

2016 First Extraordinary Session

HOUSE BILL NO. 106

BY REPRESENTATIVE IVEY

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 expenses; interest and
9 management fees

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

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

13 (2) The adjustments required in Paragraph (1) of this Subsection shall not
14 apply to that portion of interest expenses and costs, intangible expenses and costs,
15 and management fees if the corporation establishes that the transaction giving rise
16 to the interest expenses and costs, the intangible expenses and costs, or the
17 management fees between the corporation and the related member did not have as
18 a principal purpose the avoidance of any Louisiana tax. If the transaction giving rise
19 to the interest expenses and costs, intangible expenses and costs, or the management
20 fees 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, intangible expenses and costs, and the
26 management fees that the corporation establishes was paid, accrued, or incurred,
27 directly or indirectly, by the related member during the same taxable year to a person
28 that is not a related member. A corporation shall not be required to add to its taxable
29 income more than once any amount of interest expenses and costs, intangible

1 expenses and costs, or management fees that the corporation pays, accrues, or incurs
2 to a related member described in Paragraph (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 of the
5 Department of Revenue agree in writing to the application or use of alternative
6 adjustments and computations. Nothing in this Section shall be construed to limit
7 or negate the secretary's authority to enter into agreements and compromises allowed
8 by law.

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

13 Section 2. The provisions of this Act shall be applicable to all tax years beginning
14 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 106 Original 2016 First Extraordinary Session Ivey

Abstract: Requires corporations to add-back otherwise deductible interest expenses, costs, and management fees 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, intangible expenses and costs, and management fees 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, the intangible expenses and costs, or management fees 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, intangible expenses and costs, and management fees 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)