
SENATE FLOOR AMENDMENTS

2016 First Extraordinary Session

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

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
27 state if the taxpayer's market for the sale is in this state. The taxpayer's market for a
28 sale is in this state and the sale is thus assigned to the state for the purpose of this
29 Section as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (ii) A corporation, or a party related to the corporation in a manner that would
7 require an attribution of stock from the corporation to the party or from the party to
8 the corporation under the attribution rules of Title 26, Section 318 of the U.S. Code
9 if the taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty
10 percent of the value of the corporation's outstanding stock.

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

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

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