

2016 First Extraordinary Session

HOUSE BILL NO. 74

BY REPRESENTATIVE JAY MORRIS

TAX/CORP INCOME: Provides for methods of determining income subject to the corporation income tax (Item #5)

1 AN ACT

2 To enact Part II-B of Chapter 1 of Subtitle II of Title 47 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 47:288.1 through 288.8, relative to corporation
4 income tax; to require combined reporting under certain circumstances; to provide
5 for certain requirements; to provide for certain limitations; to provide for the
6 administration of combined reporting by the Department of Revenue; to provide for
7 definitions; to provide for applicability; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part II-B of Chapter 1 of Subtitle II of Title 47 of the Louisiana Revised
10 Statutes of 1950, comprised of R.S. 47:288.1 through 288.8, is hereby enacted to read as
11 follows:

12 PART II-B. LOUISIANA COMBINED REPORTING ACT

13 §288.1. Short title; Louisiana Combined Reporting Act

14 This Act shall be known and may be cited as the "Louisiana Combined
15 Reporting Act".

16 §288.2. Purpose

17 A. Corporations shall be taxed on their Louisiana taxable income, calculated
18 in the manner and according to procedures provided for in this Part, to the full extent
19 permitted under the Constitutions of the United States of America and the state of
20 Louisiana.

1 B. The Legislature recognizes that the unitary business principle as
2 enunciated by the United States Supreme Court limits the state's ability to impose tax
3 on income from business activities unrelated to the state; therefore, all the provisions
4 of this Part are to be construed following the unitary business principle.

5 §288.3. Inconsistent provisions

6 The provisions of this Part shall supersede the provisions of Part I, Part II,
7 and Part II-A of this Chapter to the extent that they are inconsistent or in conflict
8 with this Part. The provisions of Part I, Part II, and Part II-A of this Chapter shall
9 remain in effect to the extent that they are not inconsistent or in conflict with this
10 Part.

11 §288.4. Definitions

12 As used in this Part, the following words and phrases shall have the following
13 meanings:

14 (1) "Combined group" means the group of all persons whose income and
15 apportionment factors are required to be taken into account pursuant to R.S.
16 47:288.5(A) or (B) in determining the taxpayer's share of income or loss attributable
17 to this state.

18 (2) "Corporation" means any corporation as defined by the laws of this state
19 or other entities taxed as corporations for federal income tax purposes under the laws
20 of this state, wherever located, which if it were doing business in this state would be
21 to a "taxpayer". The business conducted by a partnership which is directly or
22 indirectly held by a corporation shall be considered the business of the corporation
23 to the extent of the corporation's distributive share of the partnership income,
24 inclusive of guaranteed payments to the extent prescribed by regulation.

25 (3) "Partnership" means a general or limited partnership, or organization of
26 any kind treated as a partnership for income tax purposes under the laws of this state.

27 (4) "Person" means any individual, firm, partnership, general partner of a
28 partnership, limited liability company, registered limited liability partnership, foreign

1 limited liability partnership, association, or corporation, regardless of whether the
2 corporation is, or would be subject to the Louisiana Corporation Income Tax Act.

3 (5) "Tax haven" means a jurisdiction that, during the tax year in question, is
4 either of the following:

5 (a) Identified by the Organization for Economic Co-operation and
6 Development (OECD) as a tax haven or as having a harmful preferential tax regime;
7 or

8 (b) Exhibits any of the following characteristics established by the OECD
9 in its 1998 report entitled "Harmful Tax Competition: An Emerging Global Issue as
10 indicative of a tax haven or as a jurisdiction having a harmful preferential tax regime,
11 regardless of whether it is listed by the OECD as an uncooperative tax haven":

12 (i) Has no or nominal effective tax on the relevant income.

13 (ii) Has laws or practices that prevent effective exchange of information for
14 tax purposes with other governments on taxpayers benefitting from the tax regime.

15 (iii) Has a tax regime which lacks transparency. A tax regime lacks
16 transparency if the details of legislative, legal, or administrative provisions are not
17 open and apparent or are not consistently applied among similarly situated taxpayers,
18 or if the information needed by tax authorities to determine a taxpayer's correct tax
19 liability, such as accounting records and underlying documentation, is not adequately
20 available.

