Regular Session, 2011

HOUSE BILL NO. 632

BY REPRESENTATIVE HENRY

TAX/TAXATION: Provides the method of calculating taxable income derived from broadcasting film and radio programming which is attributable to activity in La.

AN ACT

To amend and reenact R.S. 47:287.95(K) and 606(A)(1)(e), relative to corporation income and franchise tax; to provide for the method of determining certain taxable revenue from broadcasting film or radio programming which is attributable to activity in Louisiana; to provide for definitions; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:287.95(K) and 606(A)(1)(e) are hereby amended and reenacted to read as follows:

§287.95. Determination of Louisiana apportionment percent

* * *

K. Attribution of revenue from television, radio, and other broadcasting.

(1) Definitions. For the purposes of this Subsection, the following terms have the following meanings unless the context clearly indicates otherwise:

(a) "Broadcast" means transmission by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners, or by any other means of communications.

(b) <u>"Commercial domicile" shall mean the state where management decisions are implemented, which is presumed to be the state where the taxpayer</u>

CODING: Words in ~~struck through~~ type are deletions from existing law; words <u>underscored</u> are additions.

conducts its principal business and thereby benefits from public facilities provided by that state. The location of board of directors' meetings is not presumed to create a commercial domicile at that location.

(c) "Customer" shall mean a business or party, such as an advertiser or licensee, that has a contract or agreement directly with the taxpayer under which revenue is derived by such taxpayer.

(d) "Film" or "film programming" means all performances, events, or productions intended to be broadcast for visual perception, including but not limited to news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works. Each episode of a series of films shall constitute a separate "film" even if the series relates to the same principal subject.

~~(c)~~ (e) "Radio" or "radio programming" means all performances, events, or productions intended to be broadcast for auditory perception, including but not limited to news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works. Each episode of a series of radio programming shall constitute a separate "radio programming" even if the series relates to the same principal subject.

~~(d)~~ (f) "Subscriber" means the individual residence or other outlet that is the ultimate recipient of the transmission.

(2) Gross apportionable income, including license fees, from broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission, or any other means of communication, either through a network, including owned and affiliated stations, or through an affiliated, unaffiliated, or independent television or radio broadcasting station, shall be attributed to this state as follows:

(a) ~~For~~ Except as otherwise provided by this Subsection, for purposes of computing the apportionment percents provided by Subsections A through F of this Section, the amount of gross apportionable income, including advertising income, attributed to this state from broadcasting film or radio programming shall be

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

determined by multiplying the total gross apportionable income from broadcasting film or radio programming, including advertising revenue, by the audience factor.

(b) ~~Except as otherwise provided by this Subsection~~ For purposes of attributing the gross apportionable income earned by a local television or radio station, the audience factor shall be determined by the ratio of the taxpayer's Louisiana viewing or listening audience to their total viewing or listening audience. The audience factor shall be determined based on the books and records of the taxpayer or on published rating statistics. However, the method used to determine the audience factor must be used consistently from year to year and must fairly represent the taxpayer's activity in Louisiana.

(c)(i) ~~When broadcasting is through or by~~ For purposes of attributing the gross apportionable income earned by a cable television system, satellite television system, or other ~~arrangement~~ system, hereinafter referred to collectively in this Paragraph as "cable or satellite system", under which ultimate viewers or listeners must pay the cable or satellite system for the right to receive the broadcast, the audience factor shall be the ratio that the subscribers for that ~~cable television system or other arrangement~~ cable or satellite system located in Louisiana bears to the total subscribers of that ~~cable television system or other arrangement~~ cable or satellite system if the payment entitles the ultimate viewers or listeners to continuous reception of programming during a subscription period.

(ii) If the number of subscribers cannot be accurately determined from the taxpayer's books and records, the audience factor shall be determined based on the applicable year's subscription statistics located in published surveys. However, the source selected to determine the audience factor must be consistently used from year to year and must fairly represent the taxpayer's activity in Louisiana.

(iii) If the payment entitles the ultimate viewers or listeners to only discrete episodes or instances of film or radio programming, the audience factor shall be the ratio of the subscribers for such discrete programming located in Louisiana to the total subscribers for such discrete programming. If the number of subscribers for

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

such discrete episodes or instances cannot be accurately determined from the taxpayer's books and records, the audience factor shall be determined based on statistics located in published surveys. However, the source selected to determine the audience factor must be consistently used from year to year and must fairly represent the taxpayer's activity in Louisiana.

