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**SENATE FLOOR AMENDMENTS**

2016 First Extraordinary Session

Amendments proposed by Senator Morrell to Engrossed House Bill No. 99 by Representative Stokes

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1 AMENDMENT NO. 1

2 On page 1, line 2, after "(C)(1), (D)" delete the remainder of the line and insert "and  
3 (F)(2)(b) and to enact R.S. 47:287.95(L) and (M), relative to"

4 AMENDMENT NO. 2

5 On page 1, line 5, after "income;" insert "to provide for the sourcing of sales;"

6 AMENDMENT NO. 3

7 On page 1, delete lines 8 and 9, and insert

8 "Section 1. R.S. 47:287.95(A), (C)(1), (D), and (F)(2)(b) are hereby amended and  
9 reenacted and R.S. 47:287.95(L) and (M) are hereby enacted to read as follows:"

10 AMENDMENT NO. 4

11 On page 2, line 26, change "Item (a)(ii)" to "Subparagraph (1)(a)(ii)"

12 AMENDMENT NO. 5

13 On page 3, line 29, change "Subparagraph (b)" to "Subparagraph (1)(b)"

14 AMENDMENT NO. 6

15 On page 4, line 2, change "performed in" to "~~performed in~~ sourced to"

16 AMENDMENT NO. 7

17 On page 4, delete lines 7 through 14 and insert the following:

18 "(2)(a) \* \* \*"

19 AMENDMENT NO. 8

20 On page 4, line 15, delete "~~(b)~~" and insert "(b)(i)"

21 AMENDMENT NO. 9

22 On page 4, line 20, change "(b)" to "(b)(ii)"

23 AMENDMENT NO. 10

24 On page 4, after line 26, insert:

25 "L. Sourcing of certain sales.

26 (1) Sales other than sale of tangible personal property are to be sourced to this state  
27 if the taxpayer's market for the sale is in this state. The taxpayer's market for a sale is in this  
28 state and the sale is thus assigned to the state for the purpose of this Section as follows:

29 (a) In the case of sale, rental, lease or license of real property, if and to the extent the  
30 property is located in the state.

31 (b) In the case of rental, lease or license of tangible personal property, if and to the  
32 extent the property is located in the state.

1 (c) In the case of sale of a service, if and to the extent the service is delivered to a  
 2 location in the state. The delivery of a tangible medium representing the output of a service  
 3 does not control the sourcing of receipts from the underlying service.

4 (d) In the case of lease or license of intangible property, including a sale or exchange  
 5 of such property where the receipts from the sale or exchange derive from payments that are  
 6 contingent on the productivity, use or disposition of the property, if and to the extent the  
 7 intangible property is used in the state.

8 (e) In the case of the sale of intangible property, other than as provided in  
 9 Subparagraph (d) of this Paragraph, where the property sold is a contract right, government  
 10 license or similar intangible property that authorizes the holder to conduct a business activity  
 11 in a specific geographic area, if and to the extent that the intangible property is used in or  
 12 otherwise associated with the state; provided, however, that any sale of intangible property,  
 13 not otherwise described in this Subparagraph and Subparagraph (d) of this Paragraph, shall  
 14 be excluded from the numerator and the denominator of the sales factor.

15 (2) In the case where the taxpayer's customer is an individual, the taxpayer shall  
 16 source receipts from the sale of a service as follows:

17 (a) In the case where a taxpayer's customer is a natural person and the service  
 18 provided is a direct personal service, the sale shall be sourced to the state where the customer  
 19 received the direct personal service.

20 (b) Services that are not direct personal services that are delivered to customers who  
 21 are natural persons with a Louisiana billing address shall be sourced to this state.

