RULE

Department of Revenue
Policy Services Division

Corporation Franchise Tax—Allocation of Taxable Capital
(LAC 61:I.306)

Under the authority of R.S. 47:606, R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, amends LAC 61:I.306 relative to the allocation of taxable capital.

This regulation updates the corporation franchise tax regulation relating to the changes to the general allocation formula resulting from the enactment of the Louisiana Headquarters and Growth Act of 2005, provides an example to clarify the attribution of revenue from sales transported by public carrier pipelines, and notifies taxpayers of changes in the secretary's interpretation of the attribution of revenue from sales of services.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 3. Corporation Franchise Tax
§306. Allocation of Taxable Capital

A. General Allocation Formula. Every corporation subject to the corporation franchise tax must determine the extent to which its entire franchise taxable base is employed in the exercise of its franchise within this state. For all taxpayers other than those in the business of manufacturing, the extent of such use of total taxable base in the state is determined by multiplying the total taxable capital by the ratio obtained through the arithmetical average of the ratio of net sales made to customers in the regular course of business and other revenues attributable to Louisiana to total net sales made to customers in the regular course of business and total other revenues, and the ratio that the value of all of the taxpayer's property and assets situated or used by the taxpayer in Louisiana bears to all of the taxpayer's property and assets wherever situated or used. For taxpayers in the business of manufacturing, the extent of such use of total taxable base in the state is determined by multiplying the total taxable capital by the ratio of net sales made to customers in the regular course of business and other revenues attributable to Louisiana to total net sales made to customers in the regular course of business and total other revenues.

1. Net Sales and Other Revenue. Net sales to be combined with other revenue in determining both the numerator and denominator of the revenue ratio for purposes of calculating the portion of the taxpayer's total taxable capital to be allocated to Louisiana are only those sales made to customers in the regular course of the taxpayer's business. 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 to determine whether they constitute sales made to customers that should be included in the revenue ratio or whether they constitute exchanges that are not sales and should be excluded from the revenue ratio. Sales of scrap materials and by-products are construed to meet the requirements for inclusion in the revenue ratio. Sales made other than to customers, such as, but not limited to, sales of stocks, bonds, futures, options, derivatives, and other evidence of investment on the open market, regardless of the frequency or volume of those sales, shall not be included in the revenue ratio. Similarly, revenues and/or gains on the sale of property other than stock in trade shall not be included in the revenue ratio since they generally do not meet the specific requirements that only sales made to customers in the regular course of business of the taxpayer should be included. Whenever a transaction is not a sale to customers in the regular course of business, the amount does not constitute other revenue so as to qualify for inclusion in either the numerator or the denominator of the allocation ratio.

a. Sales attributable to Louisiana are those sales where the goods, merchandise, or property are received in Louisiana by the purchaser. Where goods are delivered into Louisiana by public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. The transportation in question is the initial transportation relating to the sale by the taxpayer.

i. Transportation by Taxpayer or by Public Carrier. Where the goods are delivered by the taxpayer in his own equipment, it is presumed that such transportation relates to the sale. Where the goods are delivered by a common or contract carrier, whether shipped F.O.B. shipping point and whether the carrier be a pipeline, trucking line, railroad, airline, or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation incident to the sale has ended is deemed to be the place where the goods are received by the purchaser.

ii. Transportation by Purchaser

(a). Where the transportation involved is transportation by the purchaser, it is recognized that it is more difficult to determine whether or not the transportation is related to the sale by the taxpayer. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent economic and natural circumstances occurring at the time.

(b). The intent of the parties to the sale must also be considered. The intent and purpose of the purchaser may be determined directly, or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time of the sale.

(c). In order for the transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser, such transportation must be generally the same in nature and scope as that performed by the vendor or by a carrier. There is no difference between a case where a taxpayer in Houston ships F.O.B. Houston to a purchaser in Baton Rouge, by common carrier, and a case where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

iii. Transportation of Natural Resources by a Public Carrier Pipeline. Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier. However, because of the nature and character of the property, the type of carrier, and the customs of the trade, the natural resources in the pipeline may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a purchaser in more than one state, or to different purchasers in different states, peculiar problems of attribution arise. In all cases possible, attribution will be made in accordance with the rules applicable to all public carrier transportation, that is, where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state, and the oil was transported to the purchaser by public carrier pipeline, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality, but not any specific oil.

iv. Storage of Property after Purchase

(a). In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase and at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the storage is of a temporary nature.

