2016 Second Extraordinary Session

HOUSE BILL NO. 20

BY REPRESENTATIVE REYNOLDS

TAX/CORP INCOME: Provides relative to the apportionment ratio for purposes of computing corporate income tax and provides for the sourcing of sales (Item #44)

AN ACT

To amend and reenact R.S. 47:287.95(A), (C)(1), (D), (E), and (F)(2)(b) and to enact R.S. 47:287.95(L) and (M), relative to corporate income tax; to provide for the calculation of apportionment income for certain businesses; to provide for the weighing of certain ratios in the calculation of Louisiana income; to provide for the sourcing of certain sales; to provide for applicability; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

§287.95. Determination of Louisiana apportionment percent

A.<u>(1)</u> Air transportation. ~~The~~ <u>Except as provided for in Paragraph (2) of this Subsection, the</u> Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of transportation by aircraft shall be the arithmetical average of two ratios, as follows:

~~(1)~~<u>(a)</u> The ratio of the value of immovable and corporeal movable property, other than aircraft, owned by the taxpayer and located in Louisiana to the value of all immovable and corporeal movable property, other than aircraft, owned by the taxpayer and used in the production of apportionable income.

~~(2)~~(b) The ratio of the amount of gross apportionable income derived from Louisiana sources to the total gross apportionable income of the taxpayer.

(2) For taxable periods beginning on or after January 1, 2016, and for the purpose of this Subsection, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of transportation by aircraft shall be computed by means of a single ratio consisting of the ratio provided for in Subparagraph (1)(b) of this Subsection.

(3) For the purposes of this Subsection, gross apportionable income from Louisiana sources shall include all gross receipts derived from passenger journeys and cargo shipments originating in Louisiana and any other items of gross apportionable income or receipts derived entirely from sources in this state.

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C. Other transportation. (1)(a) ~~The~~ Except as provided in Subparagraph (b) of this Paragraph, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of transportation, other than by aircraft or pipeline, shall be the arithmetical average of two ratios, as follows:

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

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

(b) For taxable periods beginning on or after January 1, 2016, and for the purpose of this Subsection, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of transportation, other than by aircraft or pipeline, shall be computed by means of a single ratio consisting of the ratio provided for in Item (a)(ii) of this Paragraph.

~~(b)~~(c) For the purposes of this Subsection, the gross apportionable income from Louisiana sources shall include all such income that is derived entirely from sources within the state and a portion of revenue from transportation partly without and partly within this state, to be prorated subject to rules and regulations of the secretary, who shall give due consideration to the proportion of service performed in Louisiana.

~~(c)~~(d) For the purposes of this Subsection, the value of immovable and corporeal movable property owned by the taxpayer and used in Louisiana shall include the value of all such 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 and used in the production of apportionable income, whether within or without this state, said proration to be made subject to rules and regulations of the secretary, who shall give due consideration to the mileage operated and traffic density within and without this state.

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D.(1) Service enterprises. ~~The~~ Except as provided in Paragraph (2) of this Subsection, the Louisiana 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 the arithmetical average of two ratios, as follows:

~~(1)~~(a) The ratio of the amount paid by the taxpayer for salaries, wages, and other compensation for personal services rendered in Louisiana 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)~~(b) The ratio of the gross apportionable income of the taxpayer from Louisiana sources to the total gross apportionable income of the taxpayer.

(2) For taxable periods beginning on or after January 1, 2016, and for the purpose of this Subsection, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from a service business in

<u>which the use of property is not a substantial income-producing factor shall be computed by means of a single ratio consisting of the ratio provided for in Subparagraph (1)(b) of this Paragraph.</u>

<u>(3)</u> For the purposes of this Subsection, the gross apportionable income from Louisiana sources shall include the revenue from services ~~performed in~~ <u>sourced to</u> this state, and any other gross income derived entirely from sources within this state.

<u>E. Oil and gas.</u>

<u>(1) For taxable periods beginning on or after January 1, 2016, for the purpose of this Subsection, the Louisiana 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 ratios, as follows:</u>

<u>(a) The ratio of the value of the immovable and corporeal movable property owned by the taxpayer and located in Louisiana to the value of all immovable and corporeal movable property owned by the taxpayer and used in the production of the net apportionable income.</u>

<u>(b) 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.</u>

<u>(c) 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 this Subparagraph shall be double-weighted or counted twice.</u>

<u>(2) For purposes of this Subsection, "exploration, production, refining, or marketing of oil and gas " shall mean:</u>

<u>(a) Any taxpayer whose income is primarily derived from the production or sale of unrefined oil and gas.</u>

(b) Any taxpayer defined as an integrated oil company per the United States Internal Revenue Code - 26 U.S.C. 291(b)(4), or integrated oil companies that refine, produce, and have marketing operations, whose income in Louisiana is principally derived from production and sale of unrefined oil and gas, and who also engage in significant marketing of refined petroleum products in Louisiana. Provided, any taxpayer, whose activities during the taxable year do not include any "gross receipts from retail sales of oil and/or natural gas", or any "refinery activities of oil and/or natural gas", will not be considered as an integrated oil company for Louisiana tax purposes, not withstanding such taxpayer may be a "related party" or a "member of the federal consolidated group" under the United States Internal Revenue Code.

