HOUSE SUMMARY OF SENATE AMENDMENTS

HB 99 **2016 First Extraordinary Session** **Stokes**

TAX/CORP INCOME: Provides relative to the apportionment ratio for purposes of computing corporate income tax (Item #5)

Synopsis of Senate Amendments

1. Creates a Special Committee on Tax Exemptions and Exclusions to meet and review sales and use tax exemptions and exclusions. Provides for the membership of the committee as well as the committee's responsibilities.

2. Adds provisions, beginning Jan. 1, 2016, that the calculation of the La. apportionment percent of any taxpayer whose net apportionable income is derived primarily from the exploration, production, refining or marketing of oil and gas shall be the arithmetical average of four specific ratios.

3. Requires the double-weighing of the ratio of net sales made in the regular course of business and other gross apportionable income attributable to this state to the total net sales made in the regular course of business and other gross apportionable income of the taxpayer.

4. Requires sales, other than for the sale of tangible personal property, to be sourced to La. if the taxpayer's market for the sale is in this state.

5. Adds provisions relative to when a taxpayer's market for a sale is determined to be in La. and thus the sale is assigned to the state for purposes of <u>proposed law</u>.

5. Adds requirements for the sourcing of receipts for the sale of services in La. in cases where the taxpayer's customer is an individual and the sourcing of receipts for the sale of services when the taxpayer's customer is an entity that is unrelated to the taxpayer.

6. Add definitions for a "related entity" and a "related party".

7. Authorizes a taxpayer to petition for non-binding mediation when the taxpayer is subjected to different sourcing methodologies regarding intangibles or services.

8. Requires the secretary of the Dept. of Revenue to promulgate rules in accordance with the APA concerning the sourcing of the sales of services between related entities.

Digest of Bill as Finally Passed by Senate

Transportation By Aircraft

<u>Present law</u> provides that the La. apportionment percent of any taxpayer whose net apportionable income is derived primarily from transportation by aircraft shall be calculated from the average of following ratios:

(1) The ratio of the value of immovable and movable property, other than aircraft, owned by the taxpayer located in La. to the value of all immovable and movable property, other than aircraft, owned by the taxpayer used in the production of apportionable income.

(2) The ratio of gross apportionable income derived from La. sources to the total gross apportionable income of the taxpayer.

Proposed law changes present law to provide that for taxable periods beginning on or after Jan. 1, 2016, the La. apportionment percent of these taxpayers shall be computed by using the *single ratio* as provided in (2).

Present law provides that "gross apportionable income from La. sources" shall include all gross receipts derived from passenger journeys and cargo shipments originating in La. and other items of gross apportionable income or receipts derived entirely from sources in La.

Transportation Other Than Aircraft Or Pipeline

Present law provides that the La. apportionment percent of any taxpayer whose net apportionable income is derived primarily from transportation other than by aircraft or pipeline, shall be calculated from the average of the following ratios:

(1) The ratio of the value of immovable and movable property owned by the taxpayer located in La. to the value of all immovable and movable property owned by the taxpayer used in the production of apportionable income.

(2) The ratio of gross apportionable income from La. sources to the total amount of gross apportionable income of the taxpayer.

Proposed law changes present law to provide that for taxable periods beginning on or after Jan. 1, 2016, the La. apportionment percent of these taxpayers shall be computed by using the *single ratio* as provided in (2).

Present law provides that "gross apportionable income from La. sources" shall include all income derived entirely from sources within the state and a portion of revenue from transportation partly in and partly outside this state, prorated with deference given to the proportion of service performed in La.

Present law further provides that the value of immovable and movable property owned by the taxpayer used in La. shall include the value of property regularly situated in this state plus a pro rata of the value of all rolling stock and other mobile equipment owned by the taxpayer used in the production of apportionable income, with deference given for the mileage operated and traffic density inside and outside of this state.

Present law provides for special provisions for trucking companies.

Service Enterprises

Present law provides that the La. apportionment percent of any taxpayer whose net apportionable income is derived primarily from a service business in which the use of property is not a substantial income-producing factor shall be calculated from the average of the following ratios:

(1) The ratio of the amount paid by the taxpayer for salaries, wages, and other compensation for personal services rendered in La. to the total amount paid by the taxpayer for salaries, wages, and other compensation for personal services in connection with the production of the net apportionable income.

(2) The ratio of the gross apportionable income of the taxpayer from La. sources to the total gross apportionable income of the taxpayer.

Proposed law changes present law to provide that for taxable periods beginning on or after Jan. 1, 2016, the La. apportionment percent of these taxpayers shall be computed by using the *single ratio* as provided in (2).

