

SENATE BILL NO. 223

BY SENATOR ALLAIN

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AN ACT

To amend and reenact R.S. 47:287.732(B)(1), 293(10), and 1675(G), and to enact R.S. 47:287.732(B)(6), 287.732.2, 293(9)(a)(xviii), 297.14, and 1675(F)(4), relative to income taxation of Subchapter S corporations and other flow-through entities; to reduce the tax rates applicable to the income of Subchapter S corporations that elect to be taxed at the corporation level; to authorize certain flow-through entities not taxed as corporations to elect to file as corporations for state income tax purposes; to provide for a modification to exclude certain Subchapter S corporation and flow-through income from income subject to state individual income tax; to provide for tax credits earned by Subchapter S corporations and other flow-through entities; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:287.732(B)(1), 293(10), and 1675(G) are hereby amended and reenacted and R.S. 47:287.732(B)(6), 287.732.2, 293(9)(a)(xviii), 297.14, and 1675(F)(4) are hereby enacted to read as follows:

§287.732. S Corporations

* * *

B. S corporation exclusion. This Subsection provides an exclusion to corporations classified as S corporations under federal law for the taxable year, as follows:

(1) In computing Louisiana taxable income pursuant to this Part, an S corporation **that does not make an election pursuant to R.S. 47:287.732.2** may exclude such percentage of its Louisiana net income for the taxable year as is provided in R.S. 47:287.732(B)(2).

* * *

1 **(6) S corporations that elect to pay tax at the corporation level pursuant**
2 **to R.S. 47:287.732.2 shall not be eligible for this exclusion.**

3 * * *

4 **§287.732.2. Election for S corporations and other flow-through entities**

5 **A.(1) Any S corporation or entity taxed as a partnership for federal**
6 **income tax purposes may elect to be taxed and to comply with this Part in the**
7 **same manner as if the entity had been required to file an income tax return with**
8 **the Internal Revenue Service as a C corporation. S corporations that make this**
9 **election shall not be eligible for the exclusion provided in R.S. 47:287.732.**

10 **(2) The election shall be made in writing and may be made at any time**
11 **during the preceding taxable year, or at any time during the taxable year and**
12 **on or before the fifteenth day of the fourth month after the close of the taxable**
13 **year. The secretary may treat an election made after the fifteenth day of the**
14 **fourth month after the close of the taxable year as timely made for the taxable**
15 **year if the secretary determines that there was reasonable cause for the failure**
16 **to make the election timely.**

17 **(3) The election shall be effective for the taxable year of the entity for**
18 **which it is made and for all succeeding taxable years of the entity, until the**
19 **election is terminated by the secretary.**

20 **(4)(a) An entity that has made an election pursuant to this Section may**
21 **apply to the secretary for termination of the election if shareholders, partners,**
22 **or members holding more than one-half of the ownership interest in the entity**
23 **on the day on which the revocation is requested consent to the revocation**
24 **request.**

25 **(b) The secretary may terminate an entity's election if the entity shows**
26 **a material change in circumstances. A significant change in federal tax law may**
27 **be considered by the secretary as a material change in circumstances.**

28 **B. Notwithstanding any provision of law to the contrary, the tax on the**
29 **Louisiana taxable income of every entity that makes the election pursuant to**
30 **this Section shall be computed at the rates of:**

1 (1) Two percent upon the first twenty-five thousand dollars of Louisiana
2 taxable income.

3 (2) Four percent upon the amount of Louisiana taxable income above
4 twenty-five thousand dollars but not in excess of one hundred thousand dollars.

5 (3) Six percent upon the amount of Louisiana taxable income above one
6 hundred thousand dollars.

7 C. An entity that has made the election provided in this Section shall be
8 allowed a deduction in an amount equal to the federal income tax the entity
9 would have paid on its Louisiana net income for the taxable year if the entity
10 had been required to file an income tax return with the Internal Revenue
11 Service as a C corporation for the current and all prior taxable years, in
12 accordance with federal law.

13 D. The secretary may require the electronic filing of tax returns or
14 reports filed by entities making an election pursuant to this Section.

15 E. Unless otherwise provided in this Section, the provisions of this Part
16 shall apply to all entities making an election pursuant to this Section.

17 F. Any entity filing a composite partnership return pursuant to R.S.
18 47:201.1 is prohibited from making the election pursuant to this Section for the
19 same tax year.

20 * * *

21 §293. Definitions

22 The following definitions shall apply throughout this Part, unless the context
23 requires otherwise:

24 * * *

25 (9)(a) "Tax table income", for resident individuals, means adjusted gross
26 income plus interest on obligations of a state or political subdivision thereof, other
27 than Louisiana and its municipalities, title to which obligations vested with the
28 resident individual on or subsequent to January 1, 1980, and less:

29 * * *

30 (xviii) The pass-through entity exclusion provided in R.S. 47:297.14.

