

2017 Regular Session

HOUSE BILL NO. 666

BY REPRESENTATIVE JONES

TAX: Imposes the La. Margins Tax and repeals the corporation income tax

1 AN ACT

2 To enact Part II-B of Chapter 2 of Subtitle II of Title 47 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 47:288.1 through 288.53, and to repeal Parts II and
4 II-A of Chapter 2 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950,
5 comprised of R.S. 47:121 through 287.785, relative to taxation on business entities;
6 to provide for imposition, levy, rate, calculation, collection, and payment of the tax;
7 to provide for definitions; to provide for exemptions; to provide for exclusions from
8 total revenue; to provide for apportionment; to provide for combined reporting; to
9 provide for administration; to repeal the corporation income tax; to provide for
10 effectiveness; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Part II-B of Chapter 2 of Subtitle II of Title 47 of the Louisiana Revised
13 Statutes of 1950, comprised of R.S. 47:288.1 through 288.53, is hereby enacted to read as
14 follows:

15 PART II-B. LOUISIANA MARGINS TAX

16 SUBPART A. GENERAL PROVISIONS

17 §288.1. General definitions

18 As used in this Part:

1 (1) "Affiliated group" shall mean a group of one or more entities in which a
2 controlling interest is owned by a common owner or owners, either corporate or
3 noncorporate, or by one or more of the member entities.

4 (2) "Banking corporation" shall mean each state, national, domestic, or
5 foreign bank, whether organized under the laws of this state, another state, or another
6 country, or under federal law.

7 §288.2. Definition of taxable entity

8 A. Except as otherwise provided by this Section, "taxable entity" shall mean
9 a partnership, limited liability partnership, corporation, banking corporation, savings
10 and loan association, limited liability company, business trust, professional
11 association, business association, joint venture, joint stock company, holding
12 company, combined group, or other legal entity. For purposes of this Part, joint
13 venture shall not include joint operating or co-ownership arrangements meeting the
14 requirements of Treasury Regulation Section 1.761-2(a)(3) that elect out of federal
15 partnership treatment as provided by Section 761(a) of the Internal Revenue Code.

16 B. "Taxable entity" shall not include:

17 (1) A sole proprietorship.

18 (2) A general partnership with the following limitations:

19 (a) The direct ownership of which is entirely composed of natural persons.

20 (b) The liability of which is not limited under a statute of this state or another
21 state, including by registration as a limited liability partnership.

22 (3) A passive entity as defined by R.S. 47:288.3.

23 (4) An entity that is exempt from taxation under Subpart B of this Part.

24 (5) A grantor trust as defined by Sections 671 and 7701(a) (30)(E) of the
25 Internal Revenue Code, all of the grantors and beneficiaries of which are natural
26 persons or charitable entities as described in Section 501(c)(3) of the Internal
27 Revenue Code, excluding a trust taxable as a business entity pursuant to Treasury
28 Regulation Section 301.7701-4(b).

1 (6) An estate of a natural person as defined by Section 7701(a)(30)(D) of the
2 Internal Revenue Code, excluding an estate taxable as a business entity pursuant to
3 Treasury Regulation Section 301.7701-4(b).

4 (7) An escrow.

5 (8) A real estate investment trust, hereinafter referred to as "REIT", as
6 defined by Section 856 of the Internal Revenue Code, and its "qualified REIT
7 subsidiary" entities as defined by Section 856(i)(2) of the Internal Revenue Code,
8 provided that all of the following:

9 (a) A REIT with any amount of its assets in direct holdings of real estate,
10 other than real estate it occupies for business purposes, as opposed to holding
11 interests in limited partnerships or other entities that directly hold the real estate, is
12 a taxable entity.

13 (b) A limited partnership or other entity that directly holds the real estate as
14 provided for in Subparagraph (a) shall not be exempt under the provisions of this
15 Subsection, without regard to whether a REIT holds an interest in it.

16 (9) A real estate mortgage investment conduit, hereinafter referred to as
17 "REMIC", as defined by Section 860D of the Internal Revenue Code.

18 (10) A nonprofit self-insurance trust.

19 (11) A trust qualified under Section 401(a) of the Internal Revenue Code.

20 (12) A trust or other entity that is exempt under Section 501(c)(9) of the
21 Internal Revenue Code.

22 (13) An unincorporated entity organized as a political committee under the
23 Election Code or the provisions of the Federal Election Campaign Act of 1971, as
24 provided for in 2 U.S.C. Section 431 et seq..

25 C. An entity that can file as a sole proprietorship for federal tax purposes is
26 not a sole proprietorship for purposes of Paragraph (B)(1) of this Section and is not
27 exempt under that Subsection if the entity is formed in a manner under the statutes
28 of this state, another state, or a foreign country that limit the liability of the entity.

29 §288.3. Passive entity

1 A. An entity is a passive entity only if all of the following conditions are met:

2 (1) The entity is a general or limited partnership or a trust, other than a
3 business trust.

4 (2) During the period on which margin is based, the entity's federal gross
5 income consists of at least ninety percent of the following income:

6 (a) Dividends, interest, foreign currency exchange gain, periodic and
7 nonperiodic payments with respect to notional principal contracts, option premiums,
8 cash settlement or termination payments with respect to a financial instrument, and
9 income from a limited liability company.

10 (b) Distributive shares of partnership income to the extent that those
11 distributive shares of income are greater than zero.

12 (c) Capital gains from the sale of real property, gains from the sale of
13 commodities traded on a commodities exchange, and gains from the sale of
14 securities.

15 (d) Royalties, bonuses, or delay rental income from mineral properties and
16 income from other nonoperating mineral interests.

17 (3) The entity does not receive more than ten percent of its federal gross
18 income from conducting an active trade or business as defined in R.S. 47:288.4. For
19 purposes of this Paragraph, income provided for in Paragraph (2) of this Subsection
20 shall not be treated as income from conducting an active trade or business.

21 B. Income as provided for in Paragraph (A)(2) of this Section shall not
22 include:

23 (1) Rent.

24 (2) Income received by a nonoperator from mineral properties under a joint
25 operating agreement if the nonoperator is a member of an affiliated group and
26 another member of that group is the operator under the same joint operating
27 agreement.

28 §288.4. Conducting active trade or business

1 A. For purposes of R.S. 47:288.3(A)(3), an entity conducts an active trade or
2 business when both of the following occur:

3 (1) The activities being carried on by the entity include one or more active
4 operations that form a part of the process of earning income or profit.

5 (2) The entity performs active management and operational functions.

6 B. Activities performed by the entity include activities performed by persons
7 outside the entity, including independent contractors, to the extent the persons
8 perform services on behalf of the entity and those services constitute all or part of the
9 entity's trade or business.

10 C. An entity conducts an active trade or business if assets, including royalties,
11 patents, trademarks, and other intangible assets, held by the entity are used in the
12 active trade or business of one or more related entities.

13 D. For purposes of this Section:

14 (1) The ownership of a royalty interest or a nonoperating working interest in
15 mineral rights shall not constitute conduct of an active trade or business.

16 (2) Payment of compensation to employees or independent contractors for
17 financial or legal services reasonably necessary for the operation of the entity shall
18 not constitute conduct of an active trade or business.

19 (3) Holding a seat on the board of directors of an entity does not by itself
20 constitute conduct of an active trade or business.

21 §288.5. Tax imposed

22 A. A franchise tax shall be imposed on each taxable entity that does business
23 in this state or that is chartered or organized in this state.

24 B. The tax imposed under this Section or R.S. 47:288.6 shall not be imposed
25 on an entity if, during the period on which the report is based, the entity qualifies as
26 a passive entity as defined by R.S. 47:288.3.

27 §288.6. Additional tax

1 A. Except as provided for in R.S. 47:288.5(B), an additional tax shall be
2 imposed on a taxable entity that for any reason becomes no longer subject to the tax
3 imposed under this chapter.

4 B. The additional tax shall be equal to the appropriate rate under R.S.
5 47:288.7 of the taxable entity's taxable margin computed on the period beginning on
6 the day after the last day for which the tax imposed on taxable margin was computed
7 and ending on the date the taxable entity is no longer subject to the tax imposed
8 under this Part.

9 C. The additional tax imposed and any report required by the secretary shall
10 be due on the sixtieth day after the date the taxable entity becomes no longer subject
11 to the tax imposed under this chapter.

12 D. Except as otherwise provided by this Section, the provisions of this
13 chapter apply to the tax imposed under this Section.

14 §288.7. Rates; computation of tax

15 A. Subject to the provisions of R.S. 47:288.26 and except as provided for in
16 Subsection B of this Section, the rate of the franchise tax shall be seventy-five
17 hundredths of one percent of the taxable margin.

18 B. Subject to the provisions of R.S. 47:288.26, the rate of the franchise tax
19 shall be three hundred seventy-five thousandths of one percent of taxable margin for
20 those taxable entities primarily engaged in retail or wholesale trade.

