletions from existing law; words  $\underline{\text{underscored}}$  are additions.

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| 1  | dollars, or major fraction thereof, which exceeds three hundred thousand dollars of        |
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| 2  | taxable capital. Taxable capital shall be determined as hereinafter provided. The tax      |
| 3  | levied herein is due and payable on any one or all of the following alternative            |
| 4  | incidents:   |
| 5  | * * *  |
| 6  | (3) The owning or using any part or all of its capital, plant, or other property           |
| 7  | in this state in a corporate capacity. whether owned directly or indirectly by or          |
| 8  | through a partnership, joint venture, or any other business organization of which the      |
| 9  | domestic or foreign corporation is a related party as defined in R.S. 47:605.1.            |
| 10 | * * *  |
| 11 | C.(1) As used herein the term "domestic corporation" shall mean and include                |
| 12 | all any of the following:  |
| 13 | (a) corporations, Corporations, joint stock companies or associations, or                  |
| 14 | other business organizations organized under the laws of this state which have             |
| 15 | privileges, powers, rights, or immunities not possessed by individuals or                  |
| 16 | partnerships.  |
| 17 | (b) All entities taxed as corporations pursuant to 26 U.S.C. Subtitle A,                   |
| 18 | Chapter 1, Subchapter C for federal income tax purposes, notwithstanding any               |
| 19 | provision of law to the contrary. Such entities shall be treated and taxed in the same     |
| 20 | manner that such entities are treated and taxed for federal income tax purposes.           |
| 21 | (c) Nothing in this Subsection shall extend franchise tax liability to any                 |
| 22 | limited liability company qualified and eligible to make an election to be taxed in        |
| 23 | accordance with the provisions of 26 U.S.C. Subtitle A, Chapter 1, Subchapter S on         |
| 24 | the first day of its fiscal or annual year or to any other entity that was acquired before |
| 25 | January 1, 2014, but not earlier than January 1, 2012, by an entity that was taxed         |
| 26 | pursuant to 26 U.S.C, Subtitle A, Chapter1, Subchapter S.                                  |
| 27 | * * *  |
| 28 | (3) For purposes of this Chapter, "corporation" shall mean a domestic                      |
| 29 | corporation or foreign corporation as provided for in this Section.                        |
| 30 | * * *  |

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| §602. | Determination | of taxable | capital |
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## G. Holding company deduction

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

- (2) For purposes of this Subsection, "subsidiaries" shall be defined as any corporation, as provided for in R.S. 47:601(C), that is subject to the franchise tax imposed by R.S. 47:601(A), and in which at least eighty percent of the voting and nonvoting power of all classes of their stock, membership, partnership, or other ownership interests are owned, directly or indirectly, by a corporation subject to the franchise tax imposed by R.S. 47:601(A).
- (3) The amount of the deductions allowed by this Subsection shall be the sum of the amounts determined by multiplying parent corporation's investments in and advances to each subsidiary by each subsidiary's average ratio, as determined pursuant to R.S. 47:606.
- (4) Any direct or indirect subsidiary of a regulated company, as provided for in R.S. 47:602(C), that directly owns at least eighty percent of the voting power of the stock, membership, partnership, or other ownership interests in a "public-utility company", as defined by the Public Utility Holding Company Act of 1935 prior to its repeal, may use the holding corporation deduction provided in this Subsection with respect to investments in and advances to subsidiary corporations or subsidiary limited liability companies to calculate its taxable capital.
- (H) The deduction for "investments in and advances to" as provided for in this Section shall only include amounts included in the taxable capital of the recipient.

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§611. Newly taxable corporation

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

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

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

Section 4. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

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