

2015 Regular Session

SENATE BILL NO. 269

BY SENATOR ADLEY

TAX/TAXATION. Requires corporations subject to Louisiana income or franchise tax which have either corporate gross revenues everywhere of \$8 billion or \$8 million of assets everywhere to file consolidated or combined returns. (gov sig)

1 AN ACT

2 To enact R.S. 47:287.481 and to repeal R.S. 47:287.480(3), relative to consolidated or

3 combined returns; to require such returns for certain corporations; to provide for the

4 manner in which such returns are to be filed; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 47:287.481 is hereby enacted to read as follows:

7 **§287.481. Consolidated or combined returns**

8 **A. Consolidated or combined returns are not allowed under this Part**

9 **except as provided in this Section.**

10 **B.(1) Definitions. As used in this Subsection, the following terms shall**

11 **have the following meanings:**

12 **(a) "Affiliate" means an entity which, directly or indirectly, through one**

13 **or more intermediaries, controls or is controlled by, or is under common control**

14 **with, the corporation required by this Section to file consolidated returns. Any**

15 **beneficial owner of twenty percent or more of the combined voting power of all**

16 **classes of voting securities of an entity, or any executive officer, director,**

17 **trustee, or general partner of an entity is an affiliate of such entity unless the**

1 shareholder, executive officer, director, trustee, or general partner shall prove
2 that he in fact does not control, is not controlled by, and is not under common
3 control with such entity.

4 (b) "Control", including "controlling", "controlled by", and "under
5 common control with", means the possession, direct or indirect, of the power
6 to direct or cause the direction of the management and policies of a person or
7 entity, whether through the ownership of voting securities, by contract, or
8 otherwise.

9 (2) Any corporation subject to Louisiana income or franchise tax which
10 has either corporate gross revenues everywhere of eight billion dollars or eight
11 million dollars of assets everywhere shall file consolidated statements as
12 provided for in this Subsection.

13 (3)(a) Such corporation and its affiliates shall file a consolidated return,
14 computing their consolidated net income on such consolidated return, which
15 shall include the income and deductions of the corporation and its affiliates.
16 Any intercompany or interaffiliate items of income or deduction shall be
17 eliminated.

18 (b)(i) The corporation and each affiliate shall compute its Louisiana net
19 income or loss by apportioning and allocating its share of the consolidated net
20 income to its separate return using the provisions of R.S. 47:287.92 through
21 287.95. The specific apportionment formula to be used by the corporation and
22 its affiliates shall be determined based on the primary business of the
23 corporation and its affiliates as a single entity.

24 (ii) Unless the secretary determines otherwise, the separate
25 apportionment ratio of the corporation and each of its affiliates shall be
26 computed by determining the relationship that its Louisiana revenue (sales),
27 wages, and real and tangible property bear to the corporation and affiliates'
28 consolidated total revenue, wages, and real and tangible property. The
29 Louisiana revenue, wages and property and the consolidated revenue, wages

1 and property are to be determined after intercompany or interaffiliate
2 eliminations. The apportionment ratio so computed shall be applied to
3 consolidated net apportionable income to determine the Louisiana
4 apportionable income of the corporation subject to Louisiana income or
5 franchise tax. Items of allocable income and expense, after eliminations, shall
6 be attributed to the entity that produced the income.

7 (c) Filing requirements. Each consolidated return shall include the
8 following information:

9 (i) A list of the affiliates included in the consolidated return and their
10 federal or Louisiana taxpayer identification numbers, or both.

11 (ii) A combined profit and loss statement disclosing each affiliate's
12 statement of profit and loss.

13 (iii) A schedule of intercompany or interaffiliate eliminations, disclosing
14 the various adjustments necessary for each affiliate to convert the combined
15 profit and loss statement to the consolidated income.

16 (iv) Apportionment formula calculations disclosing the total consolidated
17 amount of property, payroll, and sales and each separate affiliate's Louisiana
18 amount of property, payroll and sales, all determined after eliminations.

19 (v) Schedules showing the computation of each affiliate's Louisiana
20 apportionable and allocable income, determined after eliminations.

21 (vi) Schedules showing the computation of each affiliate's tax credits,
22 Louisiana net operating loss, and federal income tax deduction.

23 (4) The secretary may provide by rule or regulation promulgated in the
24 manner provided for in the Administrative Procedure Act for the filing of such
25 additional information and documentation, or for additional procedures, or for
26 criteria for modifying the procedures set forth in this Subsection, which he
27 deems necessary.

