

2015 Regular Session

HOUSE BILL NO. 775

BY REPRESENTATIVE STOKES

TAX/CORP INCOME: Provides for methods of determining income subject to the corporation income tax

1 AN ACT

2 To enact Part II-B of Chapter 1 of Subtitle II of Title 47 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 47:288.1 through 288.50, relative to corporation
4 income tax; to require reporting; to provide for definitions; to provide for
5 applicability; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Part II-B of Chapter 1 of Subtitle II of Title 47 of the Louisiana Revised
8 Statutes of 1950, comprised of R.S. 47:288.1 through 288.50, is hereby enacted to read as
9 follows:

10 PART II-B. LOUISIANA COMBINED REPORTING ACT

11 §288.1. Short title; Louisiana Combined Reporting Act

12 This Act shall be known and may be cited as the "Louisiana Combined
13 Reporting Act".

14 §288.2. Purpose

15 A. Corporations shall be taxed on their Louisiana taxable income, calculated
16 in the manner and according to procedures provided for in this Part, to the full extent
17 permitted under the Constitutions of the United States of America and the state of
18 Louisiana.

19 B. The Legislature recognizes that the unitary business principle as
20 enunciated by the United States Supreme Court limits the state's ability to impose tax

1 on income from business activities unrelated to the state; therefore, all the provisions
2 of this Part are to be construed following the unitary business principle.

3 §288.3. Inconsistent provisions

4 The provisions of this Part shall supersede the provisions of Part I, Part II,
5 and Part II-A of this Chapter to the extent that they are inconsistent or in conflict
6 herewith. The provisions of Part I, Part II, and Part II-A of this Chapter shall remain
7 in effect to the extent that they are not inconsistent or in conflict with this Part.

8 §288.10. Definitions

9 As used in this Part, the following words and phrases shall have the following
10 meanings:

11 A. "Person" means any individual, firm, partnership, general partner of a
12 partnership, limited liability company, registered limited liability partnership, foreign
13 limited liability partnership, association, corporation (whether or not the corporation
14 is, or would be if doing business in this state, subject to the Louisiana Corporation
15 Income Tax Act), company, syndicate, estate, trust, business trust, trustee, trustee in
16 bankruptcy, receiver, executor, administrator, assignee or organization of any kind.

17 B. "Taxpayer" means any person subject to the tax imposed by this Part.

18 C. "Corporation" means any corporation as defined by the laws of this state
19 or organization of any kind treated as a corporation for tax purposes under the laws
20 of this state, wherever located, which if it were doing business in this state would be
21 a "taxpayer". The business conducted by a partnership which is directly or indirectly
22 held by a corporation shall be considered the business of the corporation to the extent
23 of the corporation's distributive share of the partnership income, inclusive of
24 guaranteed payments to the extent prescribed by regulation.

25 D. "Partnership" means a general or limited partnership, or organization of
26 any kind treated as a partnership for tax purposes under the laws of this state.

27 E. "Unitary business" means a single economic enterprise that is made up
28 either of separate parts of a single business entity or of a commonly controlled group
29 of business entities that are sufficiently interdependent, integrated and interrelated

1 through their activities so as to provide a synergy and mutual benefit that produces
2 a sharing or exchange of value among them and a significant flow of value to the
3 separate parts.

4 F. "Combined group" means the group of all persons whose income and
5 apportionment factors are required to be taken into account pursuant to R.S.
6 47:288.20(A) or (B) in determining the taxpayer's share of income or loss
7 attributable to this state.

8 G. "United States" means the fifty states of the United States, the District of
9 Columbia, and United States' territories and possessions.

