

Regular Session, 2011  
HOUSE BILL NO. 632  
BY REPRESENTATIVE HENRY

# ACT No. 381

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

10 §287.95. Determination of Louisiana apportionment percent

11 \* \* \*

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

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

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

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

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

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

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

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

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

23                  (a) ~~For~~ Except as otherwise provided by this Subsection, for purposes of  
 24                  computing the apportionment percents provided by Subsections A through F of this  
 25                  Section, the amount of gross apportionable income, including advertising income,  
 26                  attributed to this state from broadcasting film or radio programming shall be  
 27                  determined by multiplying the total gross apportionable income from broadcasting  
 28                  film or radio programming, including advertising revenue, by the audience factor.

29                  ~~(b) Except as otherwise provided by this Subsection~~ For purposes of  
 30                  attributing the gross apportionable income earned by a local television or radio

1            station, the audience factor shall be determined by the ratio of the taxpayer's  
2            Louisiana viewing or listening audience to their total viewing or listening audience.  
3            The audience factor shall be determined based on the books and records of the  
4            taxpayer or on published rating statistics. However, the method used to determine the  
5            audience factor must be used consistently from year to year and must fairly represent  
6            the taxpayer's activity in Louisiana.

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

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

22           (iii) If the payment entitles the ultimate viewers or listeners to only discrete  
23           episodes or instances of film or radio programming, the audience factor shall be the  
24           ratio of the subscribers for such discrete programming located in Louisiana to the  
25           total subscribers for such discrete programming. If the number of subscribers for  
26           such discrete episodes or instances cannot be accurately determined from the  
27           taxpayer's books and records, the audience factor shall be determined based on  
28           statistics located in published surveys. However, the source selected to determine  
29           the audience factor must be consistently used from year to year and must fairly  
30           represent the taxpayer's activity in Louisiana.

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

10           (ii) For purposes of this Subparagraph, gross apportionable income includes  
 11           advertising income and income from cable or satellite systems and local television  
 12           and radio stations. "Louisiana customers" includes cable or satellite systems, local  
 13           television and radio stations, and advertisers with a commercial domicile in the state  
 14           and a contract or agreement directly with the taxpayer under which revenue is  
 15           derived by such taxpayer. Notwithstanding the provisions of Subparagraph (1)(b)  
 16           of this Subsection, if the taxpayer's customer is a television or radio station operating  
 17           in Louisiana, then the commercial domicile of the customer is deemed to be  
 18           Louisiana. This provision shall have no impact on the tax filing position of the  
 19           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 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

1 satellite transmission, or any other means of communication, either through a  
 2 network, including owned and affiliated stations, or through an affiliated,  
 3 unaffiliated, or independent television or radio broadcasting station, shall be  
 4 attributed to the state as follows:

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

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

17 (iii) ~~When broadcasting is through or by~~ For purposes of revenue attributed  
 18 to the state from a cable television system, satellite television system, or other  
 19 arrangement system broadcasting film or radio programming, hereinafter referred to  
 20 collectively in this Subparagraph as "cable or satellite system" under which ultimate  
 21 viewers or listeners must pay the cable or satellite system for the right to receive the  
 22 broadcast, the audience factor shall be the ratio that the subscribers for that ~~cable~~  
 23 ~~television system or other arrangement~~ cable or satellite system located in Louisiana  
 24 bears to the total subscribers of that ~~cable television system or other arrangement~~  
 25 cable or satellite system if the payment entitles the ultimate viewers or listeners to  
 26 continuous reception of programming during a subscription period.

27 (aa) If the number of subscribers cannot be accurately determined from the  
 28 taxpayer's books and records, the audience factor shall be determined based on the  
 29 applicable year's subscription statistics located in published surveys. However, the

1 source selected to determine the audience factor must be consistently used from year  
2 to year and must fairly represent the taxpayer's activity in Louisiana.

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

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

19 (bb) For purposes of this Subparagraph, revenue includes advertising  
20 revenue and revenue from cable or satellite systems and local television and radio  
21 stations. Louisiana customers are cable or satellite systems, local television and  
22 radio stations, and advertisers with a commercial domicile in the state and a contract  
23 or agreement directly with the taxpayer under which revenue is derived by the  
24 taxpayer. Notwithstanding the provisions of Subitem (bb) of Item (v) of this  
25 Subparagraph, if the taxpayer's customer is a television or radio station operating in  
26 Louisiana, then the commercial domicile of the customer is deemed to be Louisiana.  
27 This provision shall have no impact on the tax filing position of the customer.

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

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

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

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

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

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

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

26 \* \* \*

27 Section 2. The provisions of this Act are severable. It is intended that if any  
 28 provision of this Act, or the application thereof to any person or circumstance is held invalid  
 29 under the Constitution of Louisiana or of the United States by a final and nonappealable

1 judgment, then such provision shall be ineffective to the extent of such invalidity without  
2 invalidating the remaining provisions of this Act.

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_