1 (10) "Tax table income", for nonresident individuals, means the amount of
 2 Louisiana income, as provided in this Part, allocated and apportioned under the
 3 provisions of R.S. 47:241 through 247, plus the total amount of the personal
 4 exemptions and deductions already included in the tax tables promulgated by the
 5 secretary under authority of R.S. 47:295, less the proportionate amount of the federal
 6 income tax liability, excess federal itemized personal deductions, the temporary
 7 teacher deduction, the recreation volunteer and volunteer firefighter deduction, the
 8 construction code retrofitting deduction, any gratuitous grant, loan, or other benefit
 9 directly or indirectly provided to a taxpayer by a hurricane recovery entity if such
 10 benefit was included in federal adjusted gross income, the exclusion provided for in
 11 R.S. 47:297.3 for S Bank shareholders, the deduction for expenses disallowed by
 12 I.R.C. Section 280C, salaries, wages or other compensation received for disaster or
 13 emergency-related work rendered during a declared state disaster or emergency, the
 14 deduction for net capital gains, **the pass-through entity exclusion provided in R.S.**
 15 **47:297.14**, and personal exemptions and deductions provided for in R.S. 47:294. The
 16 proportionate amount is to be determined by the ratio of Louisiana income to federal
 17 adjusted gross income. When federal adjusted gross income is less than Louisiana
 18 income, the ratio shall be one hundred percent.

19 * * *

20 **§297.14. Flow-through entity exclusion**

21 **A.(1) In computing Louisiana tax table income, an individual shall**
 22 **exclude net income or losses received from an entity of which the individual is**
 23 **a shareholder, partner, or member provided that the entity properly filed a**
 24 **Louisiana corporation income tax return pursuant to R.S. 47:287.732.2 that**
 25 **included the net income or loss.**

26 **(2) No exclusion shall be allowed for any amount that is attributable to**
 27 **income that, for any reason whatsoever, will not bear the tax due pursuant to**
 28 **R.S. 47:287.732.2.**

29 **B. A taxpayer whose federal individual income tax return is adjusted due**
 30 **to S corporation or partnership income or losses for which the taxpayer used**

1 this exclusion shall furnish a statement to the secretary, disclosing the nature
 2 and amounts of such adjustments within sixty days after the federal
 3 adjustments have been made and accepted by the taxpayer, provided that if the
 4 taxpayer does not receive a statement of the federal adjustments until after he
 5 accepts the adjustments, he shall have sixty days from the receipt of such
 6 statement within which to furnish the required statement to the collector.
 7 Paying the federal tax shown due or signing a consent to immediate assessment
 8 shall constitute an acceptance of the federal adjustments.

9 * * *

10 §1675. General administrative provisions for credits against income and corporation
 11 franchise tax

12 * * *

13 F. Credits granted, allocated, or transferred to entities not subject to Louisiana
 14 income tax or corporation franchise tax.

15 * * *

16 (4) The provisions of this Subsection shall not apply to entities that make
 17 an election pursuant to R.S. 47:287.732.2. Beginning with the taxable year for
 18 which the election is first made, the entity shall apply any credits earned at the
 19 entity level.

20 G. Credits granted or allocated to Subchapter S Corporations.

21 (1) Credits earned by, allocated to, or transferred to an S corporation during
 22 a year in which the corporation operated as a C corporation ~~must~~ **shall** be used at the
 23 corporation level.

24 (2)(a) Unless otherwise provided in the statute granting the credit, credits
 25 earned by, allocated to, or transferred to a corporation during a year in which the
 26 corporation operates as an S corporation do not flow through to the shareholders, but
 27 ~~must~~ **shall** be used at the corporation level unless the S corporation makes the annual
 28 election provided for in Subparagraph (b) of this Paragraph.

29 (b) Flow-through election for S corporations. An S corporation that earns or
 30 otherwise receives a tax credit through allocation or transfer during a year in which

1 the corporation operates as an S corporation may annually elect to flow through the
 2 entire amount of the credit to its shareholders. The election may be made for each
 3 credit received by the S corporation and shall be made annually. The election shall
 4 be in writing and may not be revoked. **S corporations that file their corporation**
 5 **income tax returns pursuant to R.S. 47:287.732.2 shall not be eligible to make**
 6 **this flow-through election beginning with the taxable year for which the election**
 7 **is first made.**

* * *

9 Section 2. This Act shall be effective for all tax years beginning on or after
 10 January 1, 2019.

11 Section 3. This Act shall become effective upon signature by the governor or, if not
 12 signed by the governor, upon expiration of the time for bills to become law without signature
 13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 15 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____