21 C. A taxable entity is primarily engaged in retail or wholesale trade only if
22 all of the following conditions are satisfied:

23 (1) The total revenue from its activities in retail or wholesale trade is greater
24 than the total revenue from its activities in trades other than the retail and wholesale
25 trades.

26 (2)(a) Except as provided for in Subparagraph (b) of this Paragraph, less than
27 fifty percent of the total revenue from activities in retail or wholesale trade comes
28 from the sale of products it produces or products produced by an entity that is part
29 of an affiliated group to which the taxable entity also belongs.

1 (4) An openend investment company, as defined by the Investment Company
2 Act of 1940, as provided for in 15 U.S.C. Section 80a-1 et seq., that is subject to that
3 Act shall be exempted from the franchise tax.

4 (5) The following non profit corporations shall be exempted:

5 (a) A nonprofit corporation organized solely to promote the public interest
6 of a parish, city, town, or another area in the state shall be exempted from the
7 franchise tax.

8 (b) A nonprofit corporation organized for the purpose of religious worship
9 shall be exempted from the franchise tax.

10 (c) A nonprofit corporation organized to provide places of burial shall be
11 exempted from the franchise tax.

12 (d) A nonprofit corporation organized to hold agricultural fairs and
13 encourage agricultural pursuit shall be exempted from the franchise tax.

14 (e) A nonprofit corporation organized solely for educational purposes shall
15 be exempted from the franchise tax.

16 (f) A nonprofit corporation organized for purely public charity shall be
17 exempted from the franchise tax.

18 (g) A nonprofit corporation organized solely to educate the public about the
19 protection and conservation of fish, game, other wildlife, grasslands, or forests shall
20 be exempted from the franchise tax.

21 (h) A nonprofit water supply or sewer service corporation organized in
22 behalf of a city or town shall be exempted from the franchise tax.

23 (i) A nonprofit corporation organized to construct, acquire, own, lease, or
24 operate a natural gas facility in behalf and for the benefit of a city or residents of a
25 city shall be exempted from the franchise tax.

26 (j) A nonprofit corporation organized to provide a convalescent home or
27 other housing for persons who are at least sixty-two years old or who are
28 handicapped or disabled shall be exempted from the franchise tax, whether or not the
29 corporation is organized for purely public charity.

1 (k) A nonprofit corporation engaged solely in the business of owning
2 residential property for the purpose of providing cooperative housing for persons
3 shall be exempted from the franchise tax.

4 (l)(i) The following nonprofit corporation exempt from federal income tax
5 shall be exempted from the franchise tax as follows:

6 (aa) A nonprofit corporation exempted from the federal income tax under
7 Section 501(c)(3), (4), (5), (6), (7), (8), (10), or (19) of the Internal Revenue Code.

8 (bb) A corporation exempted under Section 501(c)(2) or (25) of the Internal
9 Revenue Code, if the corporation or corporations for which it holds title to property
10 is either exempt from or not subject to the franchise tax.

11 (cc) A corporation exempted from federal income tax under Section
12 501(c)(16) of the Internal Revenue Code.

13 (ii) A corporation is entitled to an exemption under this Subparagraph based
14 on the corporation's exemption from the federal income tax if the corporation files
15 with the secretary evidence establishing the corporation's exemption, which shall be
16 established by furnishing the secretary with a copy of the Internal Revenue Service's
17 letter of exemption issued to the corporation.

18 (iii) If the Internal Revenue Service has not timely issued to a corporation a
19 letter of exemption, evidence establishing the corporation's provisional exemption
20 under this Subparagraph is sufficient if the corporation timely files with the secretary
21 evidence that the corporation has applied in good faith for the federal tax exemption.
22 The evidence must be filed not later than the fifteenth month after the day that is the
23 last day of a calendar month and that is nearest to the date of the corporation's charter
24 or certificate of authority.

25 (iv) An exemption established pursuant to Items (ii) or (iii) of this
26 Subparagraph shall be recognized, after it is finally established, as of the date of the
27 corporation's charter or certificate of authority.

28 (v) If a corporation timely files evidence with the secretary pursuant to Item
29 (iii) of this Subparagraph and the application is finally denied by the Internal

1 Revenue Service, this Subpart shall not impose a penalty on the corporation from the
2 date of its charter or certificate of authority to the date of the final denial.

3 (vi) If a corporation's federal tax exemption is withdrawn by the Internal
4 Revenue Service for failure of the corporation to qualify or maintain its qualification
5 for the exemption, the corporation's exemption under this section ends on the
6 effective date of that withdrawal by the Internal Revenue Service. The effective date
7 of the withdrawal shall be considered the corporation's beginning date for purposes
8 of determining the corporation's privilege periods and for all other purposes of this
9 chapter, the date the corporation would have become subject to the franchise tax
10 under that section is considered the corporation's beginning date for those purposes.

11 (6) A agricultural marketing association shall be exempted from the
12 franchise tax.

13 (7) A lodge shall be exempted from the franchise tax.

14 (8) A farmers' cooperative society shall be exempted from the franchise tax.

15 (9) A housing finance corporation shall be exempted from the franchise tax.

16 (10) A hospital laundry cooperative association is exempted from the
17 franchise tax.

18 (11) A nonprofit corporation organized under the Development Corporation
19 Act is exempted from the franchise tax.

20 (12) A cooperative association organized under the Cooperative Association
21 Act is exempted from the franchise tax.

22 (13) A cooperative credit association or an agricultural credit association is
23 exempted from the franchise tax.

24 (14) A credit union is exempted from the franchise tax.

25 (15) An electric cooperative corporation that is not a participant in a joint
26 powers agency is exempted from the franchise tax.

27 (16) A telephone cooperative corporation is exempted from the franchise tax.

28 (17)(a) A nonprofit corporation is exempted from the franchise tax if all of
29 the following apply:

1 (i) The corporation is organized and operated primarily to obtain, manage,
2 construct, and maintain the property in or of a residential condominium or residential
3 real estate development.

4 (ii) The owners of individual lots, residences, or residential units control at
5 least fifty-one percent of the votes of the corporation and that voting control,
6 however acquired, is not held by either of the following:

7 (aa) A single individual or family.

8 (bb) One or more developers, declarants, banks, investors, or other similar
9 parties.

10 (b) For purposes of this section, a condominium project is considered
11 residential if the project is legally restricted for use as residences. A real estate
12 development is considered residential if the property is legally restricted for use as
13 residences.

14 (18) A nonprofit corporation that is organized for the sole purpose of and
15 engages exclusively in providing emergency medical services, including rescue and
16 ambulance services, shall be exempted from the franchise tax.

17 (19)(a) A corporation shall be exempted from the franchise tax if the
18 following conditions are met:

19 (i) The only business activity conducted by or on behalf of the corporation
20 in this state is related to the solicitation of orders conducted by representatives of the
21 corporation who either:

22 (aa) Solicit orders of personal property to be sent outside this state for
23 approval or rejection by the corporation and, if approved, to be filled by shipment or
24 delivery from a point outside this state.

25 (bb) Solicit orders in the name of or for the benefit of a customer or
26 prospective customer of the corporation, if the orders are filled or intended to be
27 filled by the customer or prospective customer of the corporation by making orders
28 to the corporation described by Subitem (aa) of this Item.

1 (ii) The solicitation of orders is conducted on an occasional basis at trade
2 shows that meet any of the following:

3 (aa) Promoted by wholesale centers.

4 (bb) Promoted by nonprofit trade or professional associations for the purpose
5 of facilitating the solicitation of orders from members of the trade or profession.

6 (cc) Held at municipally or county-owned convention centers or meeting
7 facilities.

8 (b) For purposes of this Paragraph, the solicitation of orders is conducted on
9 an occasional basis only if the solicitation is conducted during not more than five
10 periods during the business period of the corporation to which a tax report applies
11 and if no single period during which solicitation is conducted is longer than one
12 hundred twenty hours.

13 (c) For purposes of this Paragraph, "wholesale center" shall mean a
14 permanent wholesale facility that has permanent tenants and that promotes at least
15 four national or regional trade shows in a calendar year. A tenant leasing space at a
16 wholesale center for a period longer than the period prescribed by Subparagraph (b)
17 of this Paragraph may qualify for the exemption provided by this Paragraph only if
18 the tenant solicits orders on an occasional basis at the trade show as prescribed by
19 Subparagraph (b) of this Paragraph.

20 (20) A corporation engaged solely in the business of recycling sludge shall
21 be exempted from the franchise tax.

22 (21) A political subdivision corporation shall be exempted from the franchise
23 tax.

24 (22) A nonprofit corporation organized solely to provide a student loan fund
25 or student scholarships shall be exempted from the franchise tax.

26 (23) An entity that is not a corporation but that, because of its activities,
27 would qualify for a specific exemption under this SUBPART if it were a corporation,
28 qualifies for the exemption and shall be exempt from the tax in the same manner and
29 under the same conditions as a corporation.