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(b)(i) For taxable periods beginning on or after January 1, 2006, and for the purpose of this Subsection, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of manufacturing or merchandising shall be computed by means of a single ratio consisting of the ratio provided for in Subparagraph (1)(c) of this Subsection.

(ii) For taxable periods beginning on or after January 1, 2016, and for the purpose of this Subsection, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from transportation by pipeline or from any business not included in Subsections A through D of this Section shall be computed by means of a single ratio consisting of the ratio provided for in Subparagraph (1)(c) of this Subsection.

* * *

L. Sourcing of certain sales.

(1) Sales other than sales of tangible personal property are to be sourced to this state if the taxpayer's market for the sale is in this state. The taxpayer's market

for a sale is in this state and the sale is assigned to the state for the purpose of this Section as follows:

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

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

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

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

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

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

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

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

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

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

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

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

<u>(c) In the case where the sourcing methodology specified by Subparagraph (a) or (b) of this Paragraph fails to clearly reflect the taxpayer's market in this state, the taxpayer may utilize, or the department may require, the use of other criteria and methodologies that will reasonably approximate the taxpayer's market in this state. If an alternate approach is utilized, the taxpayer shall attach to the tax return a detailed explanation of why it was unreasonable to utilize the methodology specified by Subparagraph (a) or (b) of this Paragraph and an explanation of the methodology used. If the taxpayer fails to make such a disclosure on the return, the taxpayer shall</u>

be presumed to consent to the sourcing as detailed in Subparagraph (a) or (b) of this Paragraph as applicable.

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

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

(i) A stockholder, or a stockholder's partnership, or juridical person, if the stockholder and the stockholder's partnerships, or juridical persons, own directly, indirectly, beneficially, or constructively, including as provided for under 26 U.S.C. 318, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock.

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

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

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

M. If the 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 pursuant to this Section and the regulations thereunder, the sale shall be excluded from the numerator and the denominator of the sales factor.

Section 2. The provisions of this Act shall be applicable to all taxable periods beginning on and after January 1, 2016.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

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 20 Reengrossed 2016 Second Extraordinary Session Reynolds

Abstract: Changes the apportionment percent for apportionable income derived for certain transportation, service, and oil industry sectors to a single ratio calculation.

Transportation By Aircraft

Present law 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 the 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.

Sourcing of Sales

Proposed law requires sales other than sales of tangible personal property to be sourced to La. if the taxpayer's market for the sale is in this state. Further provides specific provisions for the sourcing of sales to La. as follows:

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

(2) In the case of sale of a service, if and to the extent the service is delivered to a location in the state.

(3) In the case of lease or license of intangible property, including a sale or exchange of property where receipts from the sale or exchange derive from payments contingent on the productivity, use, or disposition of the property, if and to the extent the intangible property is used in the state.

(4) In the case of the sale of intangible property where the property sold is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, if and to the extent that the intangible property is used in or is otherwise associated with the state.

Proposed law provides that if the taxpayer's customer is an individual, the taxpayer shall source receipts from the sale of a service as follows:

(1) If the customer is a natural person and the service is a direct personal service, the sale shall be sourced to the state where the customer received the direct personal service.

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

(3) If the sourcing methodology in proposed law fails to clearly reflect the taxpayer's market in this state, the taxpayer may utilize, or the department may require, the use of other criteria and methodologies to approximate the taxpayer's market in this state. Proposed law specifies requirements for a taxpayer to follow if an alternate approach is utilized and consequences if a taxpayer fails to fulfill those requirements.

Proposed law provides that if the taxpayer's customer is an entity unrelated to the taxpayer, the taxpayer shall source receipts from the sale of a service as follows:

(1) If a service is provided to an unrelated entity and the service has a substantial connection to a specific geographic location, the income shall be sourced to La. if the geographic location is in this state. Service receipts that have a substantial connection to geographic locations in multiple states shall be reasonably sourced between those states.

(2) If the service provided to an unrelated entity does not have a substantial connection to a specific geographic location, sales from services delivered to unrelated entities shall be sourced to the commercial domicile of the taxpayer.

(3) If the sourcing methodology in proposed law fails to reflect the taxpayer's market in this state, the taxpayer may utilize, or the department may require, the use of other criteria and methodologies to approximate the taxpayer's market in this state. Proposed law specifies requirements for a taxpayer to follow if an alternate approach is utilized and consequences if a taxpayer fails to fulfill those requirements.

Proposed law requires the secretary of DOR 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" and "related party" for purposes of calculating the sourcing of sales.

Proposed law authorizes a taxpayer to petition for and requires DOR to participate in non-binding mediation when a taxpayer is subjected to different sourcing methodologies regarding intangibles or services by La. and one or more other state taxing authorities.

Proposed law provides that if the 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.

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), and (F)(2)(b); Adds R.S. 47:287.95(L) and (M))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Add 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.

2. Define "exploration, production, refining, or marketing of oil and gas".