

2016 Second Extraordinary Session

HOUSE BILL NO. 20

BY REPRESENTATIVE REYNOLDS

1 AN ACT

2 To amend and reenact R.S. 47:287.95(A), (C)(1), (D), and (F)(2)(b) and to enact R.S.
3 47:287.95(E), (L), and (M), relative to corporate income tax; to provide for the
4 calculation of apportionment income for certain businesses; to provide for the
5 weighing of certain ratios in the calculation of Louisiana income; to provide for the
6 sourcing of certain sales; to provide for applicability; to provide for an effective date;
7 and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

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

11 §287.95. Determination of Louisiana apportionment percent

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

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

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

1 secretary, who shall give due consideration to the proportion of service performed
 2 in Louisiana.

3 ~~(c)~~(d) For the purposes of this Subsection, the value of immovable and
 4 corporeal movable property owned by the taxpayer and used in Louisiana shall
 5 include the value of all such property regularly situated in this state, plus a pro rata
 6 of the value of all rolling stock and other mobile equipment owned by the taxpayer
 7 and used in the production of apportionable income, whether within or without this
 8 state, said proration to be made subject to rules and regulations of the secretary, who
 9 shall give due consideration to the mileage operated and traffic density within and
 10 without this state.

11 * * *

12 D.(1) Service enterprises. ~~The~~ Except as provided in Paragraph (2) of this
 13 Subsection, the Louisiana apportionment percent of any taxpayer whose net
 14 apportionable income is derived primarily from a service business in which the use
 15 of property is not a substantial income-producing factor shall be the arithmetical
 16 average of two ratios, as follows:

17 ~~(1)~~(a) The ratio of the amount paid by the taxpayer for salaries, wages, and
 18 other compensation for personal services rendered in Louisiana to the total amount
 19 paid by the taxpayer for salaries, wages, and other compensation for personal
 20 services in connection with the production of the net apportionable income.

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

23 (2) For taxable periods beginning on or after January 1, 2016, and for the
 24 purpose of this Subsection, the Louisiana apportionment percent of any taxpayer
 25 whose net apportionable income is derived primarily from a service business in
 26 which the use of property is not a substantial income-producing factor shall be
 27 computed by means of a single ratio consisting of the ratio provided for in
 28 Subparagraph (1)(b) of this Paragraph.

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

4 E. Oil and gas.

5 (1) For taxable periods beginning on or after January 1, 2016, for the purpose
 6 of this Subsection, the Louisiana apportionment percent of any taxpayer whose net
 7 apportionable income is derived primarily from the exploration, production, refining,
 8 or marketing of oil and gas shall be the arithmetical average of four ratios, as
 9 follows:

10 (a) The ratio of the value of the immovable and corporeal movable property
 11 owned by the taxpayer and located in Louisiana to the value of all immovable and
 12 corporeal movable property owned by the taxpayer and used in the production of the
 13 net apportionable income.

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

18 (c) The ratio of net sales made in the regular course of business and other
 19 gross apportionable income attributable to this state to the total net sales made in the
 20 regular course of business and other gross apportionable income of the taxpayer. The
 21 ratio of net sales as provided in this Subparagraph shall be double-weighted or
 22 counted twice.

23 (2) For purposes of this Subsection, "exploration, production, refining, or
 24 marketing of oil and gas " shall mean:

25 (a) Any taxpayer whose income is primarily derived from the production or
 26 sale of unrefined oil and gas.

27 (b) Any taxpayer defined as an integrated oil company per the United States
 28 Internal Revenue Code - 26 U.S.C. 291(b)(4), or integrated oil companies that refine,
 29 produce, and have marketing operations, whose income in Louisiana is principally
 30 derived from production and sale of unrefined oil and gas, and who also engage in

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
21 service provided is a direct personal service, the sale shall be sourced to the state
22 where the 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 Subparagraph
27 (a) or (b) of this Paragraph fails to clearly reflect the taxpayer's 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

1 detailed explanation of why it was unreasonable to utilize the methodology specified
2 by Subparagraph (a) or (b) of this Paragraph and an explanation of the methodology
3 used. If the taxpayer fails to make such a disclosure on the return, the taxpayer shall
4 be presumed to consent to the sourcing as detailed in Subparagraph (a) or (b) of this
5 Paragraph as applicable.

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

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

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

17 (c) In the case where the sourcing methodology specified by Subparagraph
18 (a) or (b) of this Paragraph fails to clearly reflect the taxpayer's market in this state,
19 the taxpayer may utilize, or the department may require, the use of other criteria and
20 methodologies that will reasonably approximate the taxpayer's market in this state.

21 If an alternate approach is utilized, the taxpayer shall attach to the tax return a
22 detailed explanation of why it was unreasonable to utilize the methodology specified
23 by Subparagraph (a) or (b) of this Paragraph and an explanation of the methodology
24 used. If the taxpayer fails to make such a disclosure on the return, the taxpayer shall
25 be presumed to consent to the sourcing as detailed in Subparagraph (a) or (b) of this
26 Paragraph as applicable.

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

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

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

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

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

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

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

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

28 Section 3. This Act shall become effective upon signature by the governor or, if not
 29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
3 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____