

2015 Regular Session

SENATE BILL NO. 270

BY SENATOR ADLEY

TAX/TAXATION. Authorizes the secretary of the Department of Revenue's authority to add back certain deductible expenses of corporations subject to Louisiana income or franchise tax which have either corporate gross revenues everywhere of \$8 billion or \$8 million of assets everywhere in order to calculate the corporation's income. (gov sig)

1 AN ACT

2 To enact R.S. 47:287.94.1, relative to corporate taxes; to provide for the secretary of the
3 Department of Revenue's authority to add back certain deductible expenses of certain
4 corporations for the calculation of its income; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 47:287.94.1 is hereby enacted to read as follows:

7 **§287.94.1. Secretary's authority to add back expenses**

8 **A. As used in this Section, the following words shall have the following**
9 **meanings unless the context requires otherwise:**

10 **(1) "Code" means the federal Internal Revenue Code as amended and**
11 **in effect for the taxable year.**

12 **(2) "Intangible expense" includes all of the following:**

13 **(a) Expenses, losses and costs for, related to, or in connection, directly or**
14 **indirectly, with the direct or indirect acquisition, use, maintenance or**
15 **management, ownership, sale, exchange, or any other disposition of intangible**
16 **property to the extent such amounts are allowed as deductions or costs in**
17 **determining taxable income before operating loss deductions and special**

1 deductions for the taxable year under the Code.

2 (b) Amounts directly or indirectly allowed as deductions under section
3 163 of the Code for purposes of determining taxable income under the Code to
4 the extent such expenses and costs are directly or indirectly for, related to, or
5 in connection with the expenses, losses and costs referenced in Subparagraph
6 (a) of this Paragraph.

7 (c) Losses related to, or incurred in connection, directly or indirectly,
8 with, factoring transactions or discounting transactions.

9 (d) Royalty, patent, technical and copyright fees.

10 (e) Licensing fees.

11 (f) Other costs similar to the ones provided for in this Paragraph.

12 (3) "Intangible property" means and includes patents, patent
13 applications, trade names, trademarks, service marks, copyrights, mask works,
14 trade secrets and similar types of intangible assets.

15 (4) "Interest expense" means amounts directly or indirectly allowed as
16 deductions under section 163 of the Code for purposes of determining taxable
17 income under the Code.

18 (5) "Related entity" means any of the following:

19 (a) A stockholder who is an individual, or a member of the stockholder's
20 family set forth in section 318 of the Code if the stockholder and the members
21 of the stockholder's family own, directly, indirectly, beneficially or
22 constructively, in the aggregate, at least fifty percent of the value of the
23 taxpayer's outstanding stock.

24 (b) A stockholder, or a stockholder's partnership, limited liability
25 company, estate, trust or corporation (hereafter, "stockholder's entity"), if the
26 stockholder and the stockholder's entity own directly, indirectly, beneficially or
27 constructively, in the aggregate, at least fifty percent of the value of the
28 taxpayer's outstanding stock.

29 (c) A corporation, or a party related to the corporation in a manner that

1 would require an attribution of stock from the corporation to the party, or from
2 the party to the corporation, under the attribution rules of the Code if the
3 taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty
4 percent of the value of the corporation's outstanding stock. The attribution
5 rules of the Code shall apply for purposes of determining whether the
6 ownership requirements of this definition have been met.

7 (6) "Related member" means a person that, with respect to the taxpayer
8 during all or any portion of the taxable year, is any of the following:

9 (a) A related entity.

10 (b) A "component member" as defined in subsection (b) of section 1563
11 of the Code.

12 (c) A person to or from whom there is attribution of stock ownership in
13 accordance with subsection (e) of section 1563 of the Code.

14 (d) A person that, notwithstanding its form of organization, bears the
15 same relationship to the taxpayer as a person described in Subparagraphs (a)
16 through (c) of this Paragraph.

17 (7) "Valid business purpose" means one or more business purposes,
18 other than the avoidance or reduction of taxation, which alone or in
19 combination constitute the primary motivation for a business activity or
20 transaction, which activity or transaction changes in a meaningful way, apart
21 from tax effects, the economic position of the taxpayer. The economic position
22 of the taxpayer includes an increase in the market share of the taxpayer or the
23 entry by the taxpayer into new business markets.

