

Regular Session, 2012

HOUSE BILL NO. 729

BY REPRESENTATIVES ROBIDEAUX, ADAMS, BARRAS, WESLEY BISHOP,  
BROADWATER, GUILLORY, HAZEL, HOFFMANN, JOHNSON, LORUSSO,  
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TAX/CORP INCOME: Extends the single sales factor for computation of corporate income  
and franchise taxes for manufacturing or merchandising to other qualified businesses  
through establishment of the Corporate Tax Apportionment Program

1 AN ACT

2 To enact Chapter 5 of Subtitle V of Title 47 of the Louisiana Revised Statutes of 1950, to  
3 be comprised of R.S. 47:4401, relative to corporation income and franchise taxes;  
4 to authorize the establishment of the Corporate Tax Apportionment Program and to  
5 provide for the administration thereof; to provide for certain definitions; to provide  
6 for contracts; to provide for certain eligibility requirements, limitations, and  
7 restrictions of such program; to prohibit the approval of certain contracts after a  
8 certain date; to provide with respect to applications; to authorize the promulgation  
9 of rules and regulations; to provide for an effective date; and to provide for related  
10 matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Chapter 5 of Subtitle V of Title 47 of the Louisiana Revised Statutes of  
13 1950, comprised of R.S. 47:4401, is hereby enacted to read as follows:

14 CHAPTER 5. CORPORATE TAX APPORTIONMENT PROGRAM

15 §4401. Corporate Tax Apportionment Program; definitions; eligibility requirements;  
16 contract approval

17 A. Definitions. For purposes of this Section, the following words shall have  
18 the following meanings unless the context clearly indicates otherwise:

- 1           (1) "Board" shall mean the Board of Commerce and Industry.
- 2           (2) "Business" shall mean any individual, firm, joint venture, association,  
3           corporation, estate, partnership, business trust, receiver, syndicate, or any other legal  
4           business entity.
- 5           (3) "Department" shall mean the Department of Economic Development.
- 6           (4) "Headquarter jobs" shall mean executive, administrative, or professional  
7           jobs based at a principal or regional office located in Louisiana, in which are located  
8           the principal or regional executive officers normally constituting a principal or  
9           regional headquarters providing corporate governance. Such principal or regional  
10           executive officers include but shall not be limited to chief executive officer, chief  
11           operating officer, and other senior level officers or appropriate regional equivalents.
- 12           (5) "Program" shall mean the Corporate Tax Apportionment Program  
13           established pursuant to the provisions of this Section, under which a qualified  
14           business may utilize the single sales factor.
- 15           (6) "Qualified business" shall mean a business certified by the secretary of  
16           the department as meeting the eligibility requirements of Subsection B of this  
17           Section and approved to participate in the program.
- 18           (7) "Secretary" shall mean the secretary of the Department of Economic  
19           Development.
- 20           (8) "Shared service center jobs" shall mean jobs based at a business located  
21           in Louisiana that perform specific corporate operational tasks for the business, or its  
22           affiliates, or customers, such as accounting, human resources, payroll, or purchasing.
- 23           (9) "Significant positive economic benefit" means that net positive tax  
24           revenues are to be generated as a result of the project. This shall be determined by  
25           taking into account direct, indirect, and induced impacts based on a standard  
26           economic impact methodology utilized by the department, the value of the single  
27           sales factor apportionment, and any other state tax and financial incentives that are  
28           used by the department to secure the qualified business.

1           (10) "Single sales factor" shall mean the single sales factor apportionment  
2           percent for manufacturing, merchandising, and other businesses as provided for in  
3           R.S. 47:287.95(F)(2)(b) and 606(A)(3)(b).

4           B. Eligibility requirements. (1) A business shall be eligible for participation  
5           in the program if all of the following requirements are met:

6           (a) At least fifty percent of the total annual sales of the business from a  
7           Louisiana site or sites is to out-of-state customers or buyers, or to in-state customers  
8           or buyers who resell the product or service to an out-of-state customer or buyer for  
9           ultimate use, or to the federal government, or any combination thereof.

10           (b) The activities of the business at a Louisiana site or sites include corporate  
11           headquarters, logistics, warehousing, data center, clean technology, destination  
12           health care, research and development, renewable energy, digital media and software  
13           development, or other business sector targeted by the secretary as a focus of the  
14           department's economic development efforts.

15           (2) The secretary, in his discretion, may include sales by affiliates of the  
16           business in determining the percentage of sales meeting the requirements of this  
17           Subsection. Except in the case of a business providing at least twenty-five new  
18           headquarter jobs or shared service center jobs, a business primarily engaged in retail  
19           sales, real estate, professional services, natural resource extraction or exploration,  
20           financial services, or venture capital funds, shall not be eligible for this program. No  
21           business engaged in gaming or gambling shall be eligible for the program.

22           C. Applications and contract approval. (1) At the invitation of the secretary,  
23           a business may apply for participation in the program by submitting to the  
24           department certified statements and substantiating documents as the department may  
25           require.

26           (2) The secretary may certify the eligibility of the business and request board  
27           approval of a contract providing for its participation in the program on terms and  
28           conditions specified by the secretary, if the secretary determines that the business  
29           meets the eligibility requirements provided for in Subsection B of this Section, that

1 participation in the program is needed in a highly competitive site selection situation  
2 to encourage a new business to locate in the state or to encourage an existing  
3 business to expand in this state, and that securing the project will result in a  
4 significant positive economic benefit to the state.