1 (3) Subtract from the amount computed under Paragraph (2) of this
2 Subsection any other allowable deductions to determine the taxable entity's taxable
3 margin.

4 B. Notwithstanding the election of the taxpayer authorized in
5 Item(A)(1)(b)(ii) of this Section, a professional employer organization may subtract
6 only the greater of one million dollars, as provided for in Item (A)(1)(b)(i) of this
7 Section, or compensation, as determined under R.S. 47:288.23.

8 C. In making a computation under this Section, an amount that is zero or less
9 is computed as a zero.

10 D. An election under Item (A)(1)(b)(ii) of this Section shall be made by the
11 taxable entity on its annual report and is effective only for that annual report. A
12 taxable entity shall notify the secretary of its election not later than the due date of
13 the annual report.

14 § 288.21. Determination of total revenue from entire business

15 A. For purposes of this section, a reference to an Internal Revenue Service
16 form shall include a variant of the form. A reference to an Internal Revenue Service
17 form shall also include any subsequent form with a different number or designation
18 that substantially provides the same information as the original form.

19 B. For purposes of this Section, a reference to an amount reportable as
20 income on a line number on an Internal Revenue Service form is the amount entered
21 to the extent the amount entered complies with federal income tax law and includes
22 the corresponding amount entered on a variant of the form, or a subsequent form,
23 with a different line number to the extent the amount entered complies with federal
24 income tax law.

25 C. Except as otherwise provided for by this Section, and subject to R.S.
26 47:288.24, for the purpose of computing its taxable margin under R.S. 47:288.20,
27 the total revenue of a taxable entity shall be as follows:

28 (1) For a taxable entity treated for federal income tax purposes as a
29 corporation, an amount computed as follows:

1 (a) Add together all of the following:

2 (i) The amount reportable as income on line 1c of Internal Revenue Service
3 Form 1120.

4 (ii) The amounts reportable as income on lines 4 through 10 of Internal
5 Revenue Service Form 1120.

6 (iii) Any total revenue reported by a lower tier entity as includable in the
7 taxable entity's total revenue under R.S. 47:288.25(B).

8 (b) Subtract all of the following:

9 (i) Bad debt expensed for federal income tax purposes that corresponds to
10 items of gross receipts included in the amount determined under Subparagraph (a)
11 of this Paragraph for the current reporting period or a past reporting period.

12 (ii) To the extent included in the amount determined under Subparagraph (a)
13 of this Paragraph, foreign royalties and foreign dividends, including amounts
14 determined under Section 78 or Sections 951-964 of the Internal Revenue Code.

15 (iii) To the extent included in the amount determined under Subparagraph (a)
16 of this Paragraph, net distributive income from a taxable entity treated as a
17 partnership or as an S corporation for federal income tax purposes.

18 (iv) Allowable deductions from Internal Revenue Service Form 1120 of
19 Schedule C, to the extent the relating dividend income is included in total revenue.

20 (v) To the extent included in the amount determined under Subparagraph (a)
21 of this Paragraph, items of income attributable to an entity that is a disregarded entity
22 for federal income tax purposes.

23 (vi) To the extent included in the amount determined under Subparagraph (a)
24 of this Paragraph, other amounts authorized by this Section.

25 (2) For a taxable entity treated for federal income tax purposes as a
26 partnership, an amount computed as follows:

27 (a) Add together all of the following:

28 (i) The amount reportable as income on line 1c of Internal Revenue Service
29 Form 1065.

1 (ii) The amounts reportable as income on lines 4, 6, and 7 of Internal
2 Revenue Service Form 1065.

3 (iii) The amounts reportable as income on lines 3a and 5 through 11 of
4 Internal Revenue Service Form 1065, Schedule K.

5 (iv) The amounts reportable as income on line 17 of Internal Revenue Service
6 Form 8825.

7 (v) The amounts reportable as income on line 11, plus line 2 or line 45 of
8 Internal Revenue Service Form 1040, Schedule F.

9 (vi) Any total revenue reported by a lower tier entity as includable in the
10 taxable entity's total revenue under R.S. 47:288.25(B).

11 **(b) Subtract all of the following:**

12 (i) Bad debt expensed for federal income tax purposes that corresponds to
13 items of gross receipts included in Subparagraph (a) of this Paragraph for the current
14 reporting period or a past reporting period;

15 (ii) To the extent included in the amount determined under Subparagraph (a)
16 of this Paragraph, foreign royalties and foreign dividends, including amounts
17 determined under Section 78 or Sections 951-964 of the Internal Revenue Code.

18 (iii) To the extent included in the amount determined under Subparagraph (a)
19 of this Paragraph, net distributive income from a taxable entity treated as a
20 partnership or as an S corporation for federal income tax purposes.

21 (iv) To the extent included in the amount determined under Subparagraph (a)
22 of this Paragraph, items of income attributable to an entity that is a disregarded entity
23 for federal income tax purposes.

24 (v) To the extent included in the amount determined under Subparagraph (a)
25 of this Paragraph, other amounts authorized by this Section.

26 (3) For a taxable entity other than a taxable entity treated for federal income
27 tax purposes as a corporation or partnership, an amount determined in a manner
28 substantially equivalent to the amount for Paragraphs (1) or (2) of this Subsection
29 determined by rules that the secretary shall adopt.

1 D. Subject to R.S. 47:288.24, a taxable entity that is part of a federal
2 consolidated group shall compute its total revenue under Subsection C of this Section
3 as if it had filed a separate return for federal income tax purposes.

4 E. A taxable entity that owns an interest in a passive entity shall exclude from
5 the taxable entity's total revenue the taxable entity's share of the net income of the
6 passive entity, but only to the extent the net income of the passive entity was
7 generated by the margin of any other taxable entity.

8 F. A taxable entity shall exclude from its total revenue, to the extent included
9 in the amount determined under Subparagraph (C)(1)(a), Subparagraph (C)(2)(a),
10 and Paragraph (C)(3) this Section, flow-through funds that are mandated by law or
11 fiduciary duty to be distributed to other entities, including taxes collected from a
12 third party by the taxable entity and remitted by the taxable entity to a taxing
13 authority.

14 G.(1) A taxable entity shall exclude from its total revenue, to the extent
15 included in the amount determined under Subparagraph (C)(1)(a), Subparagraph
16 (C)(2)(a), and Paragraph (C)(3) this Section, only the following flow-through funds
17 that are mandated by contract or subcontract to be distributed to other entities:

18 (a) Sales commissions to nonemployees, including split-fee real estate
19 commissions.

20 (b) The tax basis as determined under the Internal Revenue Code of securities
21 underwritten.

22 (c) Subcontracting payments made under a contract or subcontract entered
23 into by the taxable entity to provide services, labor, or materials in connection with
24 the actual or proposed design, construction, remodeling, remediation, or repair of
25 improvements on real property or the location of the boundaries of real property.

26 (2)(a) A taxable entity that is a lending institution shall exclude from its total
27 revenue, to the extent included in the amount determined under Subparagraph
28 (C)(1)(a), Subparagraph (C)(2)(a), and Paragraph (C)(3) this Section, proceeds from
29 the principal repayment of loans.

1 (b) For purposes of this Paragraph, "sales commission" shall mean either of
2 the following:

3 (i) Any form of compensation paid to a person for engaging in an act for
4 which a license is required.

5 (ii) Compensation paid to a sales representative by a principal in an amount
6 that is based on the amount or level of certain orders for or sales of the principal's
7 product and that the principal is required to report on Internal Revenue Service Form
8 1099-MISC.

9 (c) For purposes of this Paragraph, "principal" shall mean a person who does
10 all of the following:

11 (i) Manufactures, produces, imports, distributes, or acts as an independent
12 agent for the distribution of a product for sale.

13 (ii) Uses a sales representative to solicit orders for the product.

14 (iii) Compensates the sales representative wholly or partly by sales
15 commission.

16 (3) A taxable entity shall exclude from its total revenue, to the extent
17 included in the amount determined under Subparagraph (C)(1)(a), Subparagraph
18 (C)(2)(a), and Paragraph (C)(3) this Section, the tax basis as determined under the
19 Internal Revenue Code of securities and loans sold.

20 (4) A taxable entity that provides legal services shall exclude from its total
21 revenue all of the following:

22 (a) To the extent included in the amount determined under Subparagraph
23 (C)(1)(a), Subparagraph (C)(2)(a), and Paragraph (C)(3) this Section, flow-through
24 funds that are mandated by law, contract, or fiduciary duty to be distributed to the
25 claimant by the claimant's attorney or to other entities on behalf of a claimant by the
26 claimant's attorney as follows:

27 (i) Damages due the claimant.

28 (ii) Funds subject to a lien or other contractual obligation arising out of the
29 representation, other than fees owed to the attorney.