24 B. Notwithstanding any other provision of law to the contrary, for
25 purposes of computing the net income of a corporation pursuant to this Chapter
26 and for the purpose that the income of the corporation might be properly
27 reflected, the secretary shall add back in the manner provided for in this
28 Section the following deductible expenses of a corporation subject to Louisiana
29 income or franchise tax which has either corporate gross revenues everywhere

1 of eight billion dollars or eight million dollars of assets everywhere:

2 (1) Otherwise deductible intangible expense directly or indirectly paid,
3 accrued or incurred in connection with one or more direct or indirect
4 transactions with one or more related members.

5 (2) Otherwise deductible interest expense paid, accrued or incurred to
6 a related member during the taxable year.

7 C. The secretary shall make the following adjustments to the add back
8 required by this Section which represent the following:

9 (1) Similar taxes paid or incurred to another jurisdiction by the related
10 member or taxes that would have been paid by the related member with respect
11 to that portion of its income representing the intangible expenses or interest
12 expense paid to the related member if that portion of the related member's
13 income had not been offset by expenses or losses or if the tax liability had not
14 been offset by a credit or credits.

15 (2) Direct or indirect payments made, accrued, or incurred by the related
16 member during the same taxable year to a person that is not a related member
17 on a transaction giving rise to the intangible expense or interest expense
18 between the taxpayer and the related member that was undertaken for a valid
19 business purpose.

20 (3) Interest expense paid, accrued or incurred to a related party using
21 terms that reflect an arm's length relationship.

22 Section 2. The provisions of this Act shall be applicable to corporate income tax
23 years beginning on and after January 1, 2015, and corporate franchise tax years beginning
24 on and after January 1, 2016.

25 Section 3. This Act shall become effective upon signature by the governor or, if not
26 signed by the governor, upon expiration of the time for bills to become law without signature
27 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
28 vetoed by the governor and subsequently approved by the legislature, this Act shall become
29 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Riley Boudreaux.

DIGEST

SB 270 Original 2015 Regular Session Adley

Proposed law authorizes the secretary to add back the following deductible expenses of a corporation subject to Louisiana income or franchise tax which has either corporate gross revenues everywhere of \$8 billion or \$8 million of assets everywhere:

- (1) Otherwise deductible "intangible expense" directly or indirectly paid, accrued or incurred in connection with one or more direct or indirect transactions with one or more "related members". "Intangible expense" are defined as expenses, losses and costs related to "intangible property" such as patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets and similar types of intangible assets to the extent such amounts are in any way allowed as deductions or costs in determining taxable income under the Internal Revenue Code (IRC).
- (2) Otherwise deductible "interest expense" paid, accrued or incurred to a related member during the taxable year. "Interest expense" is defined as amounts directly or indirectly allowed as deductions under the IRC for purposes of determining taxable income under the IRC.

"Related member" is defined as a person that, with respect to the taxpayer during all or any portion of the taxable year, is any of the following:

- (1) A "related entity".
- (2) A "component member" as defined in the (IRC).
- (3) A person to or from whom there is attribution of stock ownership in accordance with the IRC.
- (4) A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in proposed law.

"Related entity" is defined as any of the following:

- (1) A stockholder who is an individual, or a member of the stockholder's family set forth in the IRC if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock.
- (2) A stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation (hereafter, "stockholder's entity"), if the stockholder and the stockholder's entity own directly, indirectly, beneficially or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock.
- (3) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party, or from the party to the corporation, under the attribution rules of the IRC if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50% of the value of the corporation's outstanding stock. The attribution rules of the IRC shall apply for purposes of determining whether the ownership requirements of this definition have been met.

Proposed law requires the secretary to make the following adjustments to the add back which represent the following:

- (1) Similar taxes paid or incurred to another jurisdiction by the "related member" or taxes that would have been paid by the "related member" with respect to that portion of its income representing the "intangible expenses" or "interest expense" paid to the "related member" if that portion of the "related member's" income had not been offset by expenses or losses or if the tax liability had not been offset by a credit or credits.
- (2) Direct or indirect payments made, accrued, or incurred by the "related member" during the same taxable year to a person that is not a "related member" on a transaction giving rise to the "intangible expense" or "interest expense" between the taxpayer and the "related member" that was undertaken for a "valid business purpose".
- (3) "Interest expense" paid, accrued or incurred to a related party using terms that reflect an arm's length relationship.

"Valid business purpose" is defined as one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for a business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer or the entry by the taxpayer into new business markets.

Applicable to corporate income tax years beginning on and after January 1, 2015, and corporate franchise tax years beginning on and after January 1, 2016.

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

(Adds R.S. 47:287.94.1.)