SLS 15RS-466 **ENGROSSED**

2015 Regular Session

SENATE BILL NO. 269

BY SENATOR ADLEY

TAX/TAXATION. Requires corporations subject to Louisiana income or franchise tax which have either corporate gross revenues everywhere of $8 billion or $8 million of assets everywhere to file combined returns and limits their NOL deduction to 50% of tax liability. (gov sig)

AN ACT

To amend and reenact R.S. 47:287.480(3)(a) and to enact R.S. 47:287.481, relative to combined returns; to require such returns for certain corporations; to provide for the manner in which such returns are to be filed; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:287.480(3)(a) is hereby amended and reenacted and R.S. 47:287.481 is hereby enacted to read as follows:

§287.480. Special adjustments by the secretary

Notwithstanding any other provisions of this Part to the contrary, the secretary is authorized to require the use of inventories and to allocate income and deductions among taxpayers and require such returns as follows:

* * *

(3) Consolidated returns.

(a) Consolidated or combined returns are not allowed under this Part except as required by the secretary pursuant to this Paragraph **and as required by the provisions of R.S. 47:287.481**.

* * *

§287.481. Combined report

A.(1) Definitions. As used in this Subsection, the following terms shall have the following meanings:

(a) "Affiliate" means an entity which, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the corporation required by this Section to file combined reports. Any beneficial owner of twenty percent or more of the combined voting power of all classes of voting securities of an entity, or any executive officer, director, trustee, or general partner of an entity is an affiliate of such entity unless the shareholder, executive officer, director, trustee, or general partner shall prove that he in fact does not control, is not controlled by, and is not under common control with such entity.

(b) "Control", including "controlling", "controlled by", and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

(c) "Unitary business" means the activities of a group of affiliates that are sufficiently interdependent, integrated, or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate operations of the affiliates. The term unitary business shall be construed to the broadest extent permitted under the United States Constitution.

(2) Any corporation subject to Louisiana income or franchise tax which has either corporate gross revenues everywhere of eight billion dollars or eight million dollars of assets everywhere and is part of a unitary business shall file a combined report as provided for in this Subsection.

(3)(a)(i) Such corporation and its affiliates shall file a combined report,

computing their combined net income on such combined report, which shall include the income and deductions of the corporation and its affiliates. Any intercompany or interaffiliate items of income or deduction shall be eliminated.

(ii) The use of the combined report shall not disregard the separate identities of the affiliates. Each affiliate shall be responsible for tax based upon the taxable income or loss, or the franchise tax base, apportioned to this state.

B.(1)(a) The corporation and each affiliate shall compute its Louisiana net income or loss by apportioning and allocating its share of the combined net income to its separate return using the provisions of R.S. 47:287.92 through 287.95. The specific apportionment formula to be used by the corporation and its affiliates shall be determined based on the primary business of the corporation and its affiliates as a single entity.

(b) Unless the secretary determines otherwise, the separate apportionment ratio of the corporation and each of its affiliates shall be computed by determining the relationship that its Louisiana revenue (sales), wages, and real and tangible property bear to the corporation and affiliates' combined total revenue, wages, and real and tangible property. The Louisiana revenue, wages, and property and the combined revenue, wages, and property are to be determined after intercompany or interaffiliate eliminations. The apportionment ratio so computed shall be applied to combined net apportionable income to determine the Louisiana apportionable income of the corporation subject to Louisiana income or franchise tax. Items of allocable income and expense, after eliminations, shall be attributed to the entity that produced the income.

(c) Notwithstanding the provisions of R.S. 47:246 or 287.86 or any other law to the contrary, any deduction for a net operating loss carryback or carryover for any corporation subject to the provisions of this Section allowed on any return filed on or after July 1, 2015, shall not exceed fifty percent of the tax liability for the taxable year for which the return was filed, regardless of the

taxable year to which the return relates.

(d) Filing requirements. Each combined report shall include the following information:

(i) A list of the affiliates included in the combined report and their federal or Louisiana taxpayer identification numbers, or both.

(ii) A combined profit and loss statement disclosing each affiliate's statement of profit and loss.

