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

DIGEST

SB 270 Original | 2015 Regular Session | Adley

Proposed law authorizes the secretary to add back the following deductible expenses of a corporation subject to Louisiana income or franchise tax which has either corporate gross revenues everywhere of $8 billion or $8 million of assets everywhere:

(1) Otherwise deductible "intangible expense" directly or indirectly paid, accrued or incurred in connection with one or more direct or indirect transactions with one or more "related members". "Intangible expense" are defined as expenses, losses and costs related to"intangible property" such as patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets and similar types of intangible assets to the extent such amounts are in any way allowed as deductions or costs in determining taxable income under the Internal Revenue Code (IRC).

(2) Otherwise deductible "interest expense" paid, accrued or incurred to a related member during the taxable year. "Interest expense" is defined as amounts directly or indirectly allowed as deductions under the IRC for purposes of determining taxable income under the IRC.

"Related member" is defined as a person that, with respect to the taxpayer during all or any portion of the taxable year, is any of the following:

(1) A "related entity".

(2) A "component member" as defined in the (IRC).

(3) A person to or from whom there is attribution of stock ownership in accordance with the IRC.

(4) A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in proposed law.

"Related entity" is defined as any of the following:

(1) A stockholder who is an individual, or a member of the stockholder's family set forth in the IRC if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock.

(2) A stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation (hereafter, "stockholder's entity"), if the stockholder and the stockholder's entity

own directly, indirectly, beneficially or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock.

(3) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party, or from the party to the corporation, under the attribution rules of the IRC if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50% of the value of the corporation's outstanding stock. The attribution rules of the IRC shall apply for purposes of determining whether the ownership requirements of this definition have been met.

Proposed law requires the secretary to make the following adjustments to the add back which represent the following:

(1) Similar taxes paid or incurred to another jurisdiction by the "related member" or taxes that would have been paid by the "related member" with respect to that portion of its income representing the "intangible expenses" or "interest expense" paid to the "related member" if that portion of the "related member's" income had not been offset by expenses or losses or if the tax liability had not been offset by a credit or credits.

(2) Direct or indirect payments made, accrued, or incurred by the "related member" during the same taxable year to a person that is not a "related member" on a transaction giving rise to the "intangible expense" or "interest expense" between the taxpayer and the "related member" that was undertaken for a "valid business purpose".

(3) "Interest expense" paid, accrued or incurred to a related party using terms that reflect an arm's length relationship.

"Valid business purpose" is defined as one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for a business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer or the entry by the taxpayer into new business markets.

Applicable to corporate income tax years beginning on and after January 1, 2015, and corporate franchise tax years beginning on and after January 1, 2016.

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

(Adds R.S. 47:287.94.1.)