5 (3)(a) The board shall review the secretary's certification of the business and  
6 may approve the contract for participation in the program for an initial term of up to  
7 twenty years, renewable at the discretion of the secretary for up to an additional  
8 twenty years. Upon the board's approval of the secretary's certification of eligibility,  
9 the business shall be qualified for participation in the program and may utilize the  
10 single sales factor in the same manner as provided for in R.S. 47:287.95(F)(2)(b) and  
11 606(A)(3)(b). The department shall submit a copy of the approved certification, and  
12 any renewals thereof, to the Department of Revenue.

13 (b) No new contract shall be approved on or after July 1, 2017, but contracts  
14 existing on that date may continue and may be renewed.

15 D. Annual certification of eligibility. Prior to utilization of the single sales  
16 factor for a particular tax year, the qualified business shall submit to the department  
17 certification that it met the eligibility requirements for participation in the program  
18 and all performance obligations of the contract for that year, which certification shall  
19 be subject to audit by the department. If a qualified business fails to maintain the  
20 eligibility requirements for participation in the program or fails to meet all  
21 performance obligations of the contract, the secretary may suspend or terminate its  
22 participation in the program. If the secretary suspends or terminates a qualified  
23 business' participation in the program, the secretary shall notify the Department of  
24 Revenue that the business is not qualified to utilize the single sales factor.

25 E. Rules. The department may promulgate rules and regulations after  
26 approval of the House Committee on Ways and Means and the Senate Committee  
27 on Revenue and Fiscal Affairs meeting jointly within forty-five days of publication  
28 of such rules and regulations in the State Register.

1 Section 2. This provisions of this Act shall become effective on July 1, 2012, and  
 2 shall be applicable for all corporate income tax periods beginning on or after January 1,  
 3 2013, and for all corporation franchise tax periods beginning on or after January 1, 2014.

### 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)]

Robideaux

HB No. 729

**Abstract:** Extends the single sales factor (apportionment percent) for computation of corporate income and franchise taxes for manufacturing or merchandising to other qualified businesses through establishment of the Corporate Tax Apportionment Program.

Present law provides that the La. apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of manufacturing or merchandising shall be computed by means of a single ratio consisting of the ratio of net sales made in the regular course of a business and other gross apportionable income attributable to this state to the total net sales made in the regular course of business and other gross apportionable income of the taxpayer. Present law further provides for what the term "business of manufacturing or merchandising" does and does not include.

Proposed law retains present law but establishes the Corporate Tax Apportionment Program, hereinafter "program", which authorizes the Dept. of Economic Development (DED) to extend the apportionment percent used in calculating corporate income and franchise taxes in present law for manufacturing or merchandising to other qualified businesses certified by the secretary of DED, hereinafter "secretary", as meeting the eligibility requirements of proposed law and which are approved to participate in the program.

Proposed law provides for certain definitions, including "significant positive economic benefit" which means that net positive tax revenues are to be generated as a result of the project. Further provides how "significant positive economic benefit" shall be determined.

Proposed law provides that a business shall be eligible for participation in the program if all of the following requirements are met:

- (1) At least 50% of the total annual sales of the business from a La. site or sites is to out-of-state customers or buyers, in-state customers or buyers but the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or the federal government, or any combination thereof; and
- (2) The activities of the business at a La. site or sites include corporate headquarters, logistics, warehousing, data center, clean technology, destination health care, research and development, renewable energy, digital media and software development, or other business sector targeted by the secretary as a focus of the department's economic development efforts.

Proposed law further provides that, except for a business providing at least 25 new headquarter jobs or shared service center jobs, businesses primarily engaged in retail sales, real estate, professional services, natural resource extraction or exploration, financial services, or venture capital funds, shall not be eligible for this program. Prohibits a business engaged in gaming or gambling from being eligible to participate in the program.

Proposed law provides that at the invitation of the secretary, a business may apply for participation in the program by submitting to DED certified statements and documents as DED may require.

Proposed law authorizes the secretary to certify the eligibility of a business and request approval of a contract by the Board of Commerce and Industry, hereinafter "board", if the secretary determines that the business meets the eligibility requirements of the program, that participation in the program is needed in a highly competitive site selection situation, and that securing the project will result in a significant positive economic benefit to the state.

Proposed law authorizes contracts for an initial term of up to 20 years, renewable for up to an additional 20 years. Upon the board's approval, the business may utilize the single- sales factor for calculation of corporate income and franchise taxes for manufacturing or merchandising in the same manner as provided for in present law.

Proposed law requires DED to submit a copy of the approved certification and any contract renewals to the Dept. of Revenue.

Proposed law provides that prior to utilization of the single sales factor for a particular tax year, the business shall certify to DED that it met the eligibility requirements for participation in the program for that year. Failure of a business to maintain its eligibility for participation in the program or failure to meet all performance obligations of the contract may result in suspension or termination of its participation in the program.

Proposed law authorizes DED to promulgate rules and regulations after approval of the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs meeting jointly within 45 days of publication of the rules in the State Register.

Proposed law prohibits any new contracts from being approved on or after July 1, 2017; however, contracts existing on that date may continue and may be renewed.

Effective July 1, 2012, and shall be applicable for corporate income tax periods beginning on or after Jan. 1, 2013, and for all corporation franchise tax periods beginning on or after Jan. 1, 2014.

(Adds R.S. 47:4401)

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Added definition for "significant positive economic benefit".
2. Added limitation that no new contracts shall be approved after July 1, 2017; however, contracts existing on that date may be continued and may be renewed.
3. Added prohibition that no business engaged in gaming or gambling shall be eligible for the program.
4. Added requirement that, for purposes of legislative oversight of rules, that the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs meet jointly within 45 days of publication of rules.
5. Changed applicability of proposed law ~~from~~ all tax years beginning on and after Jan. 1, 2013, to all corporate income tax periods beginning on or after Jan. 1, 2013, and all corporate franchise tax periods beginning on or after Jan. 1, 2014.