21 (iv) Facilitates the establishment of foreign-owned entities without the need
22 for a local substantive presence or prohibits these entities from having any
23 commercial impact on the local economy.

24 (v) Explicitly or implicitly excludes the jurisdiction's resident taxpayers from
25 taking advantage of the tax regime's benefits or prohibits enterprises that benefit
26 from the regime from operating in the jurisdiction's domestic market.

27 (vi) Has created a tax regime which is favorable for tax avoidance, based
28 upon an overall assessment of relevant factors, including whether the jurisdiction has

1 a significant untaxed offshore financial or other services sector relative to its overall
2 economy.

3 (6) "Taxpayer" means any person subject to the tax imposed by this Part.

4 (7) "Unitary business" means a single economic enterprise that is made up
5 either of separate parts of a single business entity or of a commonly controlled group
6 of business entities that are sufficiently interdependent, integrated, and interrelated
7 through their activities so as to provide a synergy and mutual benefit that produces
8 a sharing or exchange of value among them and a significant flow of value to the
9 separate parts.

10 (8) "United States" means the fifty states of the United States, the District
11 of Columbia, and United States' territories and possessions.

12 §288.5. Combined reporting required; discretionary under certain circumstances

13 A. A taxpayer engaged in a unitary business with one or more other
14 corporations shall file a combined report which includes the income determined
15 under R.S. 47:288.6(C), and the apportionment factors determined under R.S.
16 47:287.95 and 288.6(B), of all corporations that are members of the unitary business,
17 and such other information as required by the secretary.

18 B. Combined reporting at secretary's discretion.

19 (1) The secretary may, by regulation, require that the combined report
20 include the income and associated apportionment factors of any persons not included
21 pursuant to Subsection A of this Section, but who are members of a unitary business,
22 in order to reflect proper apportionment of income of entire unitary businesses.
23 Authority to require combination by regulation under this Subsection includes
24 authority to require combination of persons that are not, or would not be if doing
25 business in this state, subject to the Louisiana Corporation Income Tax Act.

26 (2) If the secretary determines that the reported income or loss of a taxpayer
27 engaged in a unitary business with any person not included pursuant to Subsection
28 A of this Section represents an avoidance or evasion of tax by such taxpayer, the
29 secretary may, on a case by case basis, require all or any part of the income and

1 associated apportionment factors of such person be included in the taxpayer's
2 combined report.

3 (3) With respect to inclusion of associated apportionment factors pursuant
4 to this Subsection, the secretary may require the exclusion of any one or more of the
5 factors, the inclusion of one or more additional factors which fairly represent the
6 taxpayer's business activity in this state, or the employment of any other method to
7 effectuate a proper reflection of the total amount of income subject to apportionment
8 and an equitable allocation and apportionment of the taxpayer's income.

9 §288.6. Determination of taxable income or loss using combined report

10 A. The use of a combined report does not disregard the separate identities
11 of the taxpayer members of the combined group. Each taxpayer member is
12 responsible for tax based on its taxable income or loss apportioned or allocated to
13 this state, which shall include, in addition to other types of income, the taxpayer
14 member's share of apportionable income of the combined group, where
15 apportionable income of the combined group is calculated as a summation of the
16 individual net apportionable incomes of all members of the combined group. A
17 member's net apportionable income is determined by removing all but apportionable
18 income, expense, and loss from that member's total income, as provided in detail in
19 the following:

20 B.(1) Components of income subject to tax in this state; application of tax
21 credits and post apportionment deductions. Each taxpayer member is responsible for
22 tax based on its taxable income or loss apportioned or allocated to this state, which
23 shall include all of the following:

24 (a) Its share of income apportioned to this state of each of the combined
25 groups of which it is a member, determined in accordance with this Section.

26 (b) Its share of any income apportioned to this state of a distinct business
27 activity conducted within and without the state wholly by the taxpayer member,
28 determined under R.S. 47:287.95.

1 (c) Its income from a business conducted wholly by the taxpayer member
2 entirely within the state.

3 (d) Its income or loss allocable to this state, determined under R.S.
4 47:287.93.

5 (e) Its income or loss allocated or apportioned in an earlier year, required to
6 be taken into account as state source income during the income year, other than a net
7 operating loss.

