

2019 Regular Session

SENATE BILL NO. 227

BY SENATOR ALLAIN

TAX/FRANCHISE/CORPORATE. Provides relative to income taxation of Subchapter S corporations. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:287.732(B)(1), 293(10), and 1675(G), and to enact R.S.  
3 47:287.732(B)(6), 287.732.2, 293(9)(a)(xviii), and 297.14, relative to income  
4 taxation of Subchapter S corporations; to reduce the tax rates applicable to the  
5 income of Subchapter S corporations that elect to be taxed at the corporation level;  
6 to provide for a modification to exclude certain Subchapter S corporation income  
7 from income subject to state individual income tax; to provide for tax credits earned  
8 by Subchapter S corporations; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

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

13 §287.732. S Corporations

14 \* \* \*

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

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

5 \* \* \*

6 **(6) S corporations that elect to pay tax at the corporation level as**  
7 **provided in Subsection C of this Section shall not be eligible for this exclusion.**

8 \* \* \*

9 **§287.732.2. Election for S corporations**

10 **A.(1) Any S corporation may elect to be taxed and to comply with this**  
11 **Part in the same manner as if the corporation had been required to file an**  
12 **income tax return with the Internal Revenue Service as a C corporation. S**  
13 **corporations that make this election shall not be eligible for the exclusion**  
14 **provided in R.S. 47:287.732.**

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

22 **(3) The election shall be effective for the taxable year of the S**  
23 **corporation for which it is made and for all succeeding taxable years of the S**  
24 **corporation, until the election is terminated by the secretary.**

25 **(4)(a) An S corporation that has made an election pursuant to this**  
26 **Section may apply to the secretary for termination of the election if**  
27 **shareholders holding more than one-half of the ownership interest in the S**  
28 **corporation on the day on which the revocation is requested consent to the**  
29 **revocation request.**

1                   **(b) The secretary may terminate an S corporation's election if the**  
2                   **corporation shows a material change in circumstances. A significant change in**  
3                   **federal tax law may be considered by the secretary as a material change in**  
4                   **circumstances.**

5                   **B. Notwithstanding any provision of law to the contrary, the tax on the**  
6                   **Louisiana taxable income of every S corporation that makes the election**  
7                   **pursuant to this Section shall be computed at the rates of:**

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

10                   **(2) Four percent upon the amount of net income above twenty-five**  
11                   **thousand dollars but not in excess of one hundred thousand dollars.**

12                   **(3) Six percent on the amount of Louisiana taxable income above one**  
13                   **hundred thousand dollars.**

14                   **C. An S corporation that has made the election provided in this Section**  
15                   **shall be allowed a deduction in an amount equal to the federal income tax the**  
16                   **corporation would have paid on its Louisiana net income for the taxable year**  
17                   **if the corporation had been required to file an income tax return with the**  
18                   **Internal Revenue Service as a C corporation for the current and all prior**  
19                   **taxable years, in accordance with federal law.**

20                   **D. The secretary may require the electronic filing of tax returns or**  
21                   **reports filed by S corporations making an election pursuant to this Section.**

22   \*       \*       \*

23                   §293. Definitions

24                   The following definitions shall apply throughout this Part, unless the context  
25                   requires otherwise:

26   \*       \*       \*

27                   (9)(a) "Tax table income", for resident individuals, means adjusted gross  
28                   income plus interest on obligations of a state or political subdivision thereof, other  
29                   than Louisiana and its municipalities, title to which obligations vested with the

1 resident individual on or subsequent to January 1, 1980, and less:

2 \* \* \*

3 **(xviii) The S corporation exclusion provided in R.S. 47:297.14.**

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

22 \* \* \*

23 **§297.14. S corporation exclusion**

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

29 **(2) No exclusion shall be allowed for any amount that is attributable to**

1 income that, for any reason whatsoever, will not bear the tax due pursuant to  
2 R.S. 47:287.732.2.