1 (iii) Funds subject to a subrogation interest or other third-party contractual
2 claim.

3 (iv) Fees paid an attorney in the matter who is not a member, partner,
4 shareholder, or employee of the taxable entity.

5 (b) To the extent included in the amount determined under Subparagraph
6 (C)(1)(a), Subparagraph (C)(2)(a), and Paragraph (C)(3) this Section, reimbursement
7 of the taxable entity's expenses incurred in prosecuting a claimant's matter that are
8 specific to the matter and that are not general operating expenses.

9 (c) Five hundred dollars per pro bono services case handled by the attorney,
10 but only if the attorney maintains records of the pro bono services for auditing
11 purposes in accordance with the manner in which those services are reported to the
12 State Bar of Louisiana.

13 (5) A taxable entity that is a pharmacy cooperative shall exclude from its total
14 revenue, to the extent included in the amount determined under Subparagraph
15 (C)(1)(a), Subparagraph (C)(2)(a), and Paragraph (C)(3) this Section, flow-through
16 funds from rebates from pharmacy wholesalers that are distributed to the pharmacy
17 cooperative's shareholders. A taxable entity that provides a pharmacy network shall
18 exclude from its total revenue, to the extent included in the amount determined under
19 Subparagraph (C)(1)(a), Subparagraph (C)(2)(a), and Paragraph (C)(3) this Section,
20 reimbursements, pursuant to contractual agreements, for payments to pharmacies in
21 the pharmacy network.

22 H. If the taxable entity belongs to an affiliated group, the taxable entity shall
23 not exclude payments described by Subsections F or G of this Section that are made
24 to entities that are members of the affiliated group.

25 I. Except as provided by Subsection G of this Section, a payment made under
26 an ordinary contract for the provision of services in the regular course of business
27 shall not be excluded.

1 J. Any amount excluded under this section may not be included in the
2 determination of cost of goods sold under R.S. 47:288.22 or the determination of
3 compensation under R.S. 47:288.23.

4 K. A taxable entity that is a professional employer organization shall exclude
5 from its total revenue payments received from a client for wages, payroll taxes on
6 those wages, employee benefits, and workers' compensation benefits for the covered
7 employees of the client.

8 L.(1) A taxable entity shall exclude from its total revenue, to the extent
9 included in the amount determined under Subparagraph (C)(1)(a), Subparagraph
10 (C)(2)(a), and Paragraph (C)(3) this Section, dividends and interest received from
11 federal obligations.

12 (2) A taxable entity that is a management company shall exclude from its
13 total revenue reimbursements of specified costs incurred in its conduct of the active
14 trade or business of a managed entity, including "wages and cash compensation" as
15 determined under R.S. 47:288.23(A) and (B).

16 M. Except as provided by Subsection N, a taxable entity that is a health care
17 provider shall exclude from its total revenue all of the following:

18 (1) To the extent included in the amount determined under Subparagraph
19 (C)(1)(a), Subparagraph (C)(2)(a), and Paragraph (C)(3) this Section, the total
20 amount of payments the health care provider received for the following:

21 (a) Under the Medicaid program, Medicare program, and Children's Health
22 Insurance Program (CHIP).

23 (b) For professional services provided in relation to a workers' compensation
24 claim.

25 (c) For professional services provided to a beneficiary rendered under the
26 TRICARE military health system.

27 (2) The actual cost to the health care provider for any uncompensated care
28 provided, but only if the provider maintains records of the uncompensated care for
29 auditing purposes and, if the provider later receives payment for all or part of that

1 care, the provider adjusts the amount excluded for the tax year in which the payment
2 is received.

3 (3) The secretary shall adopt rules governing the following:

4 (a) The computation of the actual cost to a health care provider of any
5 uncompensated care provided for in Paragraph (2) of this Subsection.

6 (b) The audit requirements related to the computation of those costs.

7 N. A health care provider that is a health care institution shall exclude from
8 its total revenue fifty percent of the amounts provided for in Subsection M of this
9 Section.

10 O. A taxable entity shall exclude from its total revenue, to the extent included
11 in the amount determined under Subparagraph (C)(1)(a), Subparagraph (C)(2)(a),
12 and Paragraph (C)(3) this Section, all revenue received that is directly derived from
13 the operation of a facility that is both of the following:

14 (1) Located on property owned or leased by the federal government.

15 (2) Managed or operated primarily to house members of the armed forces of
16 the United States.

17 P. A taxable entity shall exclude from its total revenue the actual cost paid
18 by the taxable entity for a vaccine.

19 Q. A taxable entity primarily engaged in the business of transporting goods
20 by waterways that does not subtract cost of goods sold in computing its taxable
21 margin shall exclude from its total revenue direct costs of providing transportation
22 services by intrastate or interstate waterways to the same extent that a taxable entity
23 that sells in the ordinary course of business real or tangible personal property would
24 be authorized by R.S. 47:288.22 to subtract those costs as costs of goods sold in
25 computing its taxable margin, notwithstanding R.S. 47:288.22(E)(3).

26 R. A taxable entity primarily engaged in the business of providing services
27 as an agricultural aircraft operation, as defined by 14 CFR Section 137.3, shall
28 exclude from its total revenue the cost of labor, equipment, fuel, and materials used
29 in providing those services.

1 S. A taxable entity that is registered as a motor carrier shall exclude from its
2 total revenue, to the extent included in the amount determined under Subparagraph
3 (C)(1)(a), Subparagraph (C)(2)(a), and Paragraph (C)(3) this Section, flow-through
4 revenue derived from taxes and fees.

5 T. As used in this Section, the following terms shall have the meanings
6 ascribed to them in this Subsection:

7 (1) "Federal obligations" shall mean either of the following:

8 (a) Stocks and other direct obligations of, and obligations unconditionally
9 guaranteed by, the United States government and United States government
10 agencies.

11 (b) Direct obligations of a United States government sponsored agency.

12 (2) "Health care institution" shall mean any of the following:

13 (a) An ambulatory surgical center.

14 (b) An assisted living facility.

15 (c) An emergency medical services provider.

16 (d) A home and community support services agency.

17 (e) A hospice.

18 (f) A hospital.

19 (g) A hospital system.

20 (h) An intermediate care facility for the mentally retarded or a home and
21 community-based services waiver program for persons with mental retardation
22 adopted in accordance with Section 1915(c) of the federal Social Security Act, as
23 provided for in 42 U.S.C. Section 1396n.

24 (i) A birthing center.

25 (j) A nursing home.

26 (k) An end stage renal disease facility.

27 (l) A pharmacy.

28 (3) "Health care provider" shall mean a taxable entity that participates in the
29 Medicaid program, Medicare program, Children's Health Insurance Program (CHIP),

1 state workers' compensation program, or TRICARE military health system as a
2 provider of health care services.

3 (4) "Obligation" shall mean any bond, debenture, security, mortgage-backed
4 security, pass-through certificate, or other evidence of indebtedness of the issuing
5 entity. "Obligation" shall not include a deposit, a repurchase agreement, a loan, a
6 lease, a participation in a loan or pool of loans, a loan collateralized by an obligation
7 of a United States government agency, or a loan guaranteed by a United States
8 government agency.

9 (5) "Pro bono services" shall mean the direct provision of legal services to
10 the poor, without an expectation of compensation.

11 (6) "United States government" shall mean any department or ministry of the
12 federal government, including a federal reserve bank. "United States government"
13 shall not include a state or local government, a commercial enterprise owned wholly
14 or partly by the United States government, or a local governmental entity or
15 commercial enterprise whose obligations are guaranteed by the United States
16 government.

17 (7) "United States government agency" shall mean an instrumentality of the
18 United States government whose obligations are fully and explicitly guaranteed as
19 to the timely payment of principal and interest by the full faith and credit of the
20 United States government. "United States government agency" shall include the
21 Government National Mortgage Association, the Department of Veterans Affairs,
22 the Federal Housing Administration, the Farmers Home Administration, the
23 Export-Import Bank, the Overseas Private Investment Corporation, the Commodity
24 Credit Corporation, the Small Business Administration, and any successor agency.

25 (8) "United States government-sponsored agency" shall mean an agency
26 originally established or chartered by the United States government to serve public
27 purposes specified by the United States Congress but whose obligations are not
28 explicitly guaranteed by the full faith and credit of the United States government.
29 "United States government-sponsored agency" shall include the Federal Home Loan

1 Mortgage Corporation, the Federal National Mortgage Association, the Farm Credit
2 System, the Federal Home Loan Bank System, the Student Loan Marketing
3 Association, and any successor agency.

4 (9) "Vaccine" shall mean a preparation or suspension of dead, live attenuated,
5 or live fully virulent viruses or bacteria, or of antigenic proteins derived from them,
6 used to prevent, ameliorate, or treat an infectious disease.