(d)(i) For purposes of computing the apportionment percent provided in Subsections A through F of this Section, the amount of gross apportionable income attributed to this state from all other film and radio broadcasting shall be determined by multiplying the total gross apportionable income from such film and radio broadcasting by the ratio of income received from Louisiana customers to income received from customers everywhere; however, the gross apportionable income attributable to the state using this ratio shall not be less than twenty-five percent of the amount which would be attributable if calculated using an audience factor as defined in Subparagraph (b) of this Paragraph.

(ii) For purposes of this Subparagraph, gross apportionable income includes advertising income and income from cable or satellite systems and local television and radio stations. Louisiana customers are cable or satellite systems, local television and radio stations, and advertisers with a commercial domicile in the state and a contract or agreement directly with the taxpayer under which revenue is derived by such taxpayer. Notwithstanding the provisions of Subparagraph (1)(b) of this Subsection, if the taxpayer's customer is a television or radio station operating in Louisiana, then the commercial domicile of the customer is deemed to be Louisiana. This provision shall have no impact on the tax filing position of the customer.

* * *

§606. Allocation of taxable capital

A. General allocation formula.

For the purpose of ascertaining the tax imposed in this Chapter, every corporation subject to the tax is deemed to have employed in this state the proportion

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

of its taxable capital, computed on the basis of the ratio obtained by taking the arithmetical average of the following ratios:

(1)

* * *

(e) Revenue, including license fees, from broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission, or any other means of communication, either through a network, including owned and affiliated stations, or through an affiliated, unaffiliated, or independent television or radio broadcasting station, shall be attributed to the state as follows:

(i) ~~The~~ Except as otherwise provided in this Subsection, the revenue, including advertising revenue attributed to the state from broadcasting film or radio programming, shall be determined by multiplying total revenue from broadcasting film or radio programming, including advertising revenue, by the audience factor.

(ii) ~~Except as otherwise provided by this Subsection~~ For purposes of revenue attributed to the state from a local television or radio station broadcasting film or radio programming, the audience factor shall be determined by the ratio of the taxpayer's Louisiana viewing or listening audience to their total viewing or listening audience. The audience factor shall be determined based on the books and records of the taxpayer or published rating statistics. However, the method used to determine the audience factor must be used consistently from year to year and must fairly represent the taxpayer's activity in Louisiana.

(iii) ~~When broadcasting is through or by~~ For purposes of revenue attributed to the state from a cable television system, satellite television system, or other ~~arrangement~~ system broadcasting film or radio programming, hereinafter referred to collectively in this Subparagraph as "cable or satellite system" under which ultimate viewers or listeners must pay the cable or satellite system for the right to receive the broadcast, the audience factor shall be the ratio that the subscribers for that ~~cable television system or other arrangement~~ cable or satellite system located in Louisiana

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

bears to the total subscribers of that ~~cable television system or other arrangement~~ cable or satellite system if the payment entitles the ultimate viewers or listeners to continuous reception of programming during a subscription period.

(aa) If the number of subscribers cannot be accurately determined from the taxpayer's books and records, the audience factor shall be determined based on the applicable year's subscription statistics located in published surveys. However, the source selected to determine the audience factor must be consistently used from year to year and must fairly represent the taxpayer's activity in Louisiana.

(bb) If the payment entitles the ultimate viewers or listeners to only discrete episodes or instances of film or radio programming, the audience factor shall be the ratio that the subscribers for such discrete programming located in Louisiana bears to the total subscribers for such discrete programming. If the number of subscribers for such discrete episodes or instances cannot be accurately determined from the books and records maintained by the taxpayer, the audience factor shall be determined on the basis of statistics located in published surveys. However, the source selected to determine the audience factor must be consistently used from year to year for that purpose and must fairly represent the taxpayer's activity in Louisiana.

(iv)(aa) The amount of revenue attributed to this state from all other film and radio broadcasting shall be determined by multiplying the total revenue from such film and radio broadcasting by the ratio of revenue received from Louisiana customers to revenue received from customers everywhere; however, such revenue attributable to the state using this ratio shall not be less than twenty-five percent of the amount which would be attributable if calculated using an audience factor as defined in Item (ii) of this Subparagraph.

