HLS 17RS-1199 **REENGROSSED**

2017 Regular Session

HOUSE BILL NO. 639

BY REPRESENTATIVES SCHEXNAYDER, BAGLEY, BERTHELOT, BILLIOT, TERRY BROWN, CARPENTER, CHANEY, COX, CROMER, DWIGHT, EDMONDS, FOIL, JIMMY HARRIS, HAVARD, HORTON, HOWARD, IVEY, JAMES, LYONS, POPE, REYNOLDS, SEABAUGH, STOKES, THIBAUT, AND **ZERINGUE**

TAX CREDITS: Excludes compensation earned by certain out-of-state employees and nonresident businesses for disaster or emergency-related work performed during disaster periods from state income tax

1	AN ACT
2	To amend and reenact R.S. 47:242 and 287.67 and to enact R.S. 47:53.5 and 111(A)(11),
3	relative to state income tax; to provide for the determination of wages for purposes
4	of calculating withholding tax; to exclude certain remuneration from the calculation
5	of wages; to provide for the classification of gross income; to exclude certain income
6	from certain gross income calculations; to provide for the determination of Louisiana
7	net income; to exclude certain income from the calculation of Louisiana net income;
8	to exclude certain income derived from activities conducted during certain disaster
9	periods from state income tax; to provide for definitions; to provide for the
10	promulgation of rules; to provide for applicability; to provide for an effective date;
11	and to provide for related matters.
12	Be it enacted by the Legislature of Louisiana:
13	Section 1. R.S. 47:242 and 287.67 are hereby amended and reenacted and R.S.
14	47:53.5 and 111(A)(11) are hereby enacted to read as follows:
15	§53.5. Exclusions from gross income; compensation for disaster services; out-of-
16	state employees and nonresident corporations; limitations
17	A.(1) There shall be excluded from the gross income of a nonresident
18	business that performs disaster or emergency-related work within the state during a

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1	declared state disaster or emergency period all income received for disaster or
2	emergency-related work conducted in this state during the disaster period. The
3	nonresident business shall not be considered to have established a level of presence
4	that would require the business to register, file, or remit the taxes imposed by
5	Chapter 1 of Subtitle II of this Title to this state.
6	(2) There shall be excluded from the gross income of an out-of-state
7	employee, compensation for personal services rendered by a nonresident individual
8	who is an out-of-state employee during a declared state disaster or emergency. The
9	out-of-state employee shall not be considered to have established residency or a
10	presence in the state that would require the employee or the employee's employer to
11	file and pay income taxes, to be subject to tax withholdings, or to be required to file
12	and pay any other state or local tax or fee during the disaster period. The out-of-state
13	employee and the employee's employer, shall also be exempt from any related state
14	or local employer withholding and remittance obligations.
15	B. For purposes of this Section, the following terms shall have the following
16	meanings:
17	(1) "Critical infrastructure" means equipment and property that is owned or
18	used by a communications provider or cable operator or for communications
19	networks, electric generation, electric transmission and distribution systems, natural
20	gas and natural gas liquids gathering, processing, and storage, transmission and
21	distribution systems, and water pipelines and related support facilities, equipment,
22	and property that serve multiple persons, including buildings, offices, structures,
23	lines, poles, and pipes.
24	(2) "Declared state disaster or emergency" means any of the following
25	disaster or emergency events:
26	(a) A disaster or emergency declared by executive order or proclamation by
27	the governor pursuant to Chapter 6 of Title 29 of the Louisiana Revised Statutes of
28	<u>1950.</u>

1	(b) A disaster or emergency for which a federal declaration has been issued
2	by the president.
3	(c) An event within the state for which a good faith response is required and
4	for which a registered business notifies the governor or appropriate local official of
5	the event and the governor or appropriate local official declares a disaster or
6	emergency under Chapter 6 of Title 29 of the Louisiana Revised Statues of 1950.
7	(3) "Disaster or emergency-related work" means repairing, renovating,
8	installing, building, rendering services, or other business activities that relate to
9	critical infrastructure that has been damaged, impaired, or destroyed by the declared
10	state disaster or emergency.
11	(4) "Disaster period" means a period that begins within ten days of the first
12	day of the governor's declaration, the president's declaration or designation, or
13	declaration by any other authorized state official or appropriate local government
14	official, as set forth in this Section, whichever occurs first, and that extends for a
15	period of sixty calendar days after the end of the declared disaster or emergency
16	period, or any longer period authorized by the designated state official, agency, or
17	local government.
18	(5)(a) "Nonresident business" means a business entity whose services are
19	requested by a registered business in the state or by a state or local government for
20	purposes of performing disaster or emergency-related work in the state and that prior
21	to the declared state of emergency, the nonresident business was not registered to do
22	business in this state, had no employees, agents or independent contractors in this
23	state, was not transacting business in this state, and has not filed and is not required
24	to file any state or local tax return in this state.
25	(b) For purposes of this Paragraph, "nonresident business" shall include a
26	business entity that is affiliated with a registered business in this state solely through
27	common ownership.

