



June 18, 2015

Business Taxpayers Get Cooked: Louisiana Legislature Temporarily Patches \$1.6 Billion Budget Hole with Tax Changes

There's a children's book, "The Goose That Almost Got Cooked," which tells the story of a Canadian goose who takes a break from her flight south for the winter to rest at a lovely farm where the other geese are fed three meals a day. The Canadian goose thinks this is the life until discovering one of the other geese missing one day and the farmer enjoying a familiar looking dish for dinner. The Canadian goose ultimately escapes the farm before taking that one-way trip to the farmer's pot. Louisiana taxpayers, however, were not so lucky this legislative session.

The 2015 Louisiana Legislative Session adjourned *sine die* at 6:00 p.m. on Thursday evening, June 11, and there were quite a few geese that got cooked. The Legislators said their final goodbyes and left the proverbial mess in the kitchen. In Louisiana, chefs are known for their creativity; they can take one dish and prepare it in so many different ways. The same can be said for the Louisiana Legislature. They took a single dish, the business taxpayer, and found multiple ways to serve it up to fill the state's budget hole. There are reductions to deductions, reductions to tax credits, caps on tax credits, suspensions of exemptions, and the loss of refundability.

The specific tax bills that were finally passed by the Louisiana Legislature during the 2015 Legislative Session are below. We have separated them out by tax type.

Importantly, for those **taxpayers who filed extensions** for their 2014 returns, **three bills ([HB 402](#), [HB 624](#), and [HB 629](#))** attempt to creatively account for, and to some extent accommodate, those who file extension returns on or after July 1st by allowing them to still receive the disallowed tax benefit as a carryforward in equal one-third portions over the next three calendar years (2017, 2018 and 2019). However, as noted in our [prior post](#), **taxpayers should still consider filing their 2014 returns before July 1st** to preserve the full benefit of existing tax laws.

INCOME/FRANCHISE TAX:

- [HB 218](#) – The enrolled bill eliminates 3-year net operating loss (NOL) carryback and increases NOL carryforward from 15 years to 20 years. The Conference Committee Report adopted by the House and Senate prohibits application of HB 218 to any amended return filed on or after July 1, 2015 that includes a net operating loss deduction that was properly claimed when the original return for the period was filed. This bill has been sent to the Governor for executive approval.
- [HB 402](#) – The enrolled bill limits the individual income tax credit for taxes paid to other states and includes a reciprocity provision, which states that the credit may only be taken for taxes paid to states that provide a

similar credit for their residents. Like HB 624 and HB 629, the provisions of HB 402 are effective July 1, 2015 and applicable to any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates. However, the provisions of the bill are not applicable to any amended return filed on or after July 1, 2015 that relates to a credit properly claimed on an original return filed prior to July 1, 2015. For any return filed after July 1, 2015 based on a **valid filing extension**, the taxpayer will receive the disallowed portion of the credit on the taxpayer's return filed for taxable years that begin during calendar years 2017, 2018 and 2019, in equal one-third portions. These limitations sunset on June 30, 2018. This bill has been sent to the Governor for executive approval.

- [HB 624](#) – The enrolled bill provides a 28% reduction to certain corporate income tax exclusions and deductions, including depletion, dividend income, and NOLs. **The reduction to the S-corporation exclusion was removed from the bill.** The bill as finally passed by the Legislature is effective July 1, 2015 and applicable to any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates. However, the provisions of the bill are not applicable to any amended return filed on or after July 1, 2015 that relates to an exclusion or deduction properly claimed on an original return filed prior to July 1, 2015. For any return filed after July 1, 2015 based on a **valid filing extension**, the taxpayer will receive the disallowed portion of the exclusion or deduction on the taxpayer's return filed for taxable years that begin during calendar years 2017, 2018 and 2019, in equal one-third portions. The provisions of the bill sunset on June 30, 2018. This bill has been sent to the Governor for executive approval.
- [HB 629](#) – The enrolled bill provides a 28% reduction to certain income and franchise tax credits, including the digital media tax credit, the alternative fuel motor vehicle credit and the modernization tax credit. The bill as finally passed by the Legislatures is effective July 1, 2015 and applicable to any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates. However, the provisions of the bill are not applicable to any amended return filed on or after July 1, 2015 that relates to a credit properly claimed on an original return filed prior to July 1, 2015. For any return filed after July 1, 2015, based on a **valid filing extension**, the taxpayer will receive the disallowed portion of the credit on the taxpayer's return filed for taxable years that begin during calendar years 2017, 2018 and 2019, in equal one-third portions. The provisions of the bill sunset on June 30, 2018. This bill has been sent to the Governor for executive approval.
- [HB 805](#) – The enrolled bill reduces the refundable nature of the inventory tax credit by 25% for those businesses with an aggregate inventory tax liability to all political subdivisions equal to or in excess of \$10,000. The remaining 75% of the credit that exceeds the taxpayer's liability for the taxable year is refundable. The non-refundable 25% of the credit may be carried forward for up to five years. The bill also converts the research and development tax credit to a non-refundable credit. The provisions of the bill will apply to all claims for the inventory and research and development tax credit on returns filed on or after July 1, 2015; however, the provisions will not apply to an amended return filed after July 1, 2015 if the credits were properly claimed on the original return for the tax period. This bill has been sent to the Governor for executive approval.

