

ACT No. 8

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

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

10 * * *

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

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

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

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

27 ~~(b)~~(c) For the purposes of this Subsection, the gross apportionable income
28 from Louisiana sources shall include all such income that is derived entirely from
29 sources within the state and a portion of revenue from transportation partly without
30 and partly within this state, to be prorated subject to rules and regulations of the

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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 significant marketing of refined petroleum products in Louisiana. Provided, any
2 taxpayer, whose activities during the taxable year do not include any "gross receipts
3 from retail sales of oil and/or natural gas", or any "refinery activities of oil and/or
4 natural gas", will not be considered as an integrated oil company for Louisiana tax
5 purposes, notwithstanding such taxpayer may be a "related party" or a "member of
6 the federal consolidated group" under the United States Internal Revenue Code.

7 F.

8 * * *

9 (2)

10 * * *

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

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

22 * * *

23 L. Sourcing of certain sales.

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

28 (a) In the case of sale, rental, lease, or license of immovable property, if and
29 to the 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
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: _____