10 H. "Tax haven" means a jurisdiction that, during the tax year in question:

11 (1) Is identified by the Organization for Economic Co-operation and
12 Development (OECD) as a tax haven or as having a harmful preferential tax regime;
13 or

14 (2) Exhibits the following characteristics established by the OECD in its
15 1998 report entitled Harmful Tax Competition: An Emerging Global Issue as
16 indicative of a tax haven or as a jurisdiction having a harmful preferential tax regime,
17 regardless of whether it is listed by the OECD as an uncooperative tax haven:

18 (a) Has no or nominal effective tax on the relevant income; and

19 (b)(i) Has laws or practices that prevent effective exchange of information
20 for tax purposes with other governments on taxpayers benefitting from the tax
21 regime;

22 (ii) Has tax regime which lacks transparency. A tax regime lacks
23 transparency if the details of legislative, legal, or administrative provisions are not
24 open and apparent or are not consistently applied among similarly situated taxpayers,
25 or if the information needed by tax authorities to determine a taxpayer's correct tax
26 liability, such as accounting records and underlying documentation, is not adequately
27 available;

1 (iii) Facilitates the establishment of foreign-owned entities without the need
2 for a local substantive presence or prohibits these entities from having any
3 commercial impact on the local economy;

4 (iv) Explicitly or implicitly excludes the jurisdiction's resident taxpayers
5 from taking advantage of the tax regime's benefits or prohibits enterprises that
6 benefit from the regime from operating in the jurisdiction's domestic market; or

7 (v) Has created a tax regime which is favorable for tax avoidance, based
8 upon an overall assessment of relevant factors, including whether the jurisdiction has
9 a significant untaxed offshore financial/other services sector relative to its overall
10 economy.

11 §288.20. Combined reporting required discretionary under certain circumstances

12 A. Combined reporting required, when. A taxpayer engaged in a unitary
13 business with one or more other corporations shall file a combined report which
14 includes the income determined under R.S. 47:288.30(C), and the apportionment
15 factors determined under R.S. 47:287.95 and 288.30(B), of all corporations that are
16 members of the unitary business, and such other information as required by the
17 secretary.

18 B. Combined reporting at secretary's discretion.

19 (1) The secretary may, by regulation, require the combined report include the
20 income and associated apportionment factors of any persons that are not included
21 pursuant to Subsection A of this Section, but that are members of a unitary business,
22 in order to reflect proper apportionment of income of entire unitary businesses.
23 Authority to require combination by regulation under this Subsection includes
24 authority to require combination of persons that are not, or would not be if doing
25 business in this state, subject to the Louisiana Corporation Income Tax Act.

26 (2) If the secretary determines that the reported income or loss of a taxpayer
27 engaged in a unitary business with any person not included pursuant to Subsection
28 A of this Section represents an avoidance or evasion of tax by such taxpayer, the
29 Secretary may, on a case by case basis, require all or any part of the income and

1 associated apportionment factors of such person be included in the taxpayer's
2 combined report.

3 (3) With respect to inclusion of associated apportionment factors pursuant
4 to this Subsection, secretary may require the exclusion of any one or more of the
5 factors, the inclusion of one or more additional factors which will fairly represent the
6 taxpayer's business activity in this state, or the employment of any other method to
7 effectuate a proper reflection of the total amount of income subject to apportionment
8 and an equitable allocation and apportionment of the taxpayer's income.

9 §288.30. Determination of taxable income or loss using combined report

10 The use of a combined report does not disregard the separate identities of the
11 taxpayer members of the combined group. Each taxpayer member is responsible for
12 tax based on its taxable income or loss apportioned or allocated to this state, which
13 shall include, in addition to other types of income, the taxpayer member's share of
14 apportionable income of the combined group, where apportionable income of the
15 combined group is calculated as a summation of the individual net apportionable
16 incomes of all members of the combined group. A member's net apportionable
17 income is determined by removing all but apportionable income, expense and loss
18 from that member's total income, as provided in detail below.

19 A. Components of income subject to tax in this state; application of tax
20 credits and post apportionment deductions.

21 (1) Each taxpayer member is responsible for tax based on its taxable income
22 or loss apportioned or allocated to this state, which shall include:

23 (a) Its share income apportioned to this state of each of the combined groups
24 of which it is a member, determined under Subsection B of this Section;

25 (b) Its share of any income apportioned to this state of a distinct business
26 activity conducted within and without the state wholly by the taxpayer member,
27 determined under R.S. 47:287.95;

28 (c) Its income from a business conducted wholly by the taxpayer member
29 entirely within the state;

1 (d) Its income or loss allocable to this State, determined under R.S.
2 47:287.93;

3 (e) Its income or loss allocated or apportioned in an earlier year, required to
4 be taken into account as state source income during the income year, other than a net
5 operating loss; and

6 (f) Its net operating loss carryover or carryback. If the taxable income
7 computed pursuant to this Section results in a loss for a taxpayer member of the
8 combined group, that taxpayer member has a Louisiana net operating loss, subject
9 to the net operating loss limitations, carryover and carryback provisions of R.S.
10 47:287.86. Such net operating loss is applied as a deduction in a prior or subsequent
11 year only if that taxpayer has Louisiana source positive net income, whether or not
12 the taxpayer is or was a member of a combined reporting group in the prior or
13 subsequent year.