(iii) A schedule of intercompany or interaffiliate eliminations, disclosing the various adjustments necessary for each affiliate to convert the combined profit and loss statement to the combined income.

(iv) Apportionment formula calculations disclosing the total combined amount of property, payroll, and sales and each separate affiliate's Louisiana amount of property, payroll, and sales, all determined after eliminations.

(v) Schedules showing the computation of each affiliate's Louisiana apportionable and allocable income, determined after eliminations.

(vi) Schedules showing the computation of each affiliate's tax credits, Louisiana net operating loss, and federal income tax deduction.

(2) The secretary may provide by rule or regulation promulgated in the manner provided for in the Administrative Procedure Act for the filing of such additional information and documentation, or for additional procedures, or for criteria for explicating and consolidating the procedures set forth in this Subsection, which he deems necessary.

Section 2. The provisions of this Act shall be 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.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

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

DIGEST

SB 269 Engrossed 2015 Regular Session Adley

Present law prohibits requiring the filing of consolidated or combined returns, but authorizes the secretary of the Department of Revenue [LDR] to require such returns from any corporation in limited circumstances.

Proposed law retains the secretary's authority in present law with respect to any corporation.

Proposed law requires any corporation subject to Louisiana income or franchise tax which has either corporate gross revenues everywhere of $8 billion or $8 million of assets everywhere and is part of a "unitary business" to file combined statements.

"Unitary business" is defined as the activities of a group of affiliates that are sufficiently interdependent, integrated, or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate operations of the affiliates. The term unitary business is required to be construed to the broadest extent permitted under the United States Constitution

The corporation and its "affiliates" are required to file a combined return, computing their combined net income on such combined return, which must include the income and deductions of the corporation and its "affiliates". Any intercompany or interaffiliate items of income or deduction must be eliminated.

"Affiliate" is defined as an entity which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the corporation required by the proposed law to file consolidated returns. Any beneficial owner of 20% or more of the combined voting power of all classes of voting securities of an entity, or any executive officer, director, trustee, or general partner of an entity is an affiliate of such entity unless the shareholder, executive officer, director, trustee, or general partner proves that he in fact does not control, is not controlled by, and is not under "common control" with such entity.

"Control", including "controlling", "controlled by", and "under common control with", is defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

Proposed law requires the corporation and each affiliate to compute its Louisiana net income or loss by apportioning and allocating its share of the combined net income to its separate return using the provisions of R.S. 47:287.92 through 287.95. The specific apportionment formula to be used by the corporation and its affiliates shall be determined based on the primary business of the corporation and its affiliates as a single entity.

Unless the secretary determines otherwise, the separate apportionment ratio of the corporation and each of its affiliates is to be computed by determining the relationship that its Louisiana revenue (sales), wages, and real and tangible property bear to the corporation and affiliates' combined total revenue, wages, and real and tangible property, after intercompany or interaffiliate eliminations. The apportionment ratio so computed must be applied to combined net apportionable income to determine the Louisiana apportionable income of the corporation subject to Louisiana income or franchise tax. Items of allocable income and expense, after eliminations, must be attributed to the entity that produced the income.

Proposed law limits any deduction of such corporation for a net operating loss carryback or carryover on any return filed on or after July 1, 2015, to 50% of the tax liability for the taxable year for which the return was filed, regardless of the taxable year to which the return relates.

Proposed law contains a list of information about the corporation and its affiliates to be filed with the return.

Proposed law authorizes the secretary to provide by rule or regulation under the APA for the filing of such additional information and documentation, or for additional procedures, or for criteria for modifying the procedures set forth in this Subsection, which he deems necessary.

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.

(Amends R.S. 47:287.480(3)(a); adds R.S. 47:287.481)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Limits any deduction of such corporations for a net operating loss carryback or carryover on any return filed on or after July 1, 2015, to 50% of the tax liability for the taxable year for which the return was filed, regardless of the taxable year to which the return relates.

2. Also requires the corporation to be part of a "unitary business" before it is required to file combined statements and reports. Defines "unitary business".

3. Requires filing "combined reports" and statements, rather than "consolidated returns" and statements.