(bb) For purposes of this Subparagraph, revenue includes advertising revenue and revenue from cable or satellite systems and local television and radio stations. Louisiana customers are cable or satellite systems, local television and radio stations, and advertisers with a commercial domicile in the state and a contract or agreement directly with the taxpayer under which revenue is derived by the

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

taxpayer. Notwithstanding the provisions of Subitem (bb) of Item (v) of this Subparagraph, if the taxpayer's customer is a television or radio station operating in Louisiana, then the commercial domicile of the customer is deemed to be Louisiana. This provision shall have no impact on the tax filing position of the customer.

(v) Definitions. For the purposes of this Subsection, the following terms have the following meanings unless the context clearly indicates otherwise:

(aa) "Broadcast" means transmission by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions, directly or indirectly to viewers and listeners, or by any other means of communications.

(bb) "Commercial domicile" shall mean the state where management decisions are implemented, which is presumed to be the state where the taxpayer conducts its principal business and thereby benefits from public facilities provided by that state. The location of board of directors' meetings is not presumed to create a commercial domicile at that location.

(cc) "Customer" shall mean a business or party, such as an advertiser or licensee, that has a contract or agreement directly with the taxpayer under which revenue is derived by such taxpayer.

(dd) "Film" or "film programming" means all performances, events, or productions intended to be broadcast for visual perception, including but not limited to news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works. Each episode of a series of films shall constitute a separate "film" even if the series relates to the same principal subject.

~~(cc)~~ (ee) "Radio" or "radio programming" means all performances, events, or productions intended to be broadcast for auditory perception, including but not limited to news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works. Each episode of a series of radio programming shall constitute a separate "radio programming" even if the series relates to the same principal subject.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

~~(dd)~~ (ff) "Subscriber" means the individual residence or other outlet that is the ultimate recipient of the transmission.

* * *

Section 2. The provisions of this Act are severable. It is intended that if any provision of this Act, or the application thereof to any person or circumstance is held invalid under the Constitution of Louisiana or of the United States by a final and nonappealable judgment, then such provision shall be ineffective to the extent of such invalidity without invalidating the remaining provisions of this Act.

Section 3. The provisions of this Act shall be applicable for all corporate income tax periods beginning on or after January 1, 2012, and for all corporation franchise tax periods beginning on or after January 1, 2013.

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)]

Henry HB No. 632

Abstract: Provides the method of calculating the amount of gross apportionable income earned from broadcasting film and radio programming which is attributable to activity in La. and subject to corporation income and franchise tax.

Present law establishes the methods for attributing income to Louisiana for purposes of determining corporation income and franchise tax sales ratios of taxpayers who broadcast film and radio programming.

Present law provides definitions for purposes of proposed law.

Proposed law adds definitions for "commercial domicile" and "customer".

Present law provides the calculation used to determine the amount of gross apportionable income attributable to La. for a taxpayer broadcasting film or radio programming. The amount shall be determined by multiplying the total gross apportionable income by an audience factor, which is the ratio of the taxpayer's La. viewing or listening audience to the total viewing or listening audience.

Present law provides specifically for the calculation used for income of a cable television system or "other arrangement" under which viewers or listeners pay for the right to receive the broadcast. The audience factor is the ratio of that system's subscribers located in La. to the total subscribers of that system.

Proposed law retains present law and adds provisions specific to taxpayers which broadcast film and radio programming, but are not local television or radio stations, cable television systems, or satellite television systems, all of which are currently provided for in present law.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

Proposed law provides the calculation used for such "other" taxpayers to determine the amount of gross apportionable income attributable to La. from broadcasting film or radio programming. The amount shall be determined by multiplying the total gross apportionable income by the ratio of income received from customers commercially domiciled in La. to income received from customers everywhere. Further, the amount of gross apportionable income attributable to La. resulting from use of the foregoing ratio shall not be less than 25% of the income that would be attributable to La. using the audience factor provided for in present law.

Provisions of proposed law are severable.

Provisions of proposed law are applicable to all corporate income tax periods beginning on or after Jan. 1, 2012, and for all corporation franchise tax periods beginning on or after Jan. 1, 2013.

(Amends R.S. 47:287.95(K) and 606(A)(1)(e))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Reduced the minimum amount of gross apportionable income that would be attributed to La. using the audience factor ratio from 75% to 25%.

2. Added a severability clause.

3. Changes the effective date from taxable periods beginning on or after Jan. 1, 2012, to corporate income tax periods beginning on or after Jan. 1, 2012, and corporation franchise tax periods beginning on or after Jan. 1, 2013.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.