3 B. A taxpayer whose federal individual income tax return is adjusted due  
4 to S corporation income or losses for which the taxpayer used this exclusion  
5 shall furnish a statement to the secretary, disclosing the nature and amounts of  
6 such adjustments within sixty days after the federal adjustments have been  
7 made and accepted by the taxpayer, provided that if the taxpayer does not  
8 receive a statement of the federal adjustments until after he accepts the  
9 adjustments, he shall have sixty days from the receipt of such statement within  
10 which to furnish the required statement to the collector. Paying the federal tax  
11 shown due or signing a consent to immediate assessment shall constitute an  
12 acceptance of the federal adjustments.

13 \* \* \*

14 §1675. General administrative provisions for credits against income and corporation  
15 franchise tax

16 \* \* \*

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

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

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

26 (b) Flow through election for S corporations. An S corporation that earns or  
27 otherwise receives a tax credit through allocation or transfer during a year in which  
28 the corporation operates as an S corporation may annually elect to flow through the  
29 entire amount of the credit to its shareholders. The election may be made for each

1 credit received by the S corporation and shall be made annually. The election shall  
 2 be in writing and may not be revoked. **S corporations that file their corporation**  
 3 **income tax returns pursuant to R.S. 47:287.732(C) shall not be eligible to make**  
 4 **this flow through election beginning with the taxable year for which the election**  
 5 **is first made.**

6 \* \* \*

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

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

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Leonore Heavey.

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DIGEST

SB 227 Original                      2019 Regular Session                      Allain

Present law requires Subchapter S corporations to pay Louisiana income tax using the corporate income tax rate and bracket schedule as follows:

- (1) 4% on the first \$25,000 of La. taxable income.
- (2) 5% on La. taxable income above \$25,000 but not in excess of \$50,000.
- (3) 6% on La. taxable income above \$50,000 but not in excess of \$100,000.
- (4) 7% on La. taxable income above \$100,000 but not in excess of \$200,000.
- (5) 8% on all La. taxable income in excess of \$200,000.

Proposed law provides an election that authorizes S corporations to file and pay tax on their Louisiana income as if they were C corporations.

Proposed law changes the Subchapter S corporation state income tax rates to the married individual income tax rates and brackets for S corporations that elect to be taxed at the corporate level:

- (1) 2% on the first \$25,000 of La. taxable income.
- (2) 4% on La. taxable income above \$25,000 but not in excess of \$100,000.
- (3) 6% on La. taxable income in excess of \$100,000.

Present law provides a deduction for federal income tax paid on Louisiana income for the taxable year.

Proposed law authorizes Subchapter S corporations that elect to file and pay Louisiana income tax as if they were a corporation a deduction for the amount of federal income tax the corporations would have paid on its Louisiana income if it had been taxed as a C corporation for federal income tax purposes.

Present law provides a corporation income tax exclusion for Subchapter S income that is reported on a Louisiana individual resident or nonresident income tax return.

Proposed law retains present law Subchapter S exclusion for S corporations not making the proposed law election and further provides an individual income tax exclusion for Louisiana Subchapter S income and losses that are included in Louisiana individual income taxpayer's federal adjusted gross income for that taxable year.

Present law requires individual income taxpayers to inform the secretary of revenue of federal income tax adjustments.

Proposed law retains present law and requires individual income taxpayers who use the proposed law S corporation exclusion to notify the secretary if changes are made to their federal income tax return due to adjustments to an S corporation's income or losses.

Present law requires S corporations to use corporation income tax credits at the corporation level unless the S corporation annually elects to flow corporation income tax credits to shareholders.

Proposed law retains present law requiring S corporations to use credits at the corporation level and ends the annual election to flow through credits on Jan. 1, 2019.

Proposed law applies to all taxable years beginning on or after Jan. 1, 2019.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:287.732(B)(1), 293(10), and 1675(G); adds R.S. 47:287.732(B)(6), 287.732.2, 293(9)(a)(xviii), and 297.14)