1	(6) "Out-of-state employee" means a nonresident individual who does not
2	provide services or activities in this state, except for disaster or emergency-related
3	work during a disaster period.
4	(7) "Registered business in the state" means a business entity that is
5	registered to do business in the state and was registered prior to a declared state of
6	emergency.
7	C. Nonresident businesses and out-of-state employees shall be required to
8	pay transaction taxes and fees including, but not limited to taxes on motor fuels,
9	hotel occupancy taxes, car rental taxes, fees, or other sales and use taxes on
10	purchases or services made in the state during the disaster period, unless these taxes
11	are otherwise exempted during the disaster period.
12	D. Any nonresident business or out-of-state employee that remains in the
13	state after the disaster period shall be subject to the state's normal standards for
14	establishing presence, residency, or doing business in the state and shall be subject
15	to and responsible for any business or employee tax requirements that ensue.
16	E. The secretary of the Department of Revenue may promulgate rules and
17	regulations in accordance with the Administrative Procedure Act as are necessary to
18	implement the provisions of this Section including, but not limited to rules to
19	develop and issue forms or establish online processes.
20	* * *
21	§111. Definitions
22	A. Wages. For purposes of this Subpart the term "wages" means all
23	remuneration (other than fees paid to a public official) for services performed by an
24	employee for his employer, including the cash value of all remuneration paid in any
25	medium other than cash; except that such term shall not include remuneration paid:
26	* * *
27	(11) for services performed by a nonresident individual during a declared
28	state disaster or emergency as defined in R.S. 47:53.5.
29	* * *

1	§242. Segregation of items of gross income
2	All items of gross income, not otherwise exempted in this Chapter, shall be
3	segregated into two general classes.
4	(1) The class of gross income to be designated as "allocable income" shall
5	include only the following:
6	(a) rents Rents and royalties from immovable or corporeal movable
7	property;
8	(b) profits Profits from sales or exchanges of property (including such items
9	such as stocks, bonds, notes, land, machinery, mineral rights) not made in the regular
10	course of business;.
11	(c) interest Interest income;.
12	(d) dividends Dividends from corporate stock;.
13	(e) royalties Royalties or similar revenue from the use of patents, trade
14	marks, copyrights, secret processes, and other similar intangible rights;
15	(f) income Income from estates, trusts, and partnerships;.
16	(g) salaries, Salaries, wages, or other compensation received by a
17	nonresident individual for personal services;. However, salaries, wages, or other
18	compensation received by a nonresident individual for personal services rendered
19	during a declared state disaster or emergency as defined in R.S. 47:53.5 shall not be
20	considered an item of gross income to be designated as allocable income.
21	(h) income Income from construction, repair, or other similar services.
22	However, income from construction, repair, or other similar services received by a
23	nonresident corporation for disaster emergency-related work rendered during a
24	declared state disaster or emergency as defined in R.S. 47:53.5 shall not be
25	considered an item of gross income to be designated as allocable income.
26	(2) The class of income to be designated as "apportionable income" shall
27	include all items of gross income which are not properly includible in allocable
28	income as defined in this Section. However, salaries, wages, or other compensation
29	received by a nonresident individual for personal services rendered during a declared

1 state disaster or emergency and income from construction, repair, or other similar 2 services received by a nonresident corporation for disaster or emergency-related 3 work rendered during a declared state disaster or emergency as defined in R.S. 4 47:53.5 shall not be considered an item of gross income to be designated as 5 apportionable income. 6 7 §287.67. Louisiana net income defined "Louisiana net income" means net income which is earned within or derived 8 from sources within the state of Louisiana. Louisiana net income shall not include 9 10 income received by a nonresident corporation for construction, repair, or other 11 similar services for disaster or emergency-related work rendered during a declared 12 state disaster or emergency as defined in R.S. 47:53.5. 13 Section 2. The provisions of this Act shall be applicable to all tax years beginning 14 on and after January 1, 2018. 15 Section 3. This Act shall become effective on July 1, 2017.

