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## DIGEST

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HB 20 Original

2016 Second Extraordinary Session

Reynolds

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

### **Transportation By Aircraft**

Present law provides that the La. apportionment percent of any taxpayer whose net apportionable income is derived primarily from transportation by aircraft shall be calculated from the average of the following ratios:

- (1) The ratio of the value of immovable and movable property, other than aircraft, owned by the taxpayer located in La. to the value of all immovable and movable property, other than aircraft, owned by the taxpayer used in the production of apportionable income.
- (2) The ratio of gross apportionable income derived from La. sources to the total gross apportionable income of the taxpayer.

Proposed law changes present law to provide that for taxable periods beginning on or after Jan. 1, 2016, the La. apportionment percent of these taxpayers shall be computed by using the single ratio as provided in (2).

Present law provides that gross apportionable income from La. sources shall include all gross receipts derived from passenger journeys and cargo shipments originating in La. and other items of gross apportionable income or receipts derived entirely from sources in La.

### **Transportation Other Than Aircraft Or Pipeline**

Present law provides that the La. apportionment percent of any taxpayer whose net apportionable income is derived primarily from transportation other than by aircraft or pipeline, shall be calculated from the average of the following ratios:

- (1) The ratio of the value of immovable and movable property owned by the taxpayer located in La. to the value of all immovable and movable property owned by the taxpayer used in the production of apportionable income.
- (2) The ratio of gross apportionable income from La. sources to the total amount of gross apportionable income of the taxpayer.

Proposed law changes present law to provide that for taxable periods beginning on or after Jan. 1, 2016, the La. apportionment percent of these taxpayers shall be computed by using the single ratio as provided in (2).

Present law provides that gross apportionable income from La. sources shall include all income derived entirely from sources within the state and a portion of revenue from transportation partly in and partly outside this state, prorated with deference given to the proportion of service performed in La.

Present law further provides that the value of immovable and movable property owned by the taxpayer used in La. shall include the value of property regularly situated in this state plus a pro rata of the value of all rolling stock and other mobile equipment owned by the taxpayer used in the production of apportionable income, with deference given for the mileage operated and traffic density inside and outside of this state.

Present law provides for special provisions for trucking companies.

### **Service Enterprises**

Present law provides that the La. apportionment percent of any taxpayer whose net apportionable income is derived primarily from a service business in which the use of property is not a substantial income-producing factor shall be calculated from the average of the following ratios:

- (1) The ratio of the amount paid by the taxpayer for salaries, wages, and other compensation for personal services rendered in La. to the total amount paid by the taxpayer for salaries, wages, and other compensation for personal services in connection with the production of the net apportionable income.
- (2) The ratio of the gross apportionable income of the taxpayer from La. sources to the total gross apportionable income of the taxpayer.

Proposed law changes present law to provide that for taxable periods beginning on or after Jan. 1, 2016, the La. apportionment percent of these taxpayers shall be computed by using the single ratio as provided in (2).

Present law provides that gross apportionable income from La. sources shall include revenue from services performed in this state, and any other gross income derived entirely from sources within this state.

### **Manufacturing And Merchandising**

Present law provides that the La. apportionment percent of a taxpayer whose net apportionable income is derived primarily from the transportation by pipeline or from any business not included in other provisions of present law (manufacturing and merchandising) shall be calculated from the average of the following three ratios:

- (1) The ratio of the value of the immovable and movable property owned by the taxpayer located in La. to the value of all immovable and movable property owned by the taxpayer used in the production of the net apportionable income.
- (2) The ratio of the amount paid by the taxpayer for salaries, wages, and other compensation for personal services rendered in this state to the total amount paid by the taxpayer for salaries, wages, and other compensation for personal services in connection with the production of net apportionable income.
- (3) The ratio of net sales made in the regular course of business and other gross apportionable income attributable to this state to the total net sales made in the regular course of business and other gross apportionable income of the taxpayer.

Proposed law changes present law to provide that for taxable periods beginning on or after Jan. 1, 2016, the La. apportionment percent of taxpayers whose apportionable income is derived primarily from transportation by pipeline or from any business not included in other provisions of present law shall be computed by using the single ratio as provided in (3).

Present law provides that since Jan. 1, 2006, the La. apportionment percent of any taxpayer whose net apportionable income is derived primarily from manufacturing or merchandising shall be computed by a single ratio of net sales made in the regular course of business and other gross apportionable income attributable to this state to the total net sales made in the regular course of business and other gross apportionable income of the taxpayer.

Proposed law retains present law as it relates to the apportionment ratios for manufacturing or merchandising sectors.

### **Sourcing of Sales**

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

- (1) In the case of a sale, rental, lease or license of real property or rental, lease or license of tangible personal property, if and to the extent the property is located in the state.
- (2) In the case of sale of a service, if and to the extent the service is delivered to a location in the state.
- (3) In the case of lease or license of intangible property, including a sale or exchange of property where receipts from the sale or exchange derive from payments contingent on the productivity, use or disposition of the property, if and to the extent the intangible property is used in the state.
- (4) In the case of the sale of intangible property where the property sold is a contract right,

government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, if and to the extent that the intangible property is used in or otherwise associated with the state.

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

- (1) If the customer is a natural person and the service is a direct personal service, the sale shall be sourced to the state where the customer received the direct personal service.
- (2) Services that are not direct personal services that are delivered to customers who are natural persons with a La. billing address shall be sourced to this state.
- (3) If the sourcing methodology in proposed law fails to clearly reflect the taxpayers market in this state, the taxpayer may utilize, or the department may require, the use of other criteria and methodologies to approximate the taxpayer's market in this state. Proposed law specifies requirements for a taxpayer to follow if an alternate approach is utilized and consequences if a taxpayer fails to fulfill those requirements.

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

- (1) If a service is provided to an unrelated entity and the service has a substantial connection to a specific geographic location, the income shall be sourced to La. if the geographic location is in this state. Service receipts that have a substantial connection to geographic locations in multiple states shall be reasonably sourced between those states.
- (2) If the service provided to an unrelated entity does not have a substantial connection to a specific geographic location, sales from services delivered to unrelated entities shall be sourced to the commercial domicile of the taxpayer.
- (3) If the sourcing methodology in proposed law fails to reflect the taxpayers market in this state, the taxpayer may utilize, or the department may require, the use of other criteria and methodologies to approximate the taxpayer's market in this state. Proposed law specifies requirements for a taxpayer to follow if an alternate approach is utilized and consequences if a taxpayer fails to fulfill those requirements.

Proposed law requires the secretary of DOR to promulgate rules in accordance with the APA concerning the sourcing of the sales of services between related entities.

Proposed law defines a "related entity" and "related party" for purposes of calculating the sourcing of sales.

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

Proposed law provides that if the taxpayer is not taxable in a state to which a sale is assigned or if the state of assignment cannot be determined or reasonably approximated then the sale shall be excluded from the numerator and the denominator of the sales factor.

Applicable to all taxable periods beginning on and after Jan. 1, 2016.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:287.95(A), (C)(1), (D), and (F)(2)(b); Adds R.S. 47:287.95(L) and (M))