HLS 15RS-1246 ENGROSSED

2015 Regular Session

HOUSE BILL NO. 775

1

BY REPRESENTATIVE STOKES

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

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 enunciated by the United States Supreme Court limits the state's ability to impose tax 20

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

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 lo				
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	<u>or</u>				
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, base				
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	<u>47:287.93;</u>			
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			

property, payroll and sales, respectively, associated with the combined	group's
unitary business in this state, and including in the denominator the property,	<u>payroll</u>
and sales of all members of the combined group, including the taxpayer,	which
property, payroll and sales are associated with the combined group's unitary b	<u>usiness</u>
wherever located. The property, payroll, and sales of a partnership shall be in	ncluded
in the determination of the partner's apportionment percentage in proportion	on to a
ratio the numerator of which is the amount of the partner's distributive s	hare of
partnership's unitary income included in the income of the combined gr	roup in
accordance with R.S. 47:288.30(C)(2)(c) and the denominator of which	is the
amount of the partnership's total unitary income.	
C. Determination of the apportionable income of the combined group	up.
The apportionable income of a combined group is determined as fol	<u>lows:</u>
(1) From the total income of the combined group, determined	l under
Paragraph (2) of this Subsection, subtract net allocable income.	
(2) Except as otherwise provided, the total income of the combined	d group
is the sum of the income of each member of the combined group determined	d under
federal income tax laws, as adjusted for state purposes, as if the member w	ere not
consolidated for federal purposes. The income of each member of the con-	mbined
group shall be determined as follows:	
(a) For any member incorporated in the United States, or includ-	ed in a
consolidated federal corporate income tax return, the income to be included	d in the
total income of the combined group shall be the taxable income for the corp	oration
after making appropriate modifications under R.S. 47:287.71 and 287.73.	
(b)(i) For any member not included in Subparagraph (a) of this Para	agraph,
the income to be included in the total income of the combined group s	hall be
determined as follows:	
(aa) A profit and loss statement shall be prepared for each foreign broad	anch or
corporation in the currency in which the books of account of the bra	nch or
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.				

§288.40. Designation of surety

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

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

A. Water's-edge election.

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

- (1) The entire income and apportionment factors of any member incorporated in the United States or formed under the laws of any state, the District of Columbia, or any territory or possession of the United States;
- (2) The entire income and apportionment factors of any member, regardless of the place incorporated or formed, if the average of its property, payroll, and sales factors within the United States is twenty percent or more;
- (3) The entire income and apportionment factors of any member which is a domestic international sales corporations as described in Internal Revenue Code Sections 991 to 994, inclusive; a foreign sales corporation as described in Internal

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 factor			
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.			

Revenue Code Sections 921 to 927, inclusive; or any member which is an export

В.	Initiation	and	withdrawal	of	election

(1) A water's-edge election is effective only if made on a timely-filed, original return for a tax year by every member of the unitary business subject to tax.

The Secretary shall develop rules and regulations governing the impact, if any, on the scope or application of a water's-edge election, including termination or deemed election, resulting from a change in the composition of the unitary group, the combined group, the taxpayer members, and any other similar change.

- (2) Such election shall constitute consent to the reasonable production of documents and taking of depositions.
- (3) In the discretion of the secretary, a water's-edge election may be disregarded in part or in whole, and the income and apportionment factors of any member of the taxpayer's unitary group may be included in the combined report without regard to the provisions of this section, if any member of the unitary group fails to comply with any provision of this Part or if a person otherwise not included in the water's-edge combined group was availed of with a substantial objective of avoiding state income tax.
- (4) A water's-edge election is binding for and applicable to the tax year it is made and all tax years thereafter for a period of ten years. It may be withdrawn or reinstituted after withdrawal, prior to the expiration of the ten year period, only upon written request for reasonable cause based on extraordinary hardship due to unforeseen changes in state tax statutes, law, or policy, and only with the written permission of the secretary. If the secretary grants a withdrawal of election, he or she shall impose reasonable conditions as necessary to prevent the evasion of tax or to clearly reflect income for the election period prior to or after the withdrawal. Upon the expiration of the ten year period, a taxpayer may withdraw from the water's-edge election. Such withdrawal must be made in writing within one year of the expiration of the election, and is binding for a period of ten years, subject to the 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.

Section 3. The provisions of this Act shall be effective for taxable years beginning

4 on or after January 1, 2016.

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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.

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

Proposed law provides for definitions.

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

<u>Proposed law</u> 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)