

2017 Regular Session

HOUSE BILL NO. 639

BY REPRESENTATIVE SCHEXNAYDER

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(1)(g) and (h) and (2) and 287.67 and to enact R.S.
3 47:53.5 and 111(A)(11), relative to state income tax; to provide for the determination
4 of wages for purposes of calculating withholding tax; to exclude certain
5 remuneration from the calculation of wages; to provide for the classification of gross
6 income; to exclude certain income from certain gross income calculations; to provide
7 for the determination of Louisiana net income; to exclude certain income from the
8 calculation of Louisiana net income; to exclude certain income derived from
9 activities conducted during certain disaster periods from state income tax; to provide
10 for definitions; to provide for the promulgation of rules; to provide for applicability;
11 to provide for an effective date; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 47:242(1)(g) and (h) and (2) and 287.67 are hereby amended and
14 reenacted and R.S. 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
19 declared state disaster or emergency period all income received for disaster or

1 emergency-related work conducted in this state during the disaster period. The
2 nonresident business shall not be considered to have established a level of presence
3 that would require the business to register, file, or remit the taxes imposed by
4 Chapter 1 of Subtitle II of this Title to this state.

5 (2) There shall be excluded from the gross income of an out-of-state
6 employee, compensation for personal services rendered by a nonresident individual
7 who is an out-of-state employee during a declared state disaster or emergency. The
8 out-of-state employee shall not be considered to have established residency or a
9 presence in the state that would require the employee or the employee's employer to
10 file and pay income taxes, to be subject to tax withholdings, or to be required to file
11 and pay any other state or local tax or fee during the disaster period. The out-of-state
12 employee and the employee's employer, shall also be exempt from any related state
13 or local employer withholding and remittance obligations.

14 B. For purposes of this Section, the following terms shall have the following
15 meanings:

16 (1) "Critical infrastructure" means equipment and property that is owned or
17 used by a communications provider or cable operator or for communications
18 networks, electric generation, electric transmission and distribution systems, natural
19 gas and natural gas liquids gathering, processing, and storage, transmission and
20 distribution systems, and water pipelines and related support facilities, equipment,
21 and property that serve multiple persons, including buildings, offices, structures,
22 lines, poles, and pipes.

23 (2) "Declared state disaster or emergency" means any of the following
24 disaster or emergency events:

25 (a) A disaster or emergency declared by executive order or proclamation by
26 the governor pursuant to Chapter 6 of Title 29 of the Louisiana Revised Statutes of
27 1950.

28 (b) A disaster or emergency for which a federal declaration has been issued
29 by the president.

1 (c) An event within the state for which a good faith response is required and
2 for which a registered business notifies the governor or appropriate local official of
3 the event and the governor or appropriate local official declares a disaster or
4 emergency under Chapter 6 of Title 29 of the Louisiana Revised Statutes of 1950.

5 (3) "Disaster or emergency-related work" means repairing, renovating,
6 installing, building, rendering services, or other business activities that relate to
7 critical infrastructure that has been damaged, impaired, or destroyed by the declared
8 state disaster or emergency.

9 (4) "Disaster period" means a period that begins within ten days of the first
10 day of the governor's declaration, the president's declaration or designation, or
11 declaration by any other authorized state official or appropriate local government
12 official, as set forth in this Section, whichever occurs first, and that extends for a
13 period of sixty calendar days after the end of the declared disaster or emergency
14 period, or any longer period authorized by the designated state official, agency, or
15 local government.

16 (5)(a) "Nonresident business" means a business entity whose services are
17 requested by a registered business in the state or by a state or local government for
18 purposes of performing disaster or emergency related work in the state and that prior
19 to the declared state of emergency, the nonresident business was not registered to do
20 business in this state, had no employees, agents or independent contractors in this
21 state, was not transacting business in this state, and has not filed and is not required
22 to file any state or local tax return in this state.

23 (b) For purposes of this Paragraph, "nonresident business" shall include a
24 business entity that is affiliated with a registered business in this state solely through
25 common ownership.