7 U. The secretary shall adopt rules as necessary to accomplish the legislative
8 intent prescribed by this Section.

9 §288.22. Determination of cost of goods sold

10 A. As used in this Section, the following terms shall have the meanings
11 ascribed to them in this Subsection:

12 (1) "Goods" shall mean real or tangible personal property sold in the ordinary
13 course of business of a taxable entity.

14 (2) "Production" shall include construction, installation, manufacture,
15 development, mining, extraction, improvement, creation, raising, or growth.

16 (3)(a) "Tangible personal property" shall mean any of the following:

17 (i) Personal property that can be seen, weighed, measured, felt, or touched or
18 that is perceptible to the senses in any other manner.

19 (ii) Films, sound recordings, videotapes, live and prerecorded television and
20 radio programs, books, and other similar property embodying words, ideas, concepts,
21 images, or sound, without regard to the means or methods of distribution or the
22 medium in which the property is embodied, for which, as costs are incurred in
23 producing the property, it is intended or is reasonably likely that any medium in
24 which the property is embodied will be mass-distributed by the creator or any one
25 or more third parties in a form that is not substantially altered.

26 (b) "Tangible personal property" shall not include either of the following:

27 (i) Intangible property.

28 (ii) Services.

1 B. Subject to R.S. 47:288.24, a taxable entity that elects to subtract cost of
2 goods sold for the purpose of computing its taxable margin shall determine the
3 amount of that cost of goods sold as provided for in this Section.

4 C. The cost of goods sold includes all direct costs of acquiring or producing
5 the goods, including all of the following:

6 (1) Labor costs.

7 (2) Cost of materials that are an integral part of specific property produced.

8 (3) Cost of materials that are consumed in the ordinary course of performing
9 production activities.

10 (4) Handling costs, including costs attributable to processing, assembling,
11 repackaging, and inbound transportation costs.

12 (5) Storage costs, including the costs of carrying, storing, or warehousing
13 property, subject to Subsection E of this Section.

14 (6) Depreciation, depletion, and amortization, reported on the federal income
15 tax return on which the report under this Subpart is based, to the extent associated
16 with and necessary for the production of goods, including recovery described by
17 Section 197 of the Internal Revenue Code;

18 (7) The cost of renting or leasing equipment, facilities, or real property
19 directly used for the production of the goods, including pollution control equipment
20 and intangible drilling and dry hole costs.

21 (8) The cost of repairing and maintaining equipment, facilities, or real
22 property directly used for the production of the goods, including pollution control
23 devices.

24 (9) Costs attributable to research, experimental, engineering, and design
25 activities directly related to the production of the goods, including all research or
26 experimental expenditures described by Section 174 of the Internal Revenue Code.

27 (10) Geological and geophysical costs incurred to identify and locate property
28 that has the potential to produce minerals.

1 (11) Taxes paid in relation to acquiring or producing any material, or taxes
2 paid in relation to services that are a direct cost of production.

3 (12) The cost of producing or acquiring electricity sold.

4 (13) A contribution to a partnership in which the taxable entity owns an
5 interest that is used to fund activities, the costs of which would otherwise be treated
6 as cost of goods sold of the partnership, but only to the extent that those costs are
7 related to goods distributed to the taxable entity as goods-in-kind in the ordinary
8 course of production activities rather than being sold.

9 D. In addition to the amounts includable under Subsection C of this Section,
10 the cost of goods sold shall include costs in relation to the taxable entity's goods as
11 follows:

12 (1) Deterioration of the goods.

13 (2) Obsolescence of the goods.

14 (3) Spoilage and abandonment, including the costs of rework labor,
15 reclamation, and scrap.

16 (4) If the property is held for future production, preproduction direct costs
17 allocable to the property, including costs of purchasing the goods and of storage and
18 handling the goods, as provided for in Paragraphs (4) and (5) of Subsection C of this
19 Section.

20 (5) Postproduction direct costs allocable to the property, including storage
21 and handling costs, as provided for in Paragraphs (4) and (5) of Subsection C of this
22 Section.

23 (6) The cost of insurance on a plant or a facility, machinery, equipment, or
24 materials directly used in the production of the goods.

25 (7) The cost of insurance on the produced goods.

26 (8) The cost of utilities, including electricity, gas, and water, directly used in
27 the production of the goods.

1 (9) The costs of quality control, including replacement of defective
2 components pursuant to standard warranty policies, inspection directly allocable to
3 the production of the goods, and repairs and maintenance of goods.

4 (10) Licensing or franchise costs, including fees incurred in securing the
5 contractual right to use a trademark, corporate plan, manufacturing procedure,
6 special recipe, or other similar right directly associated with the goods produced.

7 E. The cost of goods sold shall not include any of the following costs in
8 relation to the taxable entity's goods:

9 (1) The cost of renting or leasing equipment, facilities, or real property that
10 is not used for the production of the goods.

11 (2) Selling costs, including employee expenses related to sales.

12 (3) Distribution costs, including outbound transportation costs.

13 (4) Advertising costs.

14 (5) Idle facility expense.

15 (6) Rehandling costs.

16 (7) Bidding costs, which are the costs incurred in the solicitation of contracts
17 ultimately awarded to the taxable entity.

18 (8) Unsuccessful bidding costs, which are the costs incurred in the solicitation
19 of contracts not awarded to the taxable entity.

20 (9) Interest, including interest on debt incurred or continued during the
21 production period to finance the production of the goods.

22 (10) Income taxes, including local, state, federal, and foreign income taxes,
23 and franchise taxes that are assessed on the taxable entity based on income.

24 (11) Strike expenses, including costs associated with hiring employees to
25 replace striking personnel, but not including the wages of the replacement personnel,
26 costs of security, and legal fees associated with settling strikes.

27 (12) Officers' compensation.

28 (13) Costs of operation of a facility that is both of the following:

29 (a) Located on property owned or leased by the federal government.

1 (b) Managed or operated primarily to house members of the armed forces of
2 the United States.

3 (14)(a) Any compensation paid to an undocumented worker used for the
4 production of goods.

5 (b) For purposes of this Section, "undocumented worker" shall mean a person
6 who is not lawfully entitled to be present and employed in the United States.

7 (c) For purposes of this Section, "goods" shall include the husbandry of
8 animals, the growing and harvesting of crops, and the severance of timber from
9 realty.

10 F. A taxable entity may subtract as a cost of goods sold indirect or
11 administrative overhead costs, including all mixed service costs, such as security
12 services, legal services, data processing services, accounting services, personnel
13 operations, and general financial planning and financial management costs, that it
14 can demonstrate are allocable to the acquisition or production of goods, except that
15 the amount subtracted shall not exceed four percent of the taxable entity's total
16 indirect or administrative overhead costs, including all mixed service costs. Any
17 costs excluded under Subsection E of this Section shall not be subtracted under this
18 Subsection.

19 G.(1) A taxable entity that is allowed a subtraction by this Section for a cost
20 of goods sold and that is subject to Section 263A, 460, or 471 of the Internal
21 Revenue Code, may do one of the following:

22 (a) Capitalize that cost in the same manner and to the same extent that the
23 taxable entity capitalized that cost on its federal income tax return.

24 (b) Expense those costs as provided for in Subsections C, D, and F of this
25 Section. Costs excluded under Subsection (E) shall not be expensed.

26 (2) If the taxable entity elects to capitalize costs, it shall capitalize each cost
27 allowed under this Section that it capitalized on its federal income tax return. If the
28 taxable entity later elects to begin expensing a cost allowed under this Section as a

1 cost of goods sold, the entity shall not deduct any cost in ending inventory from a
2 previous report.

3 (3) If the taxable entity elects to expense a cost of goods sold allowed under
4 this Section, a cost incurred before the first day of the period on which the report is
5 based shall not be subtracted as a cost of goods sold. If the taxable entity elects to
6 expense a cost of goods sold and later elects to capitalize that cost of goods sold, a
7 cost expensed on a previous report shall not be capitalized.

8 H. A taxable entity shall determine its cost of goods sold, except as otherwise
9 provided by this Section, in accordance with the methods used on the federal income
10 tax return on which the report under this Subpart is based. This Subsection shall not
11 affect the type or category of cost of goods sold that may be subtracted under this
12 Section.

13 I. A taxable entity may make a subtraction under this Section in relation to
14 the cost of goods sold only if that entity owns the goods. The determination of
15 whether a taxable entity is an owner is based on all of the facts and circumstances,
16 including the various benefits and burdens of ownership vested with the taxable
17 entity. A taxable entity furnishing labor or materials to a project for the construction,
18 improvement, remodeling, repair, or industrial maintenance of real property shall be
19 considered an owner of that labor or materials and shall include the costs, as allowed
20 by this Section, in the computation of cost of goods sold. Solely for purposes of this
21 Section, a taxable entity shall be treated as the owner of goods being manufactured
22 or produced by the entity under a contract with the federal government, including
23 any subcontracts that support a contract with the federal government,
24 notwithstanding that the Federal Acquisition Regulation may require that title or risk
25 of loss with respect to those goods be transferred to the federal government before
26 the manufacture or production of those goods is complete.

