

Regular Session, 2012

# ACT No. 415

HOUSE BILL NO. 729

BY REPRESENTATIVES ROBIDEAUX, ADAMS, BARRAS, WESLEY BISHOP,  
BROADWATER, GUILLORY, HAZEL, HOFFMANN, JOHNSON, LORUSSO,  
THIBAUT, AND PATRICK WILLIAMS

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:

19 (1) "Business" shall mean any individual, firm, joint venture, association,  
20 corporation, estate, partnership, business trust, receiver, syndicate, or any other legal  
21 business entity.

22 (2) "Department" shall mean the Department of Economic Development.

1           (3) "Headquarter jobs" shall mean executive, administrative, or professional  
2           jobs based at a principal or regional office located in Louisiana, in which are located  
3           the principal or regional executive officers normally constituting a principal or  
4           regional headquarters providing corporate governance. Such principal or regional  
5           executive officers include but shall not be limited to chief executive officer, chief  
6           operating officer, and other senior level officers or appropriate regional equivalents.

7           (4) "Program" shall mean the Corporate Tax Apportionment Program  
8           established pursuant to the provisions of this Section, under which a qualified  
9           business may utilize the single sales factor.

10           (5) "Qualified business" shall mean a business certified by the secretary of  
11           the department as meeting the eligibility requirements of Subsection B of this  
12           Section and approved to participate in the program.

13           (6) "Secretary" shall mean the secretary of the Department of Economic  
14           Development.

15           (7) "Shared service center jobs" shall mean jobs based at a business located  
16           in Louisiana that perform specific corporate operational tasks for the business, or its  
17           affiliates, or customers, such as accounting, human resources, payroll, or purchasing.

18           (8) "Significant positive economic benefit" means the generation of net  
19           positive tax revenues. This shall be determined by taking into account direct,  
20           indirect, and induced impacts based on a standard economic impact methodology  
21           utilized by the department, the value of the single sales factor apportionment, and  
22           any other state tax and financial incentives that are used by the department to secure  
23           the qualified business.

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

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

29           (a) At least fifty percent of the total annual sales of the business from a  
30           Louisiana site or sites is to out-of-state customers or buyers, or to in-state customers

1 or buyers who resell the product or service to an out-of-state customer or buyer for  
2 ultimate use, or to the federal government, or any combination thereof.

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

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

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

19 (2) The secretary may certify the eligibility of the business and request Joint  
20 Legislative Committee on the Budget approval of a contract providing for its  
21 participation in the program on terms and conditions specified by the secretary, if the  
22 secretary determines that the business meets the eligibility requirements provided for  
23 in Subsection B of this Section, that participation in the program is needed in a  
24 highly competitive site selection situation to encourage a new business to locate in  
25 the state or to encourage an existing business to expand in this state, and that  
26 securing the project will result in a significant positive economic benefit to the state.

27 (3)(a) The Joint Legislative Committee on the Budget shall review the  
28 secretary's certification of the business and may approve the contract for  
29 participation in the program for an initial term of up to twenty years, renewable at  
30 the discretion of the secretary for up to an additional twenty years. Upon the

1 approval by the Joint Legislative Committee on the Budget of the secretary's  
2 certification of eligibility, the business shall be qualified for participation in the  
3 program and may utilize the single sales factor in the same manner as provided for  
4 in R.S. 47:287.95(F)(2)(b) and 606(A)(3)(b). The department shall submit a copy  
5 of the approved certification, and any renewals thereof, to the Department of  
6 Revenue.

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

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

19 E. Economic Analysis Verification. Prior to the implementation of the  
20 program, an independent third-party economist selected by the Legislative Fiscal  
21 Office and the department, and retained by the department after approval of the Joint  
22 Legislative Committee on the Budget, shall verify the standard economic impact  
23 methodology utilized by the department.

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_