26 (6) "Out-of-state employee" means a nonresident individual who does not
27 provide services or activities in this state, except for disaster or emergency related
28 work during a disaster period.

1 (7) "Registered business in the state" means a business entity that is
2 registered to do business in the state and was registered prior to a declared state of
3 emergency.

4 C. Nonresident businesses and out-of-state employees shall be required to
5 pay transaction taxes and fees including, but not limited to taxes on motor fuels,
6 hotel occupancy taxes, car rental taxes, fees, or other sales and use taxes on
7 purchases or services made in the state during the disaster period, unless these taxes
8 are otherwise exempted during the disaster period.

9 D. Any nonresident business or out-of-state employee that remains in the
10 state after the disaster period shall be subject to the state's normal standards for
11 establishing presence, residency, or doing business in the state and shall be subject
12 to and responsible for any business or employee tax requirements that ensue.

13 E. The secretary of the Department of Revenue may promulgate rules and
14 regulations in accordance with the Administrative Procedures Act as are necessary,
15 including rules to develop and issue forms or establish online processes to implement
16 the provisions of this Section.

17 * * *

18 §111. Definitions

19 A. Wages. For purposes of this Subpart the term "wages" means all
20 remuneration (other than fees paid to a public official) for services performed by an
21 employee for his employer, including the cash value of all remuneration paid in any
22 medium other than cash; except that such term shall not include remuneration paid:

23 * * *

24 (11) for services performed by a nonresident individual during a declared
25 state disaster or emergency as defined in R.S. 47:53.5.

26 * * *

27 §242. Segregation of items of gross income

28 All items of gross income, not otherwise exempted in this Chapter, shall be
29 segregated into two general classes.

1 (1) The class of gross income to be designated as "allocable income" shall
2 include only the following:

3 * * *

4 (g) salaries, wages or other compensation received by a nonresident
5 individual for personal services; however, salaries, wages, or other compensation
6 received by a nonresident individual for personal services rendered during a declared
7 state disaster or emergency as defined in R.S. 47:53.5 shall not be considered an item
8 of gross income to be designated as allocable income;

9 (h) income from construction, repair, or other similar services; however,
10 income from construction, repair, or other similar services received by a nonresident
11 corporation for disaster emergency-related work rendered during a declared state
12 disaster or emergency as defined in R.S. 47:53.5 shall not be considered an item of
13 gross income to be designated as allocable income.

14 (2) The class of income to be designated as "apportionable income" shall
15 include all items of gross income which are not properly includible in allocable
16 income as defined in this Section. However, salaries, wages, or other compensation
17 received by a nonresident individual for personal services rendered during a declared
18 state disaster or emergency and income from construction, repair, or other similar
19 services received by a nonresident corporation for disaster or emergency-related
20 work rendered during a declared state disaster or emergency as defined in R.S.
21 47:53.5 shall not be considered an item of gross income to be designated as
22 apportionable income.

23 * * *

24 §287.67. Louisiana net income defined

25 "Louisiana net income" means net income which is earned within or derived
26 from sources within the state of Louisiana. Louisiana net income shall not include
27 income received by a nonresident corporation for construction, repair, or other
28 similar services for disaster or emergency-related work rendered during a declared
29 state disaster or emergency as defined in R.S. 47:53.5.

1 Section 2. The provisions of this Act shall be applicable to all tax years beginning
2 on and after January 1, 2018.

3 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 Engrossed

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.

Proposed law 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 present law.

Proposed law 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.

Proposed law 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 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

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

Present law defines "wages" for purposes of withholding income tax as all remuneration for services performed by an employee for an employer. Present law 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.

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

Present law provides for the determination of net income of a nonresident individual or a corporation for purposes of imposing corporate income tax. Proposed law further provides for the segregation of all items of gross income into either allocable income or apportionable income. Present law 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.

Proposed law retains present law 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.

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

Proposed law retains present law 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(1)(g) and (h) and (2) and 287.67; Adds R.S. 47:53.5 and 111(A)(11))