SALES/USE TAX:

- [HCR 8](#) – The enrolled bill suspends business utilities exemptions (for sales of steam, water, electric power or energy, and natural gas) as to the 0.97% state sale/use tax imposed in La. R.S. 47:331. The Louisiana Department of Revenue has interpreted the enrolled bill to **also effectively suspend the applicable exemptions as to the .03% Louisiana Tourism Promotion District tax found in La. R.S. 51:1286**, because this additional .03% tax is statutorily “subject to the exemptions and suspensions of exemptions to the same extent that such exemptions and suspensions of exemptions now or hereafter apply to the tax levied in R.S. 47:331.” The suspension in the enrolled bill applies to exemptions, but **not exclusions**. The suspension is effective beginning

July 1, 2015, through the 60th day after final adjournment of the 2016 Regular Legislative Session. The House and Senate concurred in the Conference Committee Report and the resolution is ***finally passed***.

CIGARETTE TAX:

- [HB 119](#) – The enrolled bill increases cigarette tax to 86¢ per pack, or by 50¢ per pack, and adds a tax to vapor products and electronic cigarettes (\$0.05 per mL of nicotine liquid solution). The tax increase is effective July 1, 2015 and this bill has been sent to the Governor for executive approval.

SEVERANCE TAX:

- [HB 549](#) – The enrolled bill changes horizontal drilling severance tax exemption from 100% to an amount based on the published price of oil and natural gas, and applies to all production occurring on and after July 1, 2015. This bill has been sent to the Governor for executive approval.

INCENTIVES:

- [HB 635](#) – The enrolled bill provides a 20% reduction to rebates, including the Louisiana Mega Project Energy Assistance Rebate, Quality Jobs Program, Corporate Headquarters Relocation Program, and the Competitive Projects Payroll Incentive Program. In addition, the bill eliminates eligibility for Enterprise Zone incentives for retail businesses and restaurants. The provisions of the bill sunset on June 30, 2018. The bill has been sent to the Governor for executive approval.
- [HB 779](#) – The enrolled bill adds a number of caps and limitations to the Solar Tax Credit program for both purchased systems and leased systems. Generally, the cap for both purchased and leased systems is \$10 million for fiscal years 2015-2016 and 2016-2017, and \$5 million for any system installed on or after July 1, 2017. This bill has been sent to the Governor for executive approval.
- [HB 829](#) – The enrolled bill adds a number of caps and requirements for the Motion Picture Tax Credit program. Namely, the entire program, beginning July 1, 2015, is capped at \$180 million annually. Similarly, the amount of credits that may be claimed against income tax allowed on returns or credits transferred to the state is capped at \$180 million each fiscal year. Any single state-certified production cannot claim credits greater than \$30 million. Further, HB 829 suspends authorization for credits to be transferred back to the state from July 1, 2015, through June 30, 2016. The bill has been sent to the Governor for executive approval.

As icing on the cake, the [Louisiana Legislature also passed a sales tax affiliate nexus bill](#) that ***becomes effective July 1st***. The [Legislature also failed to repeal the corporation franchise tax](#) in a five-year phase-out.

Stay tuned as the tax changes and related fallout continue to unfold.

--[Kim Robinson](#), [Matt Mantle](#), and [Justin Stone](#)

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, you may also contact:

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