Present law provides that "gross apportionable income from La. sources" shall include revenue from services performed in this state, and any other gross income derived entirely from sources within this state.

Manufacturing And Merchandising

Present law provides that the La. apportionment percent of a taxpayer whose net apportionable income is derived primarily from the transportation by pipeline or from any business not included in other provisions of present law (manufacturing and merchandising) shall be calculated from the average of the following three ratios:

(1) The ratio of the value of the immovable and movable property owned by the taxpayer located in La. to the value of all immovable and movable property owned by the taxpayer used in the production of the net apportionable income.

(2) The ratio of the amount paid by the taxpayer for salaries, wages, and other compensation for personal services rendered in this state to the total amount paid by the taxpayer for salaries, wages, and other compensation for personal services in connection with the production of net apportionable income.

(3) The ratio of net sales made in the regular course of business and other gross apportionable income attributable to this state to the total net sales made in the regular course of business and other gross apportionable income of the taxpayer.

Proposed law changes present law to provide that for taxable periods beginning on or after Jan. 1, 2016, the La. apportionment percent of taxpayers whose apportionable income is derived primarily from transportation by pipeline or from any business not included in other provisions of present law shall be computed by using the *single ratio* as provided in (3).

Present law provides that since Jan. 1, 2006, the La. apportionment percent of any taxpayer whose net apportionable income is derived primarily from manufacturing or merchandising shall be computed by a *single ratio* of net sales made in the regular course of business and other gross apportionable income attributable to this state to the total net sales made in the regular course of business and other gross apportionable income of the taxpayer.

Proposed law retains present law as it relates to the apportionment ratios for manufacturing or merchandising sectors.

Oil and Gas

Proposed law requires that for taxable periods beginning on or after Jan. 1, 2016, the La. apportionment percent of any taxpayer whose net apportionable income is derived primarily from the exploration, production, refining or marketing of oil and gas shall be the arithmetical average of the four following ratios:

(1) The ratio of the value of the immovable and movable property owned by the taxpayer located in La. to the value of all immovable and movable property owned by the taxpayer used in the production of the net apportionable income.

(2) The ratio of the amount paid by the taxpayer for salaries, wages, and other compensation for personal services rendered in this state to the total amount paid by the taxpayer for salaries, wages, and other compensation for personal services in connection with the production of net apportionable income.

(3) The ratio of net sales made in the regular course of business and other gross apportionable income attributable to this state to the total net sales made in the regular course of business and other gross apportionable income of the taxpayer. The ratio of net sales as provided in proposed law shall be double-weighted or counted

twice.

Proposed law defines "exploration, production, refining or marketing of oil and gas" for purposes of proposed law.

Proposed law requires sales, other than for the sale of tangible personal property to be sourced to this state if the taxpayer's market for the sale is in this state. Provides for scenarios for when a taxpayer's market for a sale is determined to be in this state and thus the sale is assigned to the state for purposes of proposed law.

Proposed law adds requirements for the sourcing of receipts for the sale of services in La. in cases where the taxpayer's customer is an individual and the sourcing of receipts for the sale of services when the taxpayer's customer is an entity that is unrelated to the taxpayer.

Proposed law requires the secretary of the Dept. of Revenue to promulgate rules in accordance with the APA concerning the sourcing of the sales of services between related entities.

Proposed law defines a "related entity" for purposes of proposed law.

Proposed law provides that whenever a taxpayer is subjected to different sourcing methodologies regarding intangibles or services, the taxpayer may petition for, and the department shall participate in, and encourage other state taxing authorities to participate in, non-binding mediation.

Proposed law provides that if a taxpayer is not taxable in a state to which a sale is assigned or if the state of assignment cannot be determined or reasonably approximated, then the sale shall be excluded from the numerator and the denominator of the sales factor.

Proposed law creates the Special Committee on Tax Exemptions and Exclusions to meet and review sales and use tax exemptions and exclusions (hereinafter "exemptions") in present law and provides for the membership of the special committee.

Proposed law requires the committee to identify the exemptions enacted before Jan. 1, 1975, and determine an effective economic model to determine the economic impact of a tax exemption, to establish criteria for the identification of the high-performing exemptions based on specific criteria and to identify the low-performing tax exemptions.

Proposed law requires that the special committee submit a report to the Legislature no later than March 15, 2017, and that the report recommend the temporary or permanent sunset, reduction, reenactment, or repeal of tax exemptions, include a summary of any possible overall reduction in the sales tax rate due to the expansion of the tax base, and recommend a schedule for the review of tax exemptions and exclusions.

Applicable to all taxable periods beginning on and after Jan. 1, 2016.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:287.95(A), (C)(1), (D), (E), (F)(2); Adds R.S. 47:287.95(L) and (M) and 319)