

2016 First Extraordinary Session

HOUSE BILL NO. 73

BY REPRESENTATIVE JAY MORRIS

TAX/INCOME TAX: Requires that certain deductible items be added-back on certain corporate income tax returns (Item #5)

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; to provide for applicability; 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 of the Department of Revenue, that the corresponding item
15 of income was in the same taxable year either subject to a tax based on or measured
16 by the related member's net income in Louisiana or any other state, or was subject
17 to a tax based on or measured by the related member's net income by a foreign nation
18 which has an enforceable income tax treaty with the United States, if the recipient
19 was a "resident" as defined in the income tax treaty of the foreign nation. For
20 purposes of this Subsection, the term "subject to a tax based on or measured by the

1 related member's net income" shall mean that receipt of the payment by the
2 recipient-related member is reported and included in income for purposes of a tax on
3 net income, and not offset or eliminated in a combined or consolidated return which
4 includes the payor. Any portion of an item of income that is not attributed to the
5 taxing jurisdiction, as determined by that jurisdiction's allocation and apportionment
6 methodology or other sourcing methodology, is not included in income for purposes
7 of a tax on net income and, therefore, shall not be considered subject to a tax. That
8 portion of an item of income which is attributed to a taxing jurisdiction having a tax
9 on net income shall be considered subject to a tax even if no actual taxes are paid on
10 the item of income 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. If the transaction giving rise to the interest expenses and costs or intangible
17 expenses and costs, has a substantial business purpose and economic substance and
18 contains terms and conditions comparable to a similar arm's length transaction
19 between unrelated parties, the transaction shall be presumed to not have as its
20 principal purpose tax avoidance, subject to rebuttal by the secretary of the
21 Department of Revenue.

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

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

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

11 Section 2. The provisions of this Act shall be applicable to all tax years beginning
12 on and after January 1, 2016.

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 73 Original

2016 First Extraordinary Session

Jay Morris

Abstract: Requires corporations to add-back otherwise deductible interest expenses and costs incurred in connection with transactions with one or more related members for purposes of calculating corporate income tax liability.

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, incurred, 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, 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, that item of income would not be required to be added-back.

Proposed law defines "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 that 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.

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.

Proposed law exempts from the mandatory adjustments that portion of interest expenses and costs and intangible expenses and costs that the corporation establishes was paid or incurred 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, 2016.

(Adds R.S. 47:287.82)