22 (c) In the case where the sourcing methodology specified by Subparagraphs (a) or  
 23 (b) of this Paragraph fails to clearly reflect the taxpayers market in this state, the taxpayer  
 24 may utilize, or the department may require, the use of other criteria and methodologies that  
 25 will reasonably approximate the taxpayer's market in this state. If an alternate approach is  
 26 utilized, the taxpayer shall attach to the tax return a detailed explanation of why it was  
 27 unreasonable to utilize the methodology specified by Subparagraphs (a) or (b) of this  
 28 Paragraph and an explanation of the methodology used. If the taxpayer fails to make such  
 29 a disclosure on the return, the taxpayer shall be presumed to consent to the sourcing as  
 30 detailed in Subparagraphs (a) or (b) of this Paragraph as applicable.

31 (3) In the case where the taxpayer's customer is an entity that is unrelated to the  
 32 taxpayer, the taxpayer shall source receipts from the sale of a service as follows:

33 (a) To the extent a service is provided to an unrelated entity and the service being  
 34 provided has a substantial connection to a specific geographic location, the income shall be  
 35 sourced to Louisiana if the geographic location is in this state. If the service receipts have  
 36 a substantial connection to geographic locations in more than one state, the sales shall be  
 37 reasonably sourced between those states.

38 (b) To the extent a service is provided to an unrelated entity and the service being  
 39 provided does not have a substantial connection to a specific geographic location, sales from  
 40 services delivered to unrelated entities shall be sourced to the commercial domicile of the  
 41 taxpayer.

42 (c) In the case where the sourcing methodology specified by Subparagraphs (a) or  
 43 (b) of this Paragraph fails to clearly reflect the taxpayers market in this state, the taxpayer  
 44 may utilize, or the department may require, the use of other criteria and methodologies that  
 45 will reasonably approximate the taxpayer's market in this state. If an alternate approach is  
 46 utilized, the taxpayer shall attach to the tax return a detailed explanation of why it was  
 47 unreasonable to utilize the methodology specified by Subparagraphs (a) or (b) of this  
 48 Paragraph and an explanation of the methodology used. If the taxpayer fails to make such  
 49 a disclosure on the return, the taxpayer shall be presumed to consent to the sourcing as  
 50 detailed in Subparagraphs (a) or (b) of this Paragraph as applicable.

51 (d) The secretary shall promulgate rules pursuant to the Administrative Procedure  
 52 Act concerning the sourcing of the sales of services between related entities.

53 (e) As used in this Subsection, a related entity shall include:

54 (i) A stockholder, or a stockholder's partnership, or juridical person, if the  
 55 stockholder and the stockholder's partnerships, or juridical persons, own directly, indirectly,  
 56 beneficially or constructively, including as provided for under Title 26, Section 318 of the  
 57 U.S. Code, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding  
 58 stock.

59 (ii) A corporation, or a party related to the corporation in a manner that would require  
 60 an attribution of stock from the corporation to the party or from the party to the corporation  
 61 under the attribution rules of Title 26, Section 318 of the U.S. Code if the taxpayer owns,

1 directly, indirectly, beneficially or constructively, at least fifty percent of the value of the  
2 corporation's outstanding stock.

3 (iii) "Related party" means any member of a controlled group of corporations as  
4 defined in Title 26, Section 1563 of the U.S. Code, or any other person that would be a  
5 member of a controlled group if rules similar to those in Title 26, Section 1563 of the U.S.  
6 Code were applied to that person.

7 (5) Whenever a taxpayer is subjected to different sourcing methodologies regarding  
8 intangibles or services, by the department and one or more other state taxing authorities, the  
9 taxpayer may petition for, and the department shall participate in, and encourage the other  
10 state taxing authorities to participate in, non-binding mediation in accordance with rules  
11 promulgated in accordance with the Administrative Procedure Act.

12 M. If the taxpayer is not taxable in a state to which a sale is assigned or if the state  
13 of assignment cannot be determined or reasonably approximated pursuant to this Section and  
14 the regulations thereunder, the sale shall be excluded from the numerator and the  
15 denominator of the sales factor."