8 (f) Its net operating loss carryover or carryback. If the taxable income
9 computed pursuant to this Section results in a loss for a taxpayer member of the
10 combined group, that taxpayer member has a Louisiana net operating loss, subject
11 to the net operating loss limitations, carryover, and carryback provisions of R.S.
12 47:287.86. The taxpayer's net operating loss shall be applied as a deduction in a
13 prior or subsequent year only if that taxpayer has Louisiana source positive net
14 income, whether or not the taxpayer is or was a member of a combined reporting
15 group in the prior or subsequent year.

16 (2) No tax credit or post-apportionment deduction earned by one member of
17 the group, but not fully used by or allowed to that member, may be used in whole or
18 in part by another member of the group or applied in whole or in part against the
19 total income of the combined group and a post-apportionment deduction carried over
20 into a subsequent year as to the member that incurred it, and available as a deduction
21 to that member in a subsequent year, shall be considered in the computation of the
22 income of that member in the subsequent year, regardless of the composition of that
23 income as apportioned, allocated, or wholly within this state.

24 C. Determination of taxpayer's share of the income of a combined group
25 apportionable to this state. The taxpayer's share of the income apportionable to this
26 state of each combined group of which it is a member shall be the product of:

27 (1) The apportionable income of the combined group, determined under
28 Subsection D of this Section; and

1 (2) The taxpayer member's apportionment percent, determined under R.S.
2 47:287.95, including in the property, payroll, and sales numerators, the taxpayer's
3 property, payroll, and sales, respectively, associated with the combined group's
4 unitary business in this state, and including in the denominator the property, payroll,
5 and sales of all members of the combined group, including the taxpayer, which
6 property, payroll, and sales are associated with the combined group's unitary
7 business wherever located. The property, payroll, and sales of a partnership shall be
8 included in the determination of the partner's apportionment percentage in proportion
9 to a ratio, the numerator of which is the amount of the partner's distributive share of
10 partnership's unitary income included in the income of the combined group in
11 accordance with R.S. 47:288.6(D)(2)(c) and the denominator of which is the amount
12 of the partnership's total unitary income.

13 D. Determination of the apportionable income of the combined group. The
14 apportionable income of a combined group is determined as follows:

15 (1) From the total income of the combined group, determined under
16 Paragraph (2) of this Subsection, subtract net allocable income.

17 (2) Except as otherwise provided, the total income of the combined group
18 is the sum of the income of each member of the combined group determined under
19 federal income tax laws, as adjusted for state purposes, as if the member were not
20 consolidated for federal purposes. The income of each member of the combined
21 group shall be determined as follows:

22 (a) For any member incorporated in the United States or included in a
23 consolidated federal corporate income tax return, the income to be included in the
24 total income of the combined group shall be the net income from all sources for the
25 corporation after making appropriate modifications under R.S. 47:287.71 and 287.73.

26 (b)(i) For any member not included in Subparagraph (a) of this Paragraph,
27 the income to be included in the total income of the combined group shall be
28 determined by a profit and loss statement which shall be prepared for each foreign
29 branch or corporation in the currency in which the books of account of the branch

1 or corporation are regularly maintained. Adjustments shall be made to the profit and
2 loss statement to conform it to the accounting principles generally accepted in the
3 United States for the preparation of such statements except as modified by this
4 regulation. Except as otherwise provided by regulation, the profit and loss statement
5 of each member of the combined group, and the apportionment factors related
6 thereto, whether United States or foreign, shall be translated into the currency in
7 which the parent company maintains its books and records. Income apportioned to
8 this state shall be expressed in United States dollars.

9 (ii) In lieu of the procedures set forth in Item (i) of this Subparagraph and
10 subject to the determination of the secretary that it reasonably approximates income,
11 any member not included in Subparagraph (a) of this Paragraph may determine its
12 income on the basis of the consolidated profit and loss statement which includes the
13 member and which is prepared for filing with the Securities and Exchange
14 Commission by related corporations. If the member is not required to file with the
15 Securities and Exchange Commission, the secretary may allow the use of the
16 consolidated profit and loss statement prepared for reporting to shareholders and
17 subject to review by an independent auditor. If the income and loss statements do
18 not reasonably approximate income, the secretary may accept those statements with
19 appropriate adjustments to approximate that income.