14 (2) No tax credit or post-apportionment deduction earned by one member of
15 the group, but not fully used by or allowed to that member, may be used in whole or
16 in part by another member of the group or applied in whole or in part against the
17 total income of the combined group; and a post-apportionment deduction carried
18 over into a subsequent year as to the member that incurred it, and available as a
19 deduction to that member in a subsequent year, will be considered in the computation
20 of the income of that member in the subsequent year, regardless of the composition
21 of that income as apportioned, allocated or wholly within this state.

22 B. Determination of taxpayer's share of the income of a combined group
23 apportionable to this state.

24 The taxpayer's share of the income apportionable to this state of each
25 combined group of which it is a member shall be the product of:

26 (1) The apportionable income of the combined group, determined under
27 Subsection C of this Section; and

28 (2) The taxpayer member's apportionment percent, determined under R.S.
29 47:287.95, including in the property, payroll and sales numerators the taxpayer's

1 property, payroll and sales, respectively, associated with the combined group's
2 unitary business in this state, and including in the denominator the property, payroll
3 and sales of all members of the combined group, including the taxpayer, which
4 property, payroll and sales are associated with the combined group's unitary business
5 wherever located. The property, payroll, and sales of a partnership shall be included
6 in the determination of the partner's apportionment percentage in proportion to a
7 ratio the numerator of which is the amount of the partner's distributive share of
8 partnership's unitary income included in the income of the combined group in
9 accordance with R.S. 47:288.30(C)(2)(c) and the denominator of which is the
10 amount of the partnership's total unitary income.

11 C. Determination of the apportionable income of the combined group.

12 The apportionable income of a combined group is determined as follows:

13 (1) From the total income of the combined group, determined under
14 Paragraph (2) of this Subsection, subtract net allocable income.

15 (2) Except as otherwise provided, the total income of the combined group
16 is the sum of the income of each member of the combined group determined under
17 federal income tax laws, as adjusted for state purposes, as if the member were not
18 consolidated for federal purposes. The income of each member of the combined
19 group shall be determined as follows:

20 (a) For any member incorporated in the United States, or included in a
21 consolidated federal corporate income tax return, the income to be included in the
22 total income of the combined group shall be the taxable income for the corporation
23 after making appropriate modifications under R.S. 47:287.71 and 287.73.

24 (b)(i) For any member not included in Subparagraph (a) of this Paragraph,
25 the income to be included in the total income of the combined group shall be
26 determined as follows:

27 (aa) A profit and loss statement shall be prepared for each foreign branch or
28 corporation in the currency in which the books of account of the branch or
29 corporation are regularly maintained.

1 (bb) Adjustments shall be made to the profit and loss statement to conform
2 it to the accounting principles generally accepted in the United States for the
3 preparation of such statements except as modified by this regulation.

4 (cc) Except as otherwise provided by regulation, the profit and loss statement
5 of each member of the combined group, and the apportionment factors related
6 thereto, whether United States or foreign, shall be translated into the currency in
7 which the parent company maintains its books and records.

8 (dd) Income apportioned to this state shall be expressed in United States
9 dollars.

10 (ii) In lieu of the procedures set forth in Item (i) of this Subparagraph and
11 subject to the determination of the secretary that it reasonably approximates income,
12 any member not included in Subparagraph (a) of this Paragraph may determine its
13 income on the basis of the consolidated profit and loss statement which includes the
14 member and which is prepared for filing with the Securities and Exchange
15 Commission by related corporations. If the member is not required to file with the
16 Securities and Exchange Commission, the secretary may allow the use of the
17 consolidated profit and loss statement prepared for reporting to shareholders and
18 subject to review by an independent auditor. If above statements do not reasonably
19 approximate income the secretary may accept those statements with appropriate
20 adjustments to approximate that income.

