

Second Extraordinary Session, 2008

HOUSE BILL NO. 19

BY REPRESENTATIVE LORUSSO

TAX/CORP FRANCHISE: Accelerates phase-out of borrowed capital from the tax base of the corporation franchise tax (Item #4)

1 AN ACT

2 To amend and reenact R.S. 47:602(A) and (G), 603(A)(2), 605(C), and 609(A) and to repeal  
3 R.S. 47:603, relative to the corporation franchise tax; to accelerate the elimination  
4 of borrowed capital from taxable capital; to provide for an effective date; and to  
5 provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:602(G) and 603(A)(2) are hereby amended and reenacted to read  
8 as follows:

9 §602. Determination of taxable capital

10 \* \* \*

11 G.(1) For taxable years beginning before ~~January 1, 2012~~ January 1, 2010,  
12 the portion of the deduction for "investments in and advances to" as provided for in  
13 this Section which is composed of loans and advances, after the application of R.S.  
14 47:605.1, shall be reduced by the same percentage and at the same time as is  
15 provided for the reduction of borrowed capital in R.S. 47:603(A).

16 (2) For taxable years beginning after ~~December 31, 2011~~ December 31,  
17 2009, the deduction for "investments in and advances to" as provided for in this  
18 Section shall only include amounts included in the taxable capital of the recipient.

19 \* \* \*

1 §603. Borrowed capital

2 A.

3 \* \* \*

4 (2)(a) For taxable years beginning after December 31, 2005, and before  
5 January 1, 2007, taxable capital for purposes of this Chapter shall include eighty-six  
6 percent of borrowed capital as determined pursuant to the provisions of this Section.

7 (b) For taxable years beginning after December 31, 2006, and before January  
8 1, 2008, taxable capital for purposes of this Chapter shall include seventy-two  
9 percent of borrowed capital as determined pursuant to the provisions of this Section.

10 (c) For taxable years beginning after December 31, 2007, and before January  
11 1, 2009, taxable capital for purposes of this Chapter shall include ~~fifty-eight~~ forty-  
12 four percent of borrowed capital as determined pursuant to the provisions of this  
13 Section.

14 (d) For taxable years beginning after December 31, 2008, and before January  
15 1, 2010, taxable capital for purposes of this Chapter shall include ~~forty-four~~ twenty-  
16 three percent of borrowed capital as determined pursuant to the provisions of this  
17 Section.

18 ~~(e) For taxable years beginning after December 31, 2009, and before January~~  
19 ~~1, 2011, taxable capital for purposes of this Chapter shall include thirty percent of~~  
20 ~~borrowed capital as determined pursuant to the provisions of this Section.~~

21 ~~(f) For taxable years beginning after December 31, 2010, and before January~~  
22 ~~1, 2012, taxable capital for purposes of this Chapter shall include sixteen percent of~~  
23 ~~borrowed capital as determined pursuant to the provisions of this Section.~~

24 ~~(g) (e) For all taxable years beginning after ~~December 31, 2011, or~~~~  
25 ~~thereafter, December 31, 2009, taxable capital for purposes of this Chapter shall not~~  
26 include borrowed capital.

27 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Section 2. R.S. 47:602(A) and (G), 605(C), and 609(A) are hereby amended and  
2 reenacted to read as follows:

3 §602. Determination of taxable capital

4 A. Taxable capital.

5 (1) Taxable capital shall be the amount of a corporation's issued and  
6 outstanding capital stock, surplus, and undivided profits, ~~and that portion of~~  
7 ~~borrowed capital provided for in R.S. 47:603 until borrowed capital is no longer~~  
8 ~~included in taxable capital.~~

9 (2) Every corporation taxed under this Chapter shall determine the amount  
10 of its issued and outstanding capital stock, surplus, and undivided profits, ~~and that~~  
11 ~~portion of borrowed capital provided for in R.S. 47:603 until borrowed capital is no~~  
12 ~~longer included in taxable capital~~ as the basis for computing the franchise tax levied  
13 under this Chapter and determining the extent of the use of its franchise in this state.