28 C.(1) The secretary may require consolidated statements which in his
29 opinion are necessary in order to determine the taxable income received by a

1 corporation affiliated or related to a corporation which is required to file an
2 income tax return in the following manner:

3 (a) Through stock ownership by the same interests or as parent or
4 subsidiary corporations.

5 (b) The income of the corporation required to file an income tax return
6 is regulated through contract or other arrangement.

7 (2)(a) Whenever two corporations which are each required to file an
8 income tax return are affiliated corporations as defined in Section 1504 of the
9 Internal Revenue Code, as amended, and both of the following occur, then,
10 notwithstanding any other provision of law to the contrary, the transaction may,
11 at the election of the secretary or the taxpayers, be treated as if the transaction
12 was a reorganization as described in Section 368(a)(1)(F) of the Internal
13 Revenue Code, as amended:

14 (i) One corporation transfers all or substantially all of its Louisiana
15 assets to the other corporation.

16 (ii) The corporations involved in the transfer file their income tax
17 returns in accordance with the separate accounting method as set forth in R.S.
18 47:287.94.

19 (b) If a transaction qualifies under this Paragraph and if an election is
20 made to treat the transaction as a Section 368(a)(1)(F) reorganization, then in
21 determining the tax attributes to be carried over to the transferee, the
22 transferee shall succeed only to those items associated with the transferred
23 assets.

24 (3) The provisions of this Subsection are operative whether or not a
25 federal income tax return for the taxable year is actually filed by the taxpayer
26 and whether or not such adjustments have been made pursuant to federal law.

27 Section 2. R.S. 47:287.480(3) is hereby repealed.

28 Section 3. The provisions of this Act shall be applicable to corporate income tax
29 years beginning on and after January 1, 2015, and corporate franchise tax years beginning

1 on and after January 1, 2016.

2 Section 4. This Act shall become effective upon signature by the governor or, if not
3 signed by the governor, upon expiration of the time for bills to become law without signature
4 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
5 vetoed by the governor and subsequently approved by the legislature, this Act shall become
6 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.

SB 269 Original	DIGEST 2015 Regular Session	Adley
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Present law prohibits requiring the filing of consolidated or combined returns, but authorizes the secretary of the Department of Revenue [LDR] to require such returns from any corporation in limited circumstances.

Proposed law retains the secretary's authority in present law with respect to any corporation.

Proposed law requires any corporation subject to Louisiana income or franchise tax which has either corporate gross revenues everywhere of \$8 billion or \$8 million of assets everywhere to file consolidated statements. The corporation and its "affiliates" are required to file a consolidated return, computing their consolidated net income on such consolidated return, which must include the income and deductions of the corporation and its "affiliates". Any intercompany or interaffiliate items of income or deduction must be eliminated.

"Affiliate" is defined as an entity which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the corporation required by the proposed law to file consolidated returns. Any beneficial owner of 20% or more of the combined voting power of all classes of voting securities of an entity, or any executive officer, director, trustee, or general partner of an entity is an affiliate of such entity unless the shareholder, executive officer, director, trustee, or general partner proves that he in fact does not control, is not controlled by, and is not under "common control" with such entity.

"Control", including "controlling", "controlled by", and "under common control with", is defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

Proposed law requires the corporation and each affiliate to compute its Louisiana net income or loss by apportioning and allocating its share of the consolidated net income to its separate return using the provisions of R.S. 47:287.92 through 287.95. The specific apportionment formula to be used by the corporation and its affiliates shall be determined based on the primary business of the corporation and its affiliates as a single entity.

Unless the secretary determines otherwise, the separate apportionment ratio of the corporation and each of its affiliates is to be computed by determining the relationship that its Louisiana revenue (sales), wages, and real and tangible property bear to the corporation and affiliates' consolidated total revenue, wages, and real and tangible property, after intercompany or interaffiliate eliminations. The apportionment ratio so computed must be applied to consolidated net apportionable income to determine the Louisiana apportionable

income of the corporation subject to Louisiana income or franchise tax. Items of allocable income and expense, after eliminations, must be attributed to the entity that produced the income.

Proposed law contains a list of information about the corporation and its affiliates to be filed with the return.

Proposed law authorizes the secretary to provide by rule or regulation under the APA for the filing of such additional information and documentation, or for additional procedures, or for criteria for modifying the procedures set forth in this Subsection, which he deems necessary.

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. 47:287.481; repeals R.S. 47:287.480(3))