(b). In cases where the storage is permanent or semipermanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage. However, where the storage is of a temporary nature, such as that necessitated by lack of transportation or by change from one means of transportation to another, or by natural conditions, the place of such storage is of no significance.

b. Revenue from Air Transportation. All revenues derived from the transportation of cargo or passengers by air shall be attributed within and without this state based on the point at which the cargo shipment or passenger journey originates.

c. Revenue from Transportation Other Than Air Travel. Revenue attributable to Louisiana from transportation other than air includes all such revenue derived entirely from sources within Louisiana plus a portion of revenue from transportation performed partly within and partly without Louisiana, based upon the ratio of the number of units of transportation service performed in Louisiana to the total of such units. Revenue from transportation exclusively without Louisiana shall not be included in the revenue attributed to Louisiana. Revenue attributable to Louisiana shall be computed separately for each of the four classes enumerated below.

i. A unit of transportation shall consist of the following:

(a). in the case of the transportation of passengers, the transportation of one passenger a distance of 1 mile;

(b). in the case of the transportation of liquid commodities, including petroleum or related products, the transportation of one barrel of the commodities a distance of 1 mile;

(c). in the case of the transportation of property other than liquids, the transportation of 1 ton of the property a distance of 1 mile;

(d). in the case of the transportation of natural gas, the transportation of 1 MCF or 1 MBTU a distance of 1 mile.

ii. In any case where another method would more clearly reflect the gross apportionable income attributable to Louisiana, or where the above information is not readily available from the taxpayer's records, the secretary, in his discretion, may permit or require the use of any method deemed reasonable by him.

iii. Example: ABC Corporation is in the business of transporting natural gas as a common carrier. During the year 2005, ABC entered into five transactions. In the first transaction 1 million MMCF was transported from Texas, through Louisiana, to Mississippi. The total distance transported was 500 miles, of which 200 miles was in Louisiana. The charge for the transportation was $250,000.00. In the second transaction 1 million MMCF was transported from one point in Louisiana to another point in Louisiana, a distance of 150 miles, for a charge of $150,000.00. In the third transaction 1 million MMCF was transported from one point in Texas to another point in Texas, a distance of 500 miles, for a charge of $250,000.00. In the fourth transaction 1 million MMCF was transported from a point in Louisiana to a point in another state for a charge of $500,000.00. The total distance transported was 1,000 miles, of which 100 miles were in Louisiana. In the fifth transaction 1 million MMCF was transported from a point in Louisiana to a point in another state for a charge of $250,000.00. The distance transported was 500 miles, of which 100 was in Louisiana. The portion of the gross apportionable income attributed to Louisiana would be computed as follows:

	Louisiana Amount
First Transaction—200/500 x $250,000 =	$100,000
Second Transaction—entirely from Louisiana =	150,000
Third Transaction—neither entirely nor partially in Louisiana	-0-
Fourth Transaction—100/1,000 x $500,000 =	50,000
Fifth Transaction—100/500 x $250,000 =	50,000
Louisiana Income from Transportation of Natural Gas	$350,000

d. Revenue from Services Other Than from Transportation

i. For purposes of R.S. 47:606(A), in addition to any other revenue attributed to Louisiana, the following revenue from providing telephone, telecommunications, and similar services shall be attributed to Louisiana:

(a). revenue derived from charges for providing telephone "access" from a location in this state. Access means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to a service address located in the state and without regard to actual usage;

(b). revenue derived from charges for unlimited calling privileges, if the charges are billed by reference to a service address located in this state;

(c). revenue from intrastate telephone calls or other telecommunications, except for mobile telecommunication services, beginning and ending in Louisiana;

(d). revenue from interstate or international telephone calls or other telecommunications, except for mobile telecommunication services, either beginning or ending in Louisiana if the service address charged for the call or telecommunication is located in Louisiana, regