

intangible has acquired a business situs if the intangible has been so used in connection with a business as to acquire a business situs, or, in the absence of such a business situs, shall be at the commercial domicile of the taxpayer.

d. The net profit from the sale of the tangibles shall be attributed to the state or states in which the tangible is located at the time of sale.

5. Exchanges. In transactions in which raw materials, products, or merchandise are transferred to another party at one location in exchange for raw materials, products, or merchandise at another location in agreements requiring the subsequent replacement with similar property on a routine, continuing, or repeated basis, all such transactions shall be carefully analyzed in order to determine whether they constitute sales that should be included in the sales ratio or whether they constitute exchanges which are not sales and should be excluded from the sales ratio.

6. Recoveries and Reductions of Expense. Transactions that are actually recoveries of expenses or transactions that are part of a sequence of transactions for the purpose of managing risk, preventing loss, securing product, securing market or protecting profit shall not be considered gross apportionable income for purposes of determining the Louisiana apportionment percent. Examples of such transactions include, but are not limited to:

a. Corporation A rents retail space in a shopping mall. The glass in the front door of the shop has broken and Corporation A is unable to immediately contact the building owner. Corporation A has the glass replaced and is later reimbursed by the building owner. The reimbursement is not gross apportionable income for purposes of determining the Louisiana apportionment percent;

b. Corporation B buys and sells wheat. As part of securing a supply of wheat at the best possible price Corporation B will, when it believes prices will be rising in the future, purchase options to buy a fixed quantity of wheat at a fixed price on a fixed date in the future. At times market conditions will change subsequent to the purchase of an option and, believing that prices will fall and the wheat can be bought even cheaper than the option price in the future, the option will be sold. The amount received from the sale of the option is not gross apportionable income for purposes of determining the Louisiana apportionment percent. The amount received relates to the ultimate cost of goods sold;

c. Corporation C grows and sells wheat. It knows that at harvest it will have at least a certain amount of wheat that must be sold. To ensure a market for its wheat at harvest Corporation B buys options to sell fixed quantities of wheat at fixed prices at harvest time. At times market conditions will change subsequent to the purchase of an option and, believing that there will be sufficient buyers willing to pay a sufficient price at harvest time, the option will be sold. The amount received from the sale of the option is not gross

apportionable income for purposes of determining the Louisiana apportionment percent. The amount received relates to marketing expenses;

d. Corporation D grows, buys and sells wheat. To manage market risk in its business Corporation D engages in complex, sophisticated transactions involving options, futures contracts and various derivative contracts. Any amounts received in the course of these risk management transactions are not gross apportionable income for the purposes of determining the Louisiana apportionment percent. The amounts received relate to insurance expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.95, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:105 (February 1988), repromulgated by the Department of Revenue, Policy Services Division, LR 30:482 (March 2004), amended LR 31:694 (March 2005), LR 32:421 (March 2005).

#### **§1135. Sourcing of Sales other than Sales of Tangible Personal Property**

A. General. R.S. 47:287.95(L) provides for the inclusion in the numerator of the sales factor of sales other than sales of tangible personal property.

B. Market-Based Sourcing. Sales other than sales of tangible personal property are sourced to Louisiana if and to the extent that the taxpayer's market for the sales is in Louisiana. In general, the provisions in this section establish rules for:

1. determining whether and to what extent the market for a sale other than the sale of tangible personal property is in Louisiana,

2. reasonably approximating the state or states of assignment where the state or states cannot be determined,

3. excluding certain sales of intangible property from the numerator and denominator of the receipts factor pursuant to R.S. 47:287.95(L)(1)(e), and

4. excluding sales from the numerator and denominator of the sales factor, pursuant to R.S. 47:287.95(M), where the state or states of assignment cannot be determined or reasonably approximated, or where the taxpayer is not taxable in the state to which the sales are assigned.