27 J. A taxable entity shall not make a subtraction under this Section for cost of
28 goods sold to the extent the cost of goods sold was funded by partner contributions
29 and deducted under Paragraph (C)(13) of this Section.

1 K. Notwithstanding any provision of this Section to the contrary, if the
2 taxable entity is a lending institution that offers loans to the public and elects to
3 subtract cost of goods sold, the entity, other than an entity primarily engaged in an
4 activity described by category 5932 of the 1987 Standard Industrial Classification
5 Manual published by the federal Office of Management and Budget, may subtract
6 as a cost of goods sold an amount equal to interest expense. For purposes of this
7 Subsection, an entity engaged in lending to unrelated parties solely for agricultural
8 production offers loans to the public.

9 L. Notwithstanding any provision of this Section to the contrary, a payment
10 made by one member of an affiliated group to another member of that affiliated
11 group not included in the combined group may be subtracted as a cost of goods sold
12 only if it is a transaction made at arm's length.

13 M. For purposes of this Section, "arm's length" shall mean the standard of
14 conduct under which entities that are not related parties and that have substantially
15 equal bargaining power, each acting in its own interest, would negotiate or carry out
16 a particular transaction.

17 N. For purposes of this Section, "related party" shall mean a person,
18 corporation, or other entity, including an entity that is treated as a pass-through or
19 disregarded entity for purposes of federal taxation, whether the person, corporation,
20 or entity is subject to the tax under this Subpart or not, in which one person,
21 corporation, or entity, or set of related persons, corporations, or entities, directly or
22 indirectly owns or controls a controlling interest in another entity.

23 O. If a taxable entity, including a taxable entity with respect to which cost of
24 goods sold is determined pursuant to R.S. 47:288.24(E)(1), whose principal business
25 activity is film or television production or broadcasting or the distribution of tangible
26 personal property, as defined in Item (A)(3)(a)(ii) of this Section, or any combination
27 of these activities, elects to subtract cost of goods sold, the cost of goods sold for the
28 taxable entity shall be the costs described in this section in relation to the property
29 and include depreciation, amortization, and other expenses directly related to the

1 acquisition, production, or use of the property, including expenses for the right to
2 broadcast or use the property.

3 §288.23. Determination of compensation

4 A. Except as otherwise provided by this Section, "wages and cash
5 compensation" shall mean the amount entered in the Medicare wages and tips box
6 of Internal Revenue Service Form W-2, or any subsequent form with a different
7 number or designation that substantially provides the same information. To the
8 extent not included above, "wages and cash compensation" shall also include the
9 following:

10 (1) Net distributive income from a taxable entity treated as a partnership for
11 federal income tax purposes, but only if the person receiving the distribution is a
12 natural person.

13 (2) Net distributive income from limited liability companies and corporations
14 treated as S corporations for federal income tax purposes, but only if the person
15 receiving the distribution is a natural person.

16 (3) Stock awards and stock options deducted for federal income tax purposes.

17 (4) Net distributive income from a limited liability company treated as a sole
18 proprietorship for federal income tax purposes, but only if the person receiving the
19 distribution is a natural person.

20 B. Subject to R.S. 47:288.24, a taxable entity that elects to subtract
21 compensation for the purpose of computing its taxable margin under R.S. 47:288.20
22 may subtract an amount equal to the following:

23 (1) Subject to the limitation in Subsection C of this Section, all wages and
24 cash compensation paid by the taxable entity to its officers, directors, owners,
25 partners, and employees.

26 (2) The cost of all benefits, to the extent deductible for federal income tax
27 purposes, the taxable entity provides to its officers, directors, owners, partners, and
28 employees, including workers' compensation benefits, health care, employer
29 contributions made to employees' health savings accounts, and retirement.

1 C.(1) Notwithstanding the actual amount of wages and cash compensation
2 paid by a taxable entity to its officers, directors, owners, partners, and employees,
3 a taxable entity shall not include more than three hundred thousand dollars per
4 twelve-month period on which margin is based, for any person in the amount of
5 wages and cash compensation it determines under this Section. If a person is paid by
6 more than one entity of a combined group, the combined group shall not subtract in
7 relation to that person a total of more than three hundred thousand dollars per
8 twelve-month period on which margin is based.

9 (2) Subject to R.S. 47:288.24, a taxable entity that elects to subtract
10 compensation for the purpose of computing its taxable margin under R.S. 47:288.20
11 shall not subtract any wages or cash compensation paid to an undocumented worker.
12 As used in this Section, "undocumented worker" shall mean a person who is not
13 lawfully entitled to be present and employed in the United States.

14 D. A taxable entity that is a professional employer organization shall
15 determine compensation as provided by this Section only for the taxable entity's own
16 employees that are not covered employees and shall not include as wages or cash
17 compensation payments as provided for in R.S. 47:288.21(K).

18 E. Subject to the other provisions of this Section, in determining
19 compensation, a taxable entity that is a client that contracts with a professional
20 employer organization for covered employees shall include payments made to the
21 professional employer organization for wages and benefits for the covered
22 employees as if the covered employees were actual employees of the entity, but shall
23 not include an administrative fee charged by the professional employer organization
24 for the provision of the covered employees or any other amount in relation to the
25 covered employees, including payroll taxes.

26 F. A taxable entity that is a management company shall determine
27 compensation as provided by this Section for only those wage and compensation
28 payments that are not reimbursed by a managed entity and shall not include as wages
29 or cash compensation any amounts reimbursed by a managed entity.

1 G. A taxable entity that is a managed entity shall include reimbursements
2 made to the management company for wages and compensation as if the reimbursed
3 amounts had been paid to employees of the managed entity.

4 H. Subject to R.S. 47:288.24, a taxable entity that elects to subtract
5 compensation for the purpose of computing its taxable margin under R.S. 47:288.20
6 shall not include as wages or cash compensation amounts paid to an employee whose
7 primary employment is directly associated with the operation of a facility that is both
8 of the following:

9 (1) Located on property owned or leased by the federal government.
10 (2) Managed or operated primarily to house members of the armed forces of
11 the United States.

12 §288.24. Combined reporting; affiliated group engaged in unitary business

13 A. Taxable entities that are part of an affiliated group engaged in a unitary
14 business shall file a combined group report in lieu of individual reports based on the
15 combined group's business. The combined group shall not include a taxable entity
16 that conducts business outside the United States if eighty percent or more of the
17 taxable entity's property and payroll, as determined by factoring under Chapter 141,
18 are assigned to locations outside the United States. In applying Chapter 141, if either
19 the property factor or the payroll factor is zero, the denominator is one. The
20 combined group shall not include a taxable entity that conducts business outside the
21 United States and has no property or payroll if eighty percent or more of the taxable
22 entity's gross receipts, as determined under R.S. 47:288.27, R.S. 47:288.28, and R.S.
23 47:288.29, are assigned to locations outside the United States.

24 B. The combined group is a single taxable entity for purposes of the
25 application of the tax imposed under this Subpart, including R.S. 47:288.7(D).

26 C. For purposes of R.S. 47:288.20, a combined group shall determine its total
27 revenue as follows:

28 (1) Determine the total revenue of each of its members as provided by R.S.
29 47:288.21 as if the member were an individual taxable entity.

1 (2) Add together the total revenues of each of the members determined under
2 Subparagraph (1) of this Paragraph.

3 (3) Subtract, to the extent included in determining total revenues, items of
4 total revenue received from a member of the combined group.

5 D.(1) For purposes of R.S. 47:288.20, a combined group shall make an
6 election to subtract either cost of goods sold or compensation that applies to all of
7 its members, or one million dollars. Regardless of the election, the taxable margin
8 of the combined group may not exceed the amount provided by R.S.
9 47:288.20(A)(1)(a) for the combined group.

10 (2) A member of a combined group may claim as cost of goods sold those
11 costs that qualify under R.S. 47:288.22 if the goods for which the costs are incurred
12 are owned by another member of the combined group.

13 E. For purposes of R.S. 47:288.20, a combined group that elects to subtract
14 costs of goods sold shall determine that amount as follows:

15 (1) Determine the cost of goods sold for each of its members as provided by
16 R.S. 47:288.12 as if the member were an individual taxable entity.

17 (2) Add together the amounts of cost of goods sold determined under
18 Paragraph (1) of this Subsection.

19 (3) Subtract from the amount determined under Paragraph (2) of this
20 Subsection any cost of goods sold amounts paid from one member of the combined
21 group to another member of the combined group, but only to the extent the
22 corresponding item of total revenue was subtracted under Paragraph (C)(3) of this
23 Section.