21 (c) If a unitary business includes income from a partnership, the income to
22 be included in the total income of the combined group shall be the member of the
23 combined group's direct and indirect distributive share of the partnership's unitary
24 apportionable income. Unitary apportionable income from a partnership included
25 in the income of the combined group shall be excluded from allocable income.

26 (d) Except as otherwise provided by regulation, apportionable income from
27 an intercompany transaction between members of the same combined group shall be
28 deferred in a manner similar to Internal Revenue Code Section 1502 and the
29 regulations thereunder. Upon the occurrence of any of the following events, deferred

1 apportionable income resulting from an intercompany transaction between members
2 of a combined group shall be restored to the income of the seller, and shall be
3 apportioned as income earned immediately before the event:

4 (i) the object of a deferred intercompany transaction is:

5 (aa) resold by the buyer to an entity that is not a member of the combined
6 group,

7 (bb) resold by the buyer to an entity that is a member of the combined group
8 for use outside the unitary business in which the buyer and seller are engaged, or

9 (cc) converted by the buyer to a use outside the unitary business in which the
10 buyer and seller are engaged, or

11 (ii) the buyer and seller are no longer members of the same combined group,
12 regardless of whether the members remain unitary.

13 (e) A charitable expense allowable as a deduction pursuant to Internal
14 Revenue Code Section 170 incurred by a member of a combined group shall be
15 subtracted first from the apportionable income of the combined group, subject to the
16 income limitations of that section applied to the entire apportionable income of the
17 group. Any remaining amount shall then be treated as an expense allocable to the
18 member that incurred the expense, subject to the income limitations of that section
19 applied to the allocable income of that specific member. Any charitable deduction
20 disallowed under the foregoing rule, but allowed as a carryover deduction in a
21 subsequent year, shall be treated as originally incurred in the subsequent year by the
22 same member, and the rules of this section shall apply in the subsequent year in
23 determining the allowable deduction in that year.

24 (f) Any expense of one member of the unitary group which is directly or
25 indirectly attributable to the allocable or exempt income of another member of the
26 unitary group shall be allocated to that other member as corresponding allocable or
27 exempt expense, as appropriate.

1 §288.40. Designation of surety

2 As a filing convenience, and without changing the respective liability of the
3 group members, members of a combined reporting group may annually elect to
4 designate one taxpayer member of the combined group to file a single return in the
5 form and manner prescribed by the department, in lieu of filing their own respective
6 returns, provided that the taxpayer designated to file the single return consents to act
7 as surety with respect to the tax liability of all other taxpayers properly included in
8 the combined report, and agrees to act as agent on behalf of those taxpayers for the
9 year of the election for tax matters relating to the combined report for that year. If
10 for any reason the surety is unwilling or unable to perform its responsibilities, tax
11 liability may be assessed against the taxpayer members.

12 §288.50. Water's-edge election; initiation and withdrawal

13 A. Water's-edge election.

14 Taxpayer members of a unitary group that meet the requirements of
15 Subsection B of this Section may elect to determine each of their apportioned shares
16 of the net apportionable income or loss of the combined group pursuant to a water's-
17 edge election. Under such election, taxpayer members shall take into account all or
18 a portion of the income and apportionment factors of only the following members
19 otherwise included in the combined group pursuant to R.S. 47:288.20, as described
20 below:

21 (1) The entire income and apportionment factors of any member
22 incorporated in the United States or formed under the laws of any state, the District
23 of Columbia, or any territory or possession of the United States;

24 (2) The entire income and apportionment factors of any member, regardless
25 of the place incorporated or formed, if the average of its property, payroll, and sales
26 factors within the United States is twenty percent or more;

27 (3) The entire income and apportionment factors of any member which is a
28 domestic international sales corporations as described in Internal Revenue Code
29 Sections 991 to 994, inclusive; a foreign sales corporation as described in Internal

1 Revenue Code Sections 921 to 927, inclusive; or any member which is an export
2 trade corporation, as described in Internal Revenue Code Sections 970 to 971,
3 inclusive;