C. Taxable in another State. A taxpayer is taxable within another state if it meets either one of two tests:

1. by reason of business activity in another state, the taxpayer is subject to one of the following types of taxes: A net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

2. by reason of such business activity, another state has jurisdiction to subject the taxpayer to a net income tax,

regardless of whether or not the state imposes such a tax on the taxpayer.

D. State. For purposes of this regulation, *state* means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

E. General Principles of Application; Contemporaneous Records. In order to satisfy the requirements of this regulation, a taxpayer's assignment of sales other than sales of tangible personal property must be consistent with the following principles:

1. A taxpayer shall apply the rules set forth in this regulation based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing, including, without limitation, the taxpayer's books and records kept in the normal course of business. A taxpayer shall determine its method of assigning sales in good faith, and apply it consistently with respect to similar transactions and year to year. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its sales, including its underlying assumptions, and shall provide those records to the Secretary of the Louisiana Department of Revenue upon request.

2. This regulation provides various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.

3. A taxpayer's method of assigning its sales, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of sales consistent with these regulatory standards rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

#### F. Rules of Reasonable Approximation

1. In General. In general, this regulation establishes uniform rules for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in Louisiana. This regulation also sets forth rules

of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with specific rules of approximation as prescribed in this regulation. In other cases, the applicable rule in this regulation permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable rules or standards set forth in this regulation.

2. Approximation Based Upon Known Sales. In an instance where, applying the applicable rules set forth for sale of a service, a taxpayer can ascertain the state or states of assignment of a substantial portion of its sales from sales of substantially similar services ("assigned sales"), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned sales, it shall include those sales which it believes tracks the geographic distribution of the assigned sales in its sales factor in the same proportion as its assigned sales.

3. Related-Party Transactions; Information Imputed from Customer to Taxpayer. Where a taxpayer has sales subject to this regulation from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

#### G. Rules with Respect to Exclusion of Receipts from the Receipts Factor

1. The sales factor only includes those amounts defined as sales under applicable statutes and regulations.

2. Certain sales arising from the sale of intangibles are excluded from the numerator and denominator of the sales factor pursuant to R.S. 47:287.95 (L)(1)(e).

3. In a case in which a taxpayer cannot ascertain the state or states to which sales are to be assigned pursuant to the applicable rules set forth in this regulation, (including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the numerator and denominator of the taxpayer's sales factor pursuant to R.S. 47:287.95 (M).

4. In a case in which a taxpayer can ascertain the state or states to which sales are to be assigned pursuant to this regulation, but the taxpayer is not taxable in one or more of those states, the sales that would otherwise be assigned to those states where the taxpayer is not taxable must be excluded from the numerator and denominator of the taxpayer's sales factor pursuant to R.S. 47:287.95(M).

#### H. Sale of a Service

##### 1. General Rule

a. The sale of a service is sourced to Louisiana if and to the extent that the service is delivered to a location in Louisiana. In general, the term “delivered to a location” refers to the location of the taxpayer’s market for the service, which may not be the location of the taxpayer’s employees or property. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth below.

## 2. Direct Personal Services Received by a Natural Person

### a. In General

i.(a). Except as otherwise provided in this regulation, direct personal services are services that are physically provided in person by the taxpayer, where the customer or the customer’s tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of direct personal services include, without limitation: cleaning services; pest control; medical and dental services, including medical testing, x-rays and mental health care and treatment; child care; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons. Direct personal services include services within the description above that are performed at:

[i]. a location that is owned or operated by the service provider or

[ii]. a location of the customer, including the location of the customer’s tangible property.

(b). Various professional services, including legal, accounting, financial and consulting services, and other similar services, although they may involve some amount of direct person contact, are not treated as direct personal services within the meaning of this regulation.

### b. Assignment of Sales

i. Rule of Determination. Except as otherwise provided in this regulation, if the service provided by the taxpayer is a direct personal service, the service is delivered to the location where the service is received. Therefore, the sale is in Louisiana if and to the extent the customer receives the direct personal service in Louisiana. In assigning its sales from direct personal services, a taxpayer must first attempt to determine the location where a service is received, as follows:

(a). If the service is performed with respect to the body of an individual customer in Louisiana (e.g. hair cutting or x-ray services) or in the physical presence of the customer in Louisiana (e.g. live entertainment or athletic performances), the service is received in Louisiana.

(b). If the service is performed with respect to the customer’s immovable property in Louisiana or if the service is performed with respect to the customer’s tangible personal property at the customer’s residence in Louisiana or in the customer’s possession in Louisiana, the service is received in Louisiana.

(c). If the service is performed with respect to the customer’s tangible personal property and the tangible personal property is to be received by the customer at the taxpayer’s location in Louisiana, the service is received in Louisiana.

(d). If the service is performed with respect to the customer’s tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside Louisiana, the service is received in Louisiana if the property is shipped or delivered to the customer in Louisiana.

c. Rule of Reasonable Approximation. In an instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of sale from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states. If the state to which the sales are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to the state are excluded from the numerator and denominator of the taxpayer’s sales factor pursuant to R.S. 47:287.95(M).

3. Non Direct Personal Services Received by a Natural Person. Non direct personal services delivered to a natural person shall be sourced to the customer’s billing address.

a. Non direct personal services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and accounting services, lending services, credit card services (including credit card processing services), data processing services, legal services, consulting services, video production services, graphic and other design services, engineering services, and architectural services.

b. *Billing address* means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer’s account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.

## 4. Services Delivered to an Unrelated Business Entity

a. Services with a Substantial Connection to a Specific Geographic Location

i. Services provided to an unrelated business entity that have a substantial connection to a specific geographic location shall be sourced to the state of the

specific geographic location. If the services have a substantial connection to specific geographic locations in more than one state, the services shall be reasonably sourced between those states.

ii. Examples

(a). Cleaning Company, Inc. (taxpayer) has a contract to provide cleaning services to Company A, an unrelated business entity. The contract specifies that cleaning services are to be provided to company A's locations in Louisiana and other states. Cleaning Company, Inc. should source a portion of the total service receipts to Louisiana based on the amount of services performed at company A's locations in Louisiana compared to the total amount of services performed at all of company A's locations.

(b). Training Company, Inc. (taxpayer) contracts with company B, an unrelated business entity, to provide on-site training services to company B's employees at company B's business offices located in Louisiana and three other states. The services are related to specific geographic locations; therefore they should be sourced to the state where company B's employees received the training. Training Company, Inc. should source the receipts from its contract with company B by reasonably assigning those receipts between Louisiana and the three other states using a formula based on the number of training hours provided to company B locations in Louisiana to the total number of training hours provided to all company B locations.

(c). Engineering Company, Inc. (taxpayer) contracts with company C, an unrelated business entity, to provide engineering services related to the construction of an office complex in Louisiana. Engineering Company, Inc. performs some of their service in Louisiana at the building site and additional service in state B at their headquarters. The engineering services are related to a specific geographic location; i.e. the building site in Louisiana; therefore all of the services should be sourced to Louisiana.

b. Services without a Substantial Connection to a Specific Geographic Location

i. Services provided to an unrelated business entity that do not have a substantial connection to a specific geographic location shall be sourced to the state of the taxpayer's commercial domicile.

ii. *Commercial domicile* is the principal place from which the business is directed or managed.

c. Alternative Methods. In the case where the methods contained in Subparagraphs H.4.a and H.4.b of this section fail to clearly reflect the taxpayer's market in Louisiana, the taxpayer may utilize, or the department may require, the use of alternative methods, including but not limited to the following:

i. By assigning the sales to the state where the contract of sale is principally managed by the customer:

(a). state where a contract of sale is principally managed by the customer” means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

ii. by assigning the sales to the customer's place of order;

iii. by assigning the sales to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5 percent of its receipts from sales of all services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer.

