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## DIGEST

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HB 74 Original

2016 First Extraordinary Session

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**Abstract:** Changes the method for determination of income subject to the corporation income tax by requiring combined reporting for certain corporations in Louisiana.

Proposed law requires corporate taxpayers engaged in a unitary business with one or more other corporations to file a combined report which includes the income determined under present law and the apportionment factors determined under present law of all corporations that are members of the unitary business.

Proposed law defines a "corporation" as any corporation as defined by present law or other entity taxed as a corporation for federal income tax purposes regardless of where the corporation is located, which, if it were doing business in this state would be a "taxpayer".

Proposed law defines a "unitary business" as a single economic enterprise made up of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts.

Proposed law defines a "combined group" as the group of all persons whose income and apportionment factors are required to be taken into account pursuant to present law in determining the taxpayer's share of income or loss attributable to this state.

Proposed law authorizes the secretary of the Dept. of Revenue (DOR), through promulgation of rules, to require that the combined report of a corporation include the income and associated apportionment factors of any persons that are members of a unitary business, in order to reflect proper apportionment of income of entire unitary businesses. Further provides that if the secretary determines that the reported income or loss of a taxpayer engaged in a unitary business with any person not required to file a combined report represents an avoidance or evasion of tax by the taxpayer, the secretary may require all or any part of the income and associated apportionment factors of that person be included in the taxpayer's combined report. Further authorizes the secretary use other methods to effectuate a proper reflection of the total amount of income subject to apportionment and an equitable allocation and apportionment of the taxpayer's income.

Proposed law provides that the use of a combined report does not disregard the separate identities of the taxpayer members of the combined group. Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this state, which includes the taxpayer member's share of apportionable income of the combined group, where apportionable income of the

combined group is calculated as a summation of the individual net apportionable incomes of all members of the combined group. A member's net apportionable income shall be determined by removing all but apportionable income, expense and loss from that member's total income.

Proposed law provides for the components of income which shall be subject to income tax in this state as well as the application of tax credits and post-apportionment deductions in the calculation of taxable income. Proposed law prohibits tax credits or post-apportionment deductions that are earned by one member of the group but not fully used by or allowed to that member from being used in whole or in part by another member of the group or applied in whole or in part against the total income of the combined group. Further provides that a post-apportionment deduction carried into a subsequent year as to the member that incurred it that is also a deduction to that member in a subsequent year from being considered in the computation of the income of that member in the subsequent year, regardless of the composition of that income as apportioned, allocated or wholly within this state.

Proposed law requires the taxpayer's share of income apportionable to this state of each combined group of which the taxpayer is a member be the product of the apportionable income of the combined group as determined under proposed law the taxpayer member's apportionment percent as determined under present law the taxpayer's property, payroll, and sales numerators associated with the combined group's unitary business in this state, and including in the denominator the property, payroll, and sales of all members of the combined group, including the taxpayer, which property, payroll and sales are associated with the combined group's unitary business wherever located.

Proposed law requires the apportionable income of a combined group to be determined from the total income of the combined group minus net allocable income. Further provides that the total income of the combined group shall be the sum of the income of each member of the combined group determined under federal income tax laws, as adjusted for state purposes, as if the member were not consolidated for federal purposes.

Proposed law provides for the calculation of the income of each member of the combined group that is incorporated in the U.S. or included in a consolidated federal corporate income tax return, and for all other members.

Proposed law provides for the disposition of charitable expenses allowable as deductions pursuant to federal law that are incurred by a member of a combined group and for expenses of one member of the unitary group which are directly or indirectly attributable to the allocable or exempt income of another member of the unitary group.

Proposed law authorizes members of a combined reporting group to annually elect to designate one taxpayer member of the combined group to file a single return in lieu of filing their own respective returns, provided that the taxpayer designated to file the single return consents to act as surety with respect to the tax liability of all other taxpayers included in the combined report and agrees to act as agent on behalf of those taxpayers for the year of the election for tax matters relating to the combined report for that year.

Proposed law authorizes taxpayer members of a unitary group that meet the requirements of proposed law to elect to determine each of their apportioned shares of the net apportionable income or loss of the combined group pursuant to a water's-edge election. Further provides for the members of the combined group whose income and apportionment factors that shall be taken into account in the water's-edge election.

Proposed law provides that a water's-edge election shall be effective only if made on a timely filed, original return for a tax year by every member of the unitary business subject to tax. Proposed law authorizes the secretary to develop regulations governing the impact on the scope or application of a water's-edge election, including termination or deemed election, resulting from a change in the composition of the unitary group, the combined group, the taxpayer members, and any other similar change.

Proposed law authorizes the secretary to disregard a water's-edge election, and the income and apportionment factors of any member of the taxpayer's unitary group may be included in the combined report if any member of the unitary group fails to comply with any provision of proposed law or if a person otherwise not included in the water's-edge combined group was availed of with a substantial objective of avoiding state income tax.

Proposed law provides that a water's-edge election shall be binding for and applicable to the tax year it is made and all tax years thereafter for a period of 10 years. A water's-edge election may be withdrawn or reinstated after withdrawal, prior to the expiration of the 10- year period, only upon written request for reasonable cause based on extraordinary hardship due to unforeseen changes in state tax statutes, law, or policy, and only with the written permission of the secretary.

Effective for taxable years beginning on or after Jan. 1, 2017.

(Adds R.S. 47:288.1-288.8)