4 (4) Any member not described in Paragraphs (1), (2), and (3) of this
5 Subsection, inclusive, shall include the portion of its income derived from or
6 attributable to sources within the United States, as determined under the Internal
7 Revenue Code without regard to federal treaties, and its apportionment factors
8 related thereto;

9 (5) Any member that is a "controlled foreign corporation", as defined in
10 Internal Revenue Code Section 957, to the extent of the income of that member that
11 is defined in Section 952 of Subpart F of the Internal Revenue Code not excluding
12 lower-tier subsidiaries' distributions of such income which were previously taxed,
13 determined without regard to federal treaties, and the apportionment factors related
14 to that income; any item of income received by a controlled foreign corporation shall
15 be excluded if such income was subject to an effective rate of income tax imposed
16 by a foreign country greater than ninety percent of the maximum rate of tax specified
17 in Internal Revenue Code Section 11;

18 (6) Any member that earns more than twenty percent of its income, directly
19 or indirectly, from intangible property or service related activities that are deductible
20 against the apportionable income of other members of the combined group, to the
21 extent of that income and the apportionment factors related thereto; and

22 (7) The entire income and apportionment factors of any member that is doing
23 business in a tax haven, where "doing business in a tax haven" is defined as being
24 engaged in activity sufficient for that tax haven jurisdiction to impose a tax under
25 United States constitutional standards. If the member's business activity within a tax
26 haven is entirely outside the scope of the laws, provisions and practices that cause
27 the jurisdiction to meet the criteria established in R.S. 47:288.10(H), the activity of
28 the member shall be treated as not having been conducted in a tax haven.

1 B. Initiation and withdrawal of election

2 (1) A water's-edge election is effective only if made on a timely-filed,
3 original return for a tax year by every member of the unitary business subject to tax.
4 The Secretary shall develop rules and regulations governing the impact, if any, on
5 the scope or application of a water's-edge election, including termination or deemed
6 election, resulting from a change in the composition of the unitary group, the
7 combined group, the taxpayer members, and any other similar change.

8 (2) Such election shall constitute consent to the reasonable production of
9 documents and taking of depositions.

10 (3) In the discretion of the secretary, a water's-edge election may be
11 disregarded in part or in whole, and the income and apportionment factors of any
12 member of the taxpayer's unitary group may be included in the combined report
13 without regard to the provisions of this section, if any member of the unitary group
14 fails to comply with any provision of this Part or if a person otherwise not included
15 in the water's-edge combined group was availed of with a substantial objective of
16 avoiding state income tax.

17 (4) A water's-edge election is binding for and applicable to the tax year it is
18 made and all tax years thereafter for a period of ten years. It may be withdrawn or
19 reinstated after withdrawal, prior to the expiration of the ten year period, only upon
20 written request for reasonable cause based on extraordinary hardship due to
21 unforeseen changes in state tax statutes, law, or policy, and only with the written
22 permission of the secretary. If the secretary grants a withdrawal of election, he or
23 she shall impose reasonable conditions as necessary to prevent the evasion of tax or
24 to clearly reflect income for the election period prior to or after the withdrawal.
25 Upon the expiration of the ten year period, a taxpayer may withdraw from the
26 water's-edge election. Such withdrawal must be made in writing within one year of
27 the expiration of the election, and is binding for a period of ten years, subject to the
28 same conditions as applied to the original election. If no withdrawal is properly

1 made, the water's edge election shall be in place for an additional ten year period,
2 subject to the same conditions as applied to the original election.

3 Section 3. The provisions of this Act shall be effective for taxable years beginning
4 on or after January 1, 2016.

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 775 Engrossed

2015 Regular Session

Stokes

Abstract: Changes the method for determination of income subject to the corporation income tax.

Proposed law provides that the method for determination of income subject the tax shall be the unitary business principle.

Proposed law provides for definitions.

Proposed law provides that the taxpayer shall be responsible for tax based on its taxable income or loss apportioned or allocable to Louisiana.

Proposed law provides for the various methods of determining the apportionable income of corporations and certain groups of corporations.

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

(Adds R.S. 47:288.1-288.50)