5. Services Delivered to a Related Business Entity. In any instance in which the service is sold to a related entity, the state or states to which the service is assigned is the place of receipt by the related entity as reasonably approximated using the following hierarchy:

a. if the service primarily relates to specific operations or activities of a related entity conducted in one or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related entity's payroll at the locations to which the service relates in the state or states; or

b. if the service does not relate primarily to operations or activities of a related entity conducted in particular locations, but instead relates to the operations of the related entity generally, then to the state or states in which the related entity has employees, in proportion to the related entity's payroll in those states.

I. Sale, Rental, Lease, or License of Immovable Property. In the case of the sale, rental, lease, or license of immovable property, the receipts are sourced to Louisiana if and to the extent that the immovable property is located in Louisiana.

J. Rental, Lease, or License of Tangible Personal Property. In the case of the rental, lease, or license of tangible personal property, the receipts are sourced to Louisiana if and to the extent that the tangible personal property is located in Louisiana.

K. Lease or License of Intangible Property. In the case of the lease or license of intangible property, the receipts are sourced to Louisiana if and to the extent that the intangible property is used in Louisiana.

L. Sale of Intangible Property

1. Assignment of Sales. The assignment of sales to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold.

2. Sale Where Receipts are Contingent on Productivity, Use or Disposition of the Intangible Property

a. In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned as follows:

i. the receipts are in Louisiana if and to the extent the intangible is used in Louisiana. In general, the term *use* is construed to refer to the location of the market for the use of the intangible property that is being sold and is not to be construed to refer to the location of the property or payroll of the owner.

### 3. Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area

a. In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the sale is assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in this state, the taxpayer shall assign the sale to Louisiana. If the intangible property is used or is authorized to be used in Louisiana and one or more other states, the taxpayer shall assign the sale to Louisiana to the extent that the intangible property is used in or authorized for use in Louisiana through the means of a reasonable approximation.

### 4. Excluded Sales

a. Sales of intangible property not described by Paragraphs 2 and 3 of this Subsection shall be excluded from the numerator and the denominator of the sales factor. Excluded sales include, but are not limited to, the sale of a partnership interest, the sale of business "goodwill," the sale of an agreement not to compete, and sales of similar intangible property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 47:287.95.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 44:2218 (December 2018).

### **§1136. Exclusion of Certain Sales of Tangible Personal Property from the Sales Factor**

A. General sourcing rule for sales of tangible personal property. Generally, for purposes of determining a taxpayer's Louisiana Apportionment Percent, sales of tangible personal property are sourced to the location where the tangible personal property is ultimately received by the purchaser.

B. Exclusion. Pursuant to R.S. 47:287.95(M), sales, including sales of tangible personal property, shall be excluded from both the numerator and the denominator of the sales factor if either of the following conditions apply:

1. the taxpayer is not taxable in a state to which a sale is assigned; or

2. the state of assignment cannot be determined or reasonably approximated pursuant to R.S. 47:287.95 and the regulations thereunder.

C. Taxable in Another State. A taxpayer is taxable within another state if it meets either one of two tests:

1. by reason of business activity in another state, the taxpayer is subject to one of the following types of taxes: A net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

2. by reason of such business activity, another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer.

D. State. For purposes of this regulation, *state* means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

E. Reasonable Approximation, Generally. In a case in which a taxpayer cannot ascertain the state or states to which sales are to be assigned pursuant to the applicable rules set forth in this regulation, (including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the numerator and denominator of the taxpayer's sales factor pursuant to R.S. 47:287.95(M).

### F. Rules of Reasonable Approximation

1. Approximation Based Upon Known Sales. In an instance where, applying the applicable rules set forth for sales of tangible personal property, a taxpayer can ascertain the state or states of assignment of a substantial portion of its sales from sales of substantially similar tangible personal property, (assigned sales), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned sales, it shall include those sales which it believes tracks the geographic distribution of the assigned sales in its sales factor in the same proportion as its assigned sales.