20 (c) If a unitary business includes income from a partnership, the income to
21 be included in the total income of the combined group shall be the member of the
22 combined group's direct and indirect distributive share of the partnership's unitary
23 apportionable income. Unitary apportionable income from a partnership included
24 in the income of the combined group shall be excluded from allocable income.

25 (d) Except as otherwise provided by regulation, apportionable income from
26 an intercompany transaction between members of the same combined group shall be
27 deferred in a manner similar to Internal Revenue Code Section 1502 and the
28 regulations thereunder. Upon the occurrence of any of the following events, deferred
29 apportionable income resulting from an intercompany transaction between members

1 of a combined group shall be restored to the income of the seller, and shall be
2 apportioned as income earned immediately before the event:

3 (i) The object of a deferred intercompany transaction is either resold by the
4 buyer to an entity that is not a member of the combined group, resold by the buyer
5 to an entity that is a member of the combined group for use outside the unitary
6 business in which the buyer and seller are engaged, or converted by the buyer to a
7 use outside the unitary business in which the buyer and seller are engaged.

8 (ii) The buyer and seller are no longer members of the same combined
9 group, regardless of whether the members remain unitary.

10 (e) A charitable expense allowable as a deduction pursuant to Internal
11 Revenue Code Section 170 incurred by a member of a combined group shall be
12 subtracted first from the apportionable income of the combined group, subject to the
13 income limitations of that Section applied to the entire apportionable income of the
14 group. Any remaining amount shall then be treated as an expense allocable to the
15 member that incurred the expense, subject to the income limitations of that Section
16 applied to the allocable income of that specific member. Any charitable deduction
17 disallowed under the foregoing rule, but allowed as a carryover deduction in a
18 subsequent year, shall be treated as originally incurred in the subsequent year by the
19 same member, and the rules of this Section shall apply in the subsequent year in
20 determining the allowable deduction in that year.

21 (f) Any expense of one member of the unitary group which is directly or
22 indirectly attributable to the allocable or exempt income of another member of the
23 unitary group shall be allocated to that other member as corresponding allocable or
24 exempt expense, as appropriate.

25 §288.7. Designation of surety

26 As a filing convenience, and without changing the respective liability of the
27 group members, members of a combined reporting group may annually elect to
28 designate one taxpayer member of the combined group to file a single return in the
29 form and manner prescribed by the department, in lieu of filing their own respective

1 returns, provided that the taxpayer designated to file the single return consents to act
2 as surety with respect to the tax liability of all other taxpayers properly included in
3 the combined report, and agrees to act as agent on behalf of those taxpayers for the
4 year of the election for tax matters relating to the combined report for that year. If
5 for any reason the surety is unwilling or unable to perform its responsibilities, tax
6 liability may be assessed against the taxpayer members.

7 §288.8. Water's-edge election; initiation and withdrawal

8 A. Water's-edge election. Taxpayer members of a unitary group that meet
9 the requirements of Subsection B of this Section may elect to determine each of their
10 apportioned shares of the net apportionable income or loss of the combined group
11 pursuant to a water's-edge election. Under such election, taxpayer members shall
12 take into account all or a portion of the income and apportionment factors of only the
13 following members otherwise included in the combined group pursuant to R.S.
14 47:288.5, as described below:

15 (1) The entire income and apportionment factors of any member
16 incorporated in the United States or formed under the laws of any state, the District
17 of Columbia, or any territory or possession of the United States.

18 (2) The entire income and apportionment factors of any member, regardless
19 of the place incorporated or formed, if the average of its property, payroll, and sales
20 factors within the United States is twenty percent or more.

21 (3) The entire income and apportionment factors of any member which is a
22 domestic international sales corporation as described in Internal Revenue Code
23 Sections 991 to 994, inclusive; a foreign sales corporation as described in Internal
24 Revenue Code Sections 921 to 927, inclusive; or any member which is an export
25 trade corporation, as described in Internal Revenue Code Sections 970 to 971,
26 inclusive.