14 \* \* \*

15 ~~G.(1) For taxable years beginning before January 1, 2012, the portion of the~~  
16 ~~deduction for "investments in and advances to" as provided for in this Section which~~  
17 ~~is composed of loans and advances, after the application of R.S. 47:605.1, shall be~~  
18 ~~reduced by the same percentage and at the same time as is provided for the reduction~~  
19 ~~of borrowed capital in R.S. 47:603(A).~~

20 ~~(2) For taxable years beginning after December 31, 2011, the The deduction~~  
21 ~~for "investments in and advances to" as provided for in this Section shall only~~  
22 ~~include amounts included in the taxable capital of the recipient.~~

23 \* \* \*

24 §605. Surplus and undivided profits

25 \* \* \*

26 C. Reserves and exclusion from surplus by public utilities. For purposes of  
27 this Chapter the term "reserves" includes all accounts appearing on the books of a  
28 corporation that represent amounts payable or potentially payable to others; however,  
29 the term "reserves" shall not include accounts included in "capital stock" as used in

1 R.S. 47:604 and shall not include accounts that represent indebtedness, ~~regardless of~~  
 2 ~~maturity date, as "indebtedness" is used in R.S. 47:603.~~ In computing the surplus of  
 3 a public utility regulated by the Louisiana Public Service Commission, the Federal  
 4 Energy Regulatory Commission, or other similar local, state, or federal regulator,  
 5 there shall be excluded from assets, and a corresponding amount excluded from  
 6 surplus, accounts that represent assets for which no money has previously been paid  
 7 and no service or thing of value has been paid, given, or advanced by the public  
 8 utility other than the regulated service or product. Accounts so excluded shall not  
 9 include accounts established for the purpose of valuing other asset accounts that do  
 10 not meet the criteria for exclusion, nor shall excluded accounts represent  
 11 investments, loans, deposits, goodwill, trade notes, accounts receivable from billings  
 12 to customers, or accrued unbilled revenue.

\* \* \*

14 §609. Due date, payment and reporting of tax

15 A.~~(1)~~ The tax levied by this Chapter is for the annual accounting period,  
 16 fiscal, or calendar year, regularly used by the taxpayer in keeping its books, with no  
 17 proration for a portion of the year in the case of dissolution of domestic corporations  
 18 or withdrawal from the state by foreign corporations, or where a corporation  
 19 otherwise ceases to become taxable under this Chapter. The tax is due on the first  
 20 day of each calendar or fiscal year and annually thereafter and, except as provided  
 21 for in Paragraph (2) of this Subsection, is computed on the basis of the previous  
 22 calendar or fiscal year closing. The tax is payable to the secretary on or before the  
 23 fifteenth day of the third month following the month in which the tax is due.  
 24 However, if the day on which the tax is payable falls on a Saturday, Sunday, or legal  
 25 holiday, the tax shall be payable on the next business day. With its payment the  
 26 taxpayer shall deliver to the secretary a full, accurate, and complete report and  
 27 statement signed by a duly authorized official of the corporation, containing such  
 28 information as the secretary may require.



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)]

Lorusso

HB No. 19

**Abstract:** Accelerates phase-out of borrowed capital from the tax base of corporation franchise tax.

Present law levies a corporation franchise tax, at various rates, on the amount of each corporation's taxable capital, which includes capital stock, surplus, undivided profits, and borrowed capital.

Present law phases out the inclusion of borrowed capital with the levy of the corporation franchise tax by Jan. 1, 2012, as follows:

<u>Taxable Year</u>	<u>Amount of Borrowed Capital Included in Tax Base</u>
Beginning after 12/31/05 and ending before 1/1/07	86%
Beginning after 12/31/06 and ending before 1/1/08	72%
Beginning after 12/31/07 and ending before 1/1/09	58%
Beginning after 12/31/08 and ending before 1/1/10	44%
Beginning after 12/31/09 and ending before 1/1/11	30%
Beginning after 12/31/10 and ending before 1/1/12	16%
After 12/31/11	0%

Proposed law accelerates the phase-out provided for in present law, as follows:

<u>Taxable Year</u>	<u>Amount of Borrowed Capital included in Tax Base</u>
Beginning after 12/31/05 and ending before 1/1/07	86%
Beginning after 12/31/06 and ending before 1/1/08	72%
Beginning after 12/31/07 and ending before 1/1/09	44%

Beginning after 12/31/08  
and ending before 1/1/10 23%

After 12/31/09 0%

Proposed law deletes and repeals certain provisions of present law dealing with borrowed capital which become unnecessary as a result of the phase-out provided for in proposed law, effective for all taxable periods beginning on or after Jan. 1, 2010.

Present law authorizes certain corporations that incurred extraordinary debt as a result of a gubernatorially declared disaster of 2005 to elect to compute its borrowed capital on the basis of the calendar or fiscal year closing immediately prior to Aug. 28, 2005, under certain conditions.

Proposed law deletes the provisions of present law, effective after total phase-out of borrowed capital within the levy of the tax on Jan. 1, 2010.

Effective for all taxable periods beginning on or after Jan. 1, 2008. Repeal of borrowed capital becomes effective for all taxable periods beginning on or after Jan. 1, 2010.

(Amends R.S. 47:602(A) and (G), 603(A)(2), 605(C), and 609(A); Repeals R.S. 47:603)