2. Related-Party Transactions—Information Imputed from Customer to Taxpayer. Where a taxpayer has sales subject to this regulation from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

3. Approximation Based on Place of Sale. In an instance in which the state or states where tangible personal property is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of sale from which it can reasonably approximate the state or

states where the tangible personal property is received, the taxpayer shall reasonably approximate such state or states as the place of sale.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 47:287.95.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 44:2221 (December 2018).

**§1137. Exceptions to Taxable Year of Inclusion; Taxable Year Deductions Taken**

A. Improperly Reported Item of Income. R.S. 47:287.442(A) does not relieve a taxpayer of the responsibility of filing a true and correct return and immediately correcting any errors which are discovered after the return is filed. If an error is discovered, it is the obligation of the taxpayer to file promptly an amended return reflecting the correct tax liability. The purpose of R.S. 47:287.442(A), so far as it deals with improperly reported items of income, is to preclude a taxpayer's being required to pay again on an item of income which has borne tax in full previously, even though for a period in which it was not properly reportable. An item of income will be deemed to have previously borne tax in full if the item, when multiplied by the lowest tax rate applicable to the taxpayer, results in a tax not less than the amount of tax actually paid on the return. If the item has not previously borne tax in full, R.S. 47:287.442(A) is not applicable to that portion of the item which has not previously borne tax. That portion, which shall be the difference between the item of income and the taxable balance of net income, shall be reported as income during the year it was properly reportable.

B. Example: The ABC Corporation, by mistake, reported on its 1982 income tax return an item of accrued interest in the amount of \$5,000 which was properly reportable in 1983. It paid the Louisiana income tax shown to be due on the return. The company never discovered its error. In 1987, the secretary discovers the error. The return for 1982 shows the following.

Accrued interest	\$ 5,000
Income from operations	20,000
Total income	\$ 25,000
Less total authorized deductions	\$ 21,000
Taxable income	\$ 4,000
Tax per return	\$ 160
Computation to determine if item has borne tax in full:	
Amount improperly reported	\$ 5,000
Tax at lowest rate of taxpayer	\$ 200
Tax paid	160

Amount of tax unpaid	\$ 40
Computation of portion of item to be reported in 1983:	
Improperly reported item	\$ 5,000
Taxable balance of net income in 1982	4,000
Portion of item to be reported	\$ 1,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.442.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Department of Revenue, Policy Services Division, LR 30:484 (March 2004).

**§1140. Exemption from Tax on Corporations**

A. Generally, organizations meeting the qualifications included under I.R.C. Sections 501 and 401(a) are exempt from federal and Louisiana income tax liability.

B. However, organizations meeting the qualifications under I.R.C. Sections 501 and 401(a) are not exempt from taxation on unrelated business taxable income or income not included under I.R.C. Sections 501 and 401(a) for federal income tax purposes. Since unrelated business taxable income is not exempt from federal income tax, it is not exempt from Louisiana income tax. The Department of Revenue will begin enforcing this requirement of R.S. 47:287.501 for all taxable periods beginning on and after January 1, 2008.

C. Exceptions

1. Mutual savings banks, national banking corporations, building and loan associations, and savings and loan associations are wholly exempt from the tax imposed by this Chapter regardless of where they are organized.

2. Banking corporations, regardless of where they are organized, which are required by other laws of this state to pay a tax for their shareholders, or whose shareholders are required to pay a tax on their shares of stock are also wholly exempt. Banking corporations, other than those described above, are not exempt from the corporation income tax.

D. An organization claiming a total or partial exemption under R.S. 47:287.501(A) as an organization described in I.R.C. Sections 501 or 401(a) is required to file an income tax return in the same manner as any other corporation. To claim a partial exemption, the organization must submit a copy of the Internal Revenue Service ruling establishing its exempt status under I.R.C. Sections 501 or 401(a) with its return, report any income subject to federal income tax on its Louisiana return, and include with the return a statement that all income not reported on the Louisiana return is exempt from federal income tax under I.R.C. Sections 501 or 401(a). To claim a total exemption the organization must