27 (4) Any member not described in Paragraphs (1), (2), and (3) of this
28 Subsection, inclusive, shall include the portion of its income derived from or
29 attributable to sources within the United States, as determined under the Internal

1 Revenue Code without regard to federal treaties, and its apportionment factors
2 related thereto.

3 (5) Any member that is a "controlled foreign corporation", as defined in
4 Internal Revenue Code Section 957, to the extent of the income of that member that
5 is defined in Section 952 of Subpart F of the Internal Revenue Code not excluding
6 lower-tier subsidiaries' distributions of such income which were previously taxed,
7 determined without regard to federal treaties, and the apportionment factors related
8 to that income; any item of income received by a controlled foreign corporation shall
9 be excluded if such income was subject to an effective rate of income tax imposed
10 by a foreign country greater than ninety percent of the maximum rate of tax specified
11 in Internal Revenue Code Section 11.

12 (6) Any member that earns more than twenty percent of its income, directly
13 or indirectly, from intangible property or service related activities that are deductible
14 against the apportionable income of other members of the combined group, to the
15 extent that the income and the apportionment factors are related.

16 (7) The entire income and apportionment factors of any member doing
17 business in a tax haven. The phrase "doing business in a tax haven" shall mean that
18 the member is engaged in activity sufficient for that tax haven jurisdiction to impose
19 a tax under United States constitutional standards. If the member's business activity
20 within a tax haven is entirely outside the scope of the laws, provisions, and practices
21 that cause the jurisdiction to meet the criteria established in R.S. 47:288.4, the
22 activity of the member shall be treated as not having been conducted in a tax haven.

23 B. Initiation and withdrawal of election.

24 (1) A water's-edge election is effective only if made on a timely filed,
25 original return for a tax year by every member of the unitary business subject to tax.
26 The secretary shall develop rules and regulations governing the impact, if any, on the
27 scope or application of a water's-edge election, including termination or deemed
28 election, resulting from a change in the composition of the unitary group, the
29 combined group, the taxpayer members, and any other similar change.

1 (2) Such election shall constitute consent to the reasonable production of
2 documents and taking of depositions.

3 (3) In the discretion of the secretary, a water's-edge election may be
4 disregarded in part or in whole, and the income and apportionment factors of any
5 member of the taxpayer's unitary group may be included in the combined report
6 without regard to the provisions of this Section, if any member of the unitary group
7 fails to comply with any provision of this Part, or if a person otherwise not included
8 in the water's-edge combined group was availed of a substantial objective of
9 avoiding state income tax.

10 (4) A water's-edge election is binding for and applicable to the tax year it is
11 made and all tax years thereafter for a period of ten years. It may be withdrawn or
12 reinstated after withdrawal, prior to the expiration of the ten-year period, only upon
13 written request for reasonable cause based on extraordinary hardship due to
14 unforeseen changes in state tax statutes, law, or policy, and only with the written
15 permission of the secretary. If the secretary grants a withdrawal of election, the
16 secretary shall impose reasonable conditions as necessary to prevent the evasion of
17 tax or to clearly reflect income for the election period prior to or after the
18 withdrawal. Upon the expiration of the ten-year period, a taxpayer may withdraw
19 from the water's-edge election. Such withdrawal must be made in writing within one
20 year of the expiration of the election, and is binding for a period of ten years, subject
21 to the same conditions as applied to the original election. If no withdrawal is
22 properly made, the water's-edge election shall be in place for an additional ten-year
23 period, subject to the same conditions as applied to the original election.

24 Section 2. The provisions of this Act shall be effective for taxable years beginning
25 on or after January 1, 2017.

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 74 Original

2016 First Extraordinary Session

Jay Morris

Abstract: Changes the method for determination of income subject to the corporation income tax by requiring combined reporting for certain corporations in Louisiana.

Proposed law requires corporate taxpayers engaged in a unitary business with one or more other corporations to file a combined report which includes the income determined under present law and the apportionment factors determined under present law of all corporations that are members of the unitary business.

Proposed law defines a "corporation" as any corporation as defined by present law or other entity taxed as a corporation for federal income tax purposes regardless of where the corporation is located, which, if it were doing business in this state would be a "taxpayer".

Proposed law defines a "unitary business" as a single economic enterprise made up of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts.

Proposed law defines a "combined group" as the group of all persons whose income and apportionment factors are required to be taken into account pursuant to present law in determining the taxpayer's share of income or loss attributable to this state.

