

2015 Regular Session

HOUSE BILL NO. 389

BY REPRESENTATIVE LEGER

TAX/INCOME TAX: Requires that certain deductible items be added-back on certain corporate income tax returns

1 AN ACT

2 To enact R.S. 47:287.82, relative to corporate income tax; to provide with respect to certain
3 corporate deductions; to require that certain deductible items and costs be added-
4 back when computing corporate income tax liability; to provide for certain
5 limitations; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:287.82 is hereby enacted to read as follows:

8 §287.82. Corporate deductions; add-back of certain intangible and interest expenses

9 A.(1) For purposes of computing a corporation's Louisiana net income, a
10 corporation shall add back otherwise deductible interest expenses and costs and
11 intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or
12 in connection directly or indirectly with one or more direct or indirect transactions,
13 with one or more related members, except to the extent the corporation shows, upon
14 request of the secretary, that the corresponding item of income was in the same
15 taxable year either subject to a tax based on or measured by the related member's net
16 income in Louisiana or any other state or, was subject to a tax based on or measured
17 by the related member's net income by a foreign nation which has an enforceable
18 income tax treaty with the United States, if the recipient was a "resident" as defined
19 in the income tax treaty of the foreign nation. For purposes of this Subsection, the
20 term "subject to a tax based on or measured by the related member's net income"

1 shall mean that receipt of the payment by the recipient-related member is reported
2 and included in income for purposes of a tax on net income, and not offset or
3 eliminated in a combined or consolidated return which includes the payor. Any
4 portion of an item of income that is not attributed to the taxing jurisdiction, as
5 determined by that jurisdiction's allocation and apportionment methodology or other
6 sourcing methodology, is not included in income for purposes of a tax on net income
7 and, therefore, shall not be considered subject to a tax. That portion of an item of
8 income which is attributed to a taxing jurisdiction having a tax on net income shall
9 be considered subject to a tax even if no actual taxes are paid on the item of income
10 in the taxing jurisdiction by reason of deductions or otherwise.

11 (2) The adjustments required in Paragraph (1) of this Subsection shall not
12 apply to that portion of interest expenses and costs and intangible expenses and costs
13 if the corporation establishes that the transaction giving rise to the interest expenses
14 and costs or the intangible expenses and costs between the corporation and the
15 related member did not have as a principal purpose the avoidance of any Louisiana
16 tax and the related member is not primarily engaged in the acquisition, use,
17 licensing, maintenance, management, ownership, sale, exchange, or any other
18 disposition of intangible property, or in the financing of related entities. If the
19 transaction giving rise to the interest expenses and costs or intangible expenses and
20 costs, has a substantial business purpose and economic substance and contains terms
21 and conditions comparable to a similar arm's length transaction between unrelated
22 parties, the transaction shall be presumed to not have as its principal purpose tax
23 avoidance, subject to rebuttal by the secretary of the Department of Revenue.

24 (3) The adjustments required in this Subsection shall not apply to that
25 portion of interest expenses and costs and intangible expenses and costs that the
26 corporation establishes was paid, accrued, or incurred, directly or indirectly, by the
27 related member during the same taxable year to a person that is not a related
28 member. A corporation shall not be required to add to its taxable income more than
29 once any amount of interest expenses and costs or intangible expenses and costs that

1 the corporation pays, accrues, or incurs to a related member described in Paragraph
2 (1) of this Subsection.

3 (4) The corporation shall make the adjustments required in Paragraphs (1),
4 (2), and (3) of this Subsection unless the corporation and the secretary agree in
5 writing to the application or use of alternative adjustments and computations.
6 Nothing in this Section shall be construed to limit or negate the secretary's authority
7 to enter into agreements and compromises allowed by law.

8 B. Nothing in this Section shall be construed to allow any item to be
9 deducted more than once or to allow a deduction for any item that is excluded from
10 income or to allow any item to be included in the Louisiana taxable income of more
11 than one taxpayer.

12 Section 2. The provisions of this Act shall be applicable to all tax years beginning
13 on and after January 1, 2015.

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 389 Original

2015 Regular Session

Leger

Abstract: Requires corporations to add back otherwise deductible interest expenses and costs incurred in connection with transactions with one or more related members.

Proposed law provides that for purposes of computing a corporation's La. net income, a corporation shall add back otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection with one or more direct or indirect transactions, with one or more related members. However, to the extent a corporation shows that the corresponding item of income was, in the same taxable year, either subject to a tax based on or measured by the related member's net income in La. or any other state or, was subject to a tax based on or measured by the related member's net income by a foreign nation with an enforceable income tax treaty with the U.S.

Proposed law defines the term "subject to a tax based on or measured by the related member's net income" as the receipt of payment by the recipient related member is reported and included in income for purposes of a tax on net income, and not offset or eliminated in a combined or consolidated return which includes the payor. Any portion of an item of income not attributed to the taxing jurisdiction, as determined by that jurisdiction's allocation and apportionment methodology shall not be considered subject to a tax. That portion of an item of income attributed to a taxing jurisdiction having a tax on net income shall be considered subject to a tax even if no actual taxes are paid on the item of income in the taxing jurisdiction by reason of deductions.

Proposed law adds provisions for when the adjustments required in proposed law shall not apply such as if a corporation establishes that the transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any La. income tax and the related member is not primarily engaged in the acquisition, use, licensing, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property, or in the financing of related entities.

Proposed law exempts from the mandatory adjustments for interest expenses and costs and intangible expenses and costs that the corporation establishes was paid, accrued or incurred, directly or indirectly, by the related member during the same taxable year to a person that is not a related member.

Proposed law requires the adjustments to these deductions to be made unless the corporation and the secretary agree in writing to the application or use of alternative adjustments and computations.

Applicable to all tax years beginning on and after Jan. 1, 2015.

(Adds R.S. 47:287.82)