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 639 Reengrossed

2017 Regular Session

Schexnayder

Abstract: Excludes compensation and wages from out-of-state employees and nonresident businesses that perform disaster or emergency-related work in this state during a declared state disaster or emergency.

<u>Proposed law</u> excludes from the determination of gross income, all income earned by a nonresident business that performs disaster or emergency-related work in La. during a declared state disaster or emergency during the disaster period. Further provides that the nonresident business shall not be considered to have established a presence that requires the business to register, file, or remit income taxes imposed by <u>present law</u>.

<u>Proposed law</u> excludes from the determination of gross income, compensation for personal services rendered by a nonresident individual who is an out-of-state employee during a declared state disaster or emergency. The out-of-state employee shall not be considered to have established residency or a presence in the state that requires the filing or payment of income taxes or to be subject to tax withholdings.

<u>Proposed law</u> defines a "nonresident business" as a business entity whose services are requested by a registered business in La. or by a state or local government for purposes of performing disaster or emergency-related work. A nonresident business, prior to the

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declared state of emergency, must not have been registered to do business in La., must not have had employees, agents or independent contractors in La., was not transacting business in La., and had not filed or was required to file any state or local tax return.

<u>Proposed law</u> defines an "out-of-state employee" as a nonresident individual who does not provide services or activities in this state, except for disaster or emergency-related work during a disaster period.

<u>Proposed law</u> defines a "declared state disaster or emergency" as a disaster or emergency event declared by executive order or proclamation by the governor, the president, or a state event that the governor or an appropriate local official declares a disaster or emergency.

<u>Proposed law</u> defines the "disaster period" as a period that begins within 10 days of the first day of the disaster declaration through 60 calendar days after the end of the declared disaster or emergency period.

<u>Proposed law</u> requires nonresident businesses and out-of-state employees to pay all transaction taxes and fees on other purchases such as motor fuel taxes and hotel occupancy taxes during the disaster period.

<u>Proposed law</u> requires nonresident businesses or out-of-state employees that remain in La. after the disaster period to be subject to the state's normal standards for establishing presence, residency, or doing business in the state and be subject to any business or employee tax requirements that ensue.

<u>Proposed law</u> authorizes the promulgation of rules and regulations to develop and issue forms or establish online processes to implement the provisions of proposed law.

<u>Present law</u> defines "wages" for purposes of withholding income tax as all remuneration for services performed by an employee for an employer. <u>Present law</u> exempts certain types of remuneration from the definition of "wages" such as agricultural labor, domestic service in a private home, college club, or collegiate fraternity, and services by a U.S. citizen for a foreign government.

<u>Proposed law</u> retains <u>present law</u> but exempts remuneration for services performed by a nonresident individual during a declared state disaster or emergency from the definition of wages.

<u>Present law</u> provides for the determination of net income of a nonresident individual or a corporation for purposes of imposing corporate income tax. <u>Proposed law</u> further provides for the segregation of all items of gross income into either allocable income or apportionable income. <u>Present law</u> classifies salaries, wages or other compensation received by a nonresident individual for personal services and income from construction, repair, or other similar services as allocable income. Further classifies apportionable income as all items of gross income which are not properly includible in allocable income.

<u>Proposed law</u> retains <u>present law</u> but exempts salaries, wages, or other compensation received by a nonresident individual for personal services rendered during a declared state disaster or emergency and income from construction, repair, or other similar services received by a nonresident corporation for disaster emergency-related work rendered during a declared state disaster or emergency from being designated as either allocable income or apportionable income.

<u>Present law</u> defines "La. net income" as net income earned within or derived from sources within the state.

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<u>Proposed law</u> retains <u>present law</u> but exempts income received by a nonresident corporation for construction, repair, or other similar services for disaster or emergency-related work rendered during a declared state disaster or emergency from the definition of La. net income.

Proposed law is applicable to all tax years beginning on and after Jan. 1, 2018.

Effective July 1, 2017.

(Amends R.S. 47:242 and 287.67; Adds R.S. 47:53.5 and 111(A)(11))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Make technical changes.