24 F. For purposes of R.S. 47:288.20, a combined group that elects to subtract
25 compensation shall determine that amount as follows:

26 (1) Determine the compensation for each of its members as provided by R.S.
27 47:288.23 as if each member were an individual taxable entity, subject to the
28 limitation prescribed by R.S. 47:288.23(C).

1 (2) Add together the amounts of compensation determined under Paragraph
2 (1) of this Subsection.

3 (3) Subtract from the amount determined under Paragraph (2) of this
4 Subsection any compensation amounts paid from one member of the combined
5 group to another member of the combined group, but only to the extent the
6 corresponding item of total revenue was subtracted under Paragraph (C)(3) of this
7 Section.

8 G. Each taxable entity that is part of a combined group report shall, for
9 purposes of determining margin and apportionment, include its activities for the
10 same period used by the combined group.

11 H. Each member of the combined group shall be jointly and severally liable
12 for the tax of the combined group.

13 I. Notwithstanding any provision of this Section to the contrary, a taxable
14 entity that provides retail or wholesale electric utilities shall not be included as a
15 member of a combined group that includes one or more taxable entities that do not
16 provide retail or wholesale electric utilities if that combined group in the absence of
17 this Subsection meets both of the following:

18 (1) It would not meet the requirements of R.S. 47:288.7(C) solely because
19 one or more members of the combined group provide retail or wholesale electric
20 utilities.

21 (2) It would have less than five percent of the combined group's total revenue
22 derived from providing retail or wholesale electric utilities.

23 §288.25. Reporting for certain partnerships in tiered partnership arrangement

24 A. For purposes of this Section, "tiered partnership arrangement" shall mean
25 an ownership structure in which any of the interests in one taxable entity treated as
26 a partnership or an S corporation for federal income tax purposes , referred to herein
27 after as a "lower tier entity", are owned by one or more other taxable entities,
28 referred to herein after as an "upper tier entity". A tiered partnership arrangement
29 may have two or more tiers.

1 B. In addition to the tax it is required to pay under this Subpart on its own
2 taxable margin, a taxable entity that is an upper tier entity may include, for purposes
3 of calculating its own taxable margin, the total revenue of a lower tier entity if the
4 lower tier entity submits a report to the secretary showing the amount of total
5 revenue that each upper tier entity that owns it should include within the upper tier
6 entity's own taxable margin calculation, according to the ownership interest of the
7 upper tier entity.

8 C. This Section shall not apply to that percentage of the total revenue
9 attributable to an upper tier entity by a lower tier entity if the upper tier entity is not
10 subject to the tax under this Subpart. In this case, the lower tier entity shall be liable
11 for the tax on its taxable margin.

12 D. R.S. 47:288.7(D) shall not apply to an upper tier entity if, before the
13 attribution of any total revenue by a lower tier entity to an upper tier entity under this
14 section, the lower tier entity does not meet the criteria of R.S. 47:288.7(D).

15 E. The secretary shall adopt rules to administer this Section.

16 §288.26. E-Z computation and rate

17 A. Notwithstanding any provision of this Subpart to the contrary, a taxable
18 entity whose total revenue from its entire business is not more than twenty million
19 dollars may elect to pay the tax imposed under this Subpart in the amount computed
20 and at the rate provided by this Section in lieu of the amount computed and at the tax
21 rate provided by R.S. 47:288.7.

22 B. The amount of the tax for which a taxable entity that elects to pay the tax
23 as provided by this Section shall be computed as follows:

24 (1) Determine the taxable entity's total revenue from its entire business, as
25 determined under R.S. 47:288.21.

26 (2) Apportion the amount computed under Paragraph (1) of this Subsection
27 to this state, as provided by R.S. 47:288.30, to determine the taxable entity's
28 apportioned total revenue.

1 (3) Multiply the amount computed under Paragraph (2) of this Subsection by
2 the rate of three hundred thirty-one thousandths of one percent.

3 C. A taxable entity that elects to pay the tax as provided by this Section shall
4 not take a credit, deduction, or other adjustment that is not specifically authorized by
5 this Section.

6 (d) A reference in this Subpart, or any other provision of law, to the rate of
7 the franchise tax shall mean, as appropriate, the rate under R.S. 47:288.7 or, for a
8 taxable entity that elects to pay the tax as provided by this Section, the rate under this
9 Section.

10 §288.27. Determination of gross receipts for margin from business done in this state

11 A. Subject to R.S. 47:288.29, in apportioning margin, the gross receipts of
12 a taxable entity from its business done in this state shall be the sum of the taxable
13 entity's receipts from all of the following:

14 (1) Each sale of tangible personal property if the property is delivered or
15 shipped to a buyer in this state regardless of the free on board shipping point or
16 another condition of the sale.

17 (2) Each service performed in this state, except that receipts derived from
18 servicing loans secured by real property are in this state if the real property is located
19 in this state.

20 (3) Each rental of property situated in this state.

21 (4) The use of a patent, copyright, trademark, franchise, or license in this
22 state.

23 (5) Each sale of real property located in this state, including royalties from
24 oil, gas, or other mineral interests.

25 (6) Other business done in this state.

26 (B) A combined group shall include in its gross receipts computed under
27 Subsection A of this Section the gross receipts of each taxable entity that is a
28 member of the combined group and that has a nexus with this state for the purpose
29 of taxation.

1 §288.28. Determination of gross receipts from entire business for margin.

2 A. Subject to R.S. 47:288.29, in apportioning margin, the gross receipts of
3 a taxable entity from its entire business is the sum of the taxable entity's receipts
4 from all of the following:

5 (1) Each sale of the taxable entity's tangible personal property.

6 (2) Each service, rental, or royalty.

7 (3) Other business.

8 B. If a taxable entity sells an investment or capital asset, the taxable entity's
9 gross receipts from its entire business for taxable margin includes only the net gain
10 from the sale.

11 C. A combined group shall include in its gross receipts computed under
12 Subsection A of this Section the gross receipts of each taxable entity that is a
13 member of the combined group, without regard to whether that entity has a nexus
14 with this state for the purpose of taxation.

15 §288.29. Exclusion of certain receipts for margin apportionment

16 A. In apportioning margin, receipts excluded from total revenue by a taxable
17 entity under R.S. 47:288.21 shall not be included in either the receipts of the taxable
18 entity from its business done in this state as determined under R.S. 47:288.27 or the
19 receipts of the taxable entity from its entire business done as determined under R.S.
20 47:288.28.

21 B. In apportioning margin, receipts derived from transactions between
22 individual members of a combined group that are excluded under R.S.
23 47:288.24(C)(3) shall not be included in the receipts of the taxable entity from its
24 business done in this state as determined under R.S. 47:288.27, except that receipts
25 ultimately derived from the sale of tangible personal property between individual
26 members of a combined group where one member party to the transaction does not
27 have nexus in this state shall be included in the receipts of the taxable entity from its
28 business done in this state as determined under R.S. 47:288.27 to the extent that the
29 member of the combined group that does not have nexus in this state resells the

1 tangible personal property without substantial modification to a purchaser in this
2 state. "Receipts ultimately derived from the sale" shall mean the amount paid for the
3 tangible personal property by the third party purchaser.

4 C. In apportioning margin, receipts derived from transactions between
5 individual members of a combined group that are excluded under R.S.
6 47:288.24(C)(3) shall not be included in the receipts of the taxable entity from its
7 entire business done as determined under R.S. 47:288.28.

8 §288.30. Apportionment of margin to this state

9 A. Except as otherwise provided for in this Section, a taxable entity's margin
10 is apportioned to this state to determine the amount of tax imposed under R.S.
11 47:288.7 by multiplying the margin by a fraction, the numerator of which is the
12 taxable entity's gross receipts from business done in this state, as determined under
13 R.S. 47:288.27, and the denominator of which is the taxable entity's gross receipts
14 from its entire business, as determined under R.S. 47:288.28.

15 B. A taxable entity's margin that is derived, directly or indirectly, from the
16 sale of management, distribution, or administration services to or on behalf of a
17 regulated investment company, including a taxable entity that includes trustees or
18 sponsors of employee benefit plans that have accounts in a regulated investment
19 company, is apportioned to this state to determine the amount of the tax imposed
20 under R.S. 47:288.7 by multiplying the taxable entity's total margin from the sale of
21 services to or on behalf of a regulated investment company by a fraction, the
22 numerator of which is the average of the sum of shares owned at the beginning of the
23 year and the sum of shares owned at the end of the year by the investment company
24 shareholders who are commercially domiciled in this state or, if the shareholders are
25 individuals, are residents of this state, and the denominator of which is the average
26 of the sum of shares owned at the beginning of the year and the sum of shares owned
27 at the end of the year by all investment company shareholders. For purposes of this
28 Subsection, "regulated investment company" shall have the same meaning assigned
29 by Section 851(a) of the Internal Revenue Code.