Proposed law authorizes the secretary of the Dept. of Revenue (DOR), through promulgation of rules, to require that the combined report of a corporation include the income and associated apportionment factors of any persons that are members of a unitary business, in order to reflect proper apportionment of income of entire unitary businesses. Further provides that if the secretary determines that the reported income or loss of a taxpayer engaged in a unitary business with any person not required to file a combined report represents an avoidance or evasion of tax by the taxpayer, the secretary may require all or any part of the income and associated apportionment factors of that person be included in the taxpayer's combined report. Further authorizes the secretary use other methods to effectuate a proper reflection of the total amount of income subject to apportionment and an equitable allocation and apportionment of the taxpayer's income.

Proposed law provides that the use of a combined report does not disregard the separate identities of the taxpayer members of the combined group. Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this state, which includes the taxpayer member's share of apportionable income of the combined group, where apportionable income of the combined group is calculated as a summation of the individual net apportionable incomes of all members of the combined group. A member's net apportionable income shall be determined by removing all but apportionable income, expense and loss from that member's total income.

Proposed law provides for the components of income which shall be subject to income tax in this state as well as the application of tax credits and post-apportionment deductions in the calculation of taxable income. Proposed law prohibits tax credits or post-apportionment deductions that are earned by one member of the group but not fully used by or allowed to that member from being used in whole or in part by another member of the group or applied in whole or in part against the total income of the combined group. Further provides that a

post-apportionment deduction carried into a subsequent year as to the member that incurred it that is also a deduction to that member in a subsequent year from being considered in the computation of the income of that member in the subsequent year, regardless of the composition of that income as apportioned, allocated or wholly within this state.

Proposed law requires the taxpayer's share of income apportionable to this state of each combined group of which the taxpayer is a member be the product of the apportionable income of the combined group as determined under proposed law the taxpayer member's apportionment percent as determined under present law the taxpayer's property, payroll, and sales numerators associated with the combined group's unitary business in this state, and including in the denominator the property, payroll, and sales of all members of the combined group, including the taxpayer, which property, payroll and sales are associated with the combined group's unitary business wherever located.

Proposed law requires the apportionable income of a combined group to be determined from the total income of the combined group minus net allocable income. Further provides that the total income of the combined group shall be the sum of the income of each member of the combined group determined under federal income tax laws, as adjusted for state purposes, as if the member were not consolidated for federal purposes.

Proposed law provides for the calculation of the income of each member of the combined group that is incorporated in the U.S. or included in a consolidated federal corporate income tax return, and for all other members.

Proposed law provides for the disposition of charitable expenses allowable as deductions pursuant to federal law that are incurred by a member of a combined group and for expenses of one member of the unitary group which are directly or indirectly attributable to the allocable or exempt income of another member of the unitary group.

Proposed law authorizes members of a combined reporting group to annually elect to designate one taxpayer member of the combined group to file a single return in lieu of filing their own respective returns, provided that the taxpayer designated to file the single return consents to act as surety with respect to the tax liability of all other taxpayers included in the combined report and agrees to act as agent on behalf of those taxpayers for the year of the election for tax matters relating to the combined report for that year.

Proposed law authorizes taxpayer members of a unitary group that meet the requirements of proposed law to elect to determine each of their apportioned shares of the net apportionable income or loss of the combined group pursuant to a water's-edge election. Further provides for the members of the combined group whose income and apportionment factors that shall be taken into account in the water's-edge election.

Proposed law provides that a water's-edge election shall be effective only if made on a timely filed, original return for a tax year by every member of the unitary business subject to tax. Proposed law authorizes the secretary to develop regulations governing the impact on the scope or application of a water's-edge election, including termination or deemed election, resulting from a change in the composition of the unitary group, the combined group, the taxpayer members, and any other similar change.

Proposed law authorizes the secretary to disregard a water's-edge election, and the income and apportionment factors of any member of the taxpayer's unitary group may be included in the combined report if any member of the unitary group fails to comply with any provision of proposed law or if a person otherwise not included in the water's-edge combined group was availed of with a substantial objective of avoiding state income tax.

Proposed law provides that a water's-edge election shall be binding for and applicable to the tax year it is made and all tax years thereafter for a period of 10 years. A water's-edge election may be withdrawn or reinstated after withdrawal, prior to the expiration of the 10-year period, only upon written request for reasonable cause based on extraordinary hardship

due to unforeseen changes in state tax statutes, law, or policy, and only with the written permission of the secretary.

Effective for taxable years beginning on or after Jan. 1, 2017.

(Adds R.S. 47:288.1-288.8)