1 C. A taxable entity's margin that is derived, directly or indirectly, from the
2 sale of management, administration, or investment services to an employee
3 retirement plan is apportioned to this state to determine the amount of the tax
4 imposed under R.S. 47:288.7 by multiplying the taxable entity's total margin from
5 the sale of services to an employee retirement plan company by a fraction, the
6 numerator of which is the average of the sum of beneficiaries domiciled in Louisiana
7 at the beginning of the year and the sum of beneficiaries domiciled in Louisiana at
8 the end of the year, and the denominator of which is the average of the sum of all
9 beneficiaries at the beginning of the year and the sum of all beneficiaries at the end
10 of the year. For purposes of this Subsection, "employee retirement plan" shall mean
11 a plan or other arrangement that is qualified under Section 401(a) of the Internal
12 Revenue Code, or satisfies the requirements of Section 403 of the Internal Revenue
13 Code, or a government plan described in Section 414(d) of the Internal Revenue
14 Code. "Employee retirement plan" shall not include an individual retirement account
15 or individual retirement annuity within the meaning of Section 408 of the Internal
16 Revenue Code.

17 D. A banking corporation shall exclude from the numerator of the bank's
18 apportionment factor interest earned on federal funds and interest earned on
19 securities sold under an agreement to repurchase that are held in this state in a
20 correspondent bank that is domiciled in this state. For purposes of this Subsection,
21 "correspondent" shall have the same meaning assigned by 12 CFR. Section 206.2(c).

22 E. Receipts from services that a defense readjustment project performs in a
23 defense economic readjustment zone shall not be receipts from business done in this
24 state.

25 F.(1) Notwithstanding R.S. 47:288.29, if a loan or security is treated as
26 inventory of the seller for federal income tax purposes, the gross proceeds of the sale
27 of that loan or security shall be considered gross receipts.

28 (2) Notwithstanding R.S. 47:288.29, if a lending institution categorizes a loan
29 or security as "Securities Available for Sale" or "Trading Securities" under Financial

1 Accounting Standard No. 115, the gross proceeds of the sale of that loan or security
2 are considered gross receipts. As used in this Subsection, "Financial Accounting
3 Standard No. 115" shall mean the Financial Accounting Standard No. 115 in effect
4 as of January 1, 2009, not including any changes made after that date.

5 G. A taxable entity that is a broadcaster shall include in the numerator of the
6 broadcaster's apportionment factor receipts arising from licensing income from
7 broadcasting or otherwise distributing film programming by any means only if the
8 legal domicile of the broadcaster's customer is in this state. For purposes of this
9 Subsection, the following terms shall have the meanings ascribed to them in this
10 Subsection:

11 (1) "Broadcaster" shall mean a taxable entity, not including a cable service
12 provider or a direct broadcast satellite service, that is one of the following:

13 (a) Television station licensed by the Federal Communications Commission.

14 (b) Television broadcast network.

15 (c) Cable television network.

16 (d) Television distribution company.

17 (2) "Customer" shall mean a person, including a licensee, that has a direct
18 connection or contractual relationship with a broadcaster under which the
19 broadcaster derives revenue.

20 (3) "Film programming" shall mean all or part of a live or recorded
21 performance, event, or production intended to be distributed for visual and auditory
22 perception by an audience.

23 (4) "Programming" shall include news, entertainment, sporting events, plays,
24 stories, or other literary, commercial, educational, or artistic works.

25 §288.31. Gross receipts for margin

26 A. For purposes of this Section, "gross receipts" shall mean all revenues
27 reportable by a taxable entity on its federal tax return, without deduction for the cost
28 of property sold, materials used, labor performed, or other costs incurred, unless
29 otherwise specifically provided in this Subpart.

1 A. The tax covering the privilege periods included on the initial report shall
2 be based on the business done by the taxable entity during the period beginning on
3 the taxable entity's beginning date and either of the following:

4 (1) Ending on the last accounting period ending date that is at least sixty days
5 before the original due date of the initial report.

6 (2) If there is no such period ending date in Paragraph (1) of this Subsection,
7 then ending on the day that is the last day of a calendar month and that is nearest to
8 the end of the taxable entity's first year of business.

9 B. The tax covering the regular annual period, other than a regular annual
10 period included on the initial report, is based on the business done by the taxable
11 entity during the period beginning with the day after the last date upon which taxable
12 margin or net taxable earned surplus on a previous report was based and ending with
13 its last accounting period ending date for federal income tax purposes in the year
14 before the year in which the report is originally due.

15 §288.43. Payment by foreign taxable entity before withdrawal from state

16 A. Except as provided by Subsection B of this Section, a foreign taxable
17 entity holding a registration or certificate of authority to do business in this state may
18 withdraw from doing business in this state by filing a certificate of withdrawal with
19 the secretary of state. The secretary of state shall file the certificate of withdrawal as
20 provided by law.

21 B. The foreign taxable entity shall not withdraw from doing business in this
22 state unless it has paid, before filing the certificate of withdrawal, any tax or penalty
23 imposed by this Subpart on the taxable entity.

24 SUBPART E. REPORTS AND RECORDS

25 §288.50. Additional information required by the secretary

26 The secretary may require a taxable entity on which the franchise tax is
27 imposed to furnish to the secretary information from the taxable entity's books and
28 records that has not been filed previously and that is necessary for the secretary to
29 determine the amount of the tax.

1 §288.51. Examination of records

2 To determine the franchise tax liability of a taxable entity, the secretary may
3 investigate or examine the records of the taxable entity.

4 §288.52. Report of Changes to federal income tax return

5 A. A taxable entity must file an amended report under this chapter if either
6 of the following occurs:

7 (1) The taxable entity's taxable margin is changed as the result of an audit or
8 other adjustment by the Internal Revenue Service or another competent authority.

9 (2) The taxable entity files an amended federal income tax return or other
10 return that changes the taxable entity's taxable margin.

11 B. The taxable entity shall file the amended report under Paragraph (1) of this
12 Subsection not later than the one hundred twentieth day after the date the revenue
13 agent's report or other adjustment is final. For purposes of this Subsection, a revenue
14 agent's report or other adjustment is final on the date on which all administrative
15 appeals with the Internal Revenue Service or other competent authority have been
16 exhausted or waived.

17 C. The taxable entity shall file the amended report under Paragraph (A)(2)
18 of this Section not later than the one hundred twentieth day after the date the taxable
19 entity files the amended federal income tax return or other return. For purposes of
20 this Subsection, a taxable entity is considered to have filed an amended federal
21 income tax return if the taxable entity is a member of an affiliated group during a
22 period in which an amended consolidated federal income tax report is filed.

23 D. If a taxable entity fails to comply with this Section, the taxable entity is
24 liable for a penalty of ten percent of the tax that should have been reported under this
25 Section and that had not previously been reported to the secretary. The penalty
26 prescribed by this subsection is in addition to any other penalty provided by law.

27 §288.53. Calculating cost of goods or compensation in professional employer
28 services arrangement

1 In calculating cost of goods sold or compensation, a taxable entity that is a
 2 client of a professional employer organization shall rely on information provided by
 3 the professional employer organization on a form promulgated by the secretary or
 4 an invoice.

5 Section 2. Parts II and II-A of Subtitle II of Title 47 of the Louisiana Revised
 6 Statutes of 1950, comprised of R.S. 47:121 through 287.785, are hereby repealed in their
 7 entirety.

8 Section 3. Sections 1 and 2 of this Act shall become operative on January 1, 2018.

9 Section 4. This Act shall take effect if and when the Act which originated as House
 10 Bill No. 433 of this 2017 Regular Session of the Legislature is enacted and becomes
 11 effective.

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 666 Original

2017 Regular Session

Jones

Abstract: Levies a tax on the taxable margins of business entities and repeals the corporation franchise tax.

Present law imposes an income tax on corporations and provides for the collection, computation, administration, and enforcement of the tax.

Proposed law repeals present law.

Proposed law levies an annual tax on the gross margins of business entities. The rate of the tax is 0.375% on the taxable margins of retail and wholesale businesses and 0.75% on the taxable margin of all other business entities.

Proposed law provides the taxable margin is the lesser of the following:

- (1) The lesser of 70% of the taxable margin or the taxable margin minus \$1M.
- (2) The taxable margin minus the greater of:
 - (a) \$1M.
 - (b) Cost of goods sold.
 - (c) Compensation.

Proposed law exempts numerous nonprofit entities, insurance companies, railways, electric co-ops, and political subdivisions.

Proposed law provides for numerous exclusions from the total revenue used to determine the taxable margin.

Proposed law requires combined reporting for affiliated groups and provides for margin apportionment when business is conducted both inside and outside of the state.

Proposed law provides for annual collection of the tax.

Applicable to taxable years beginning on and after Jan. 1, 2018.

Effective if and when House Bill No. 433 of this 2017 R.S. is enacted and becomes effective.

(Adds R.S. 47:288.1 through 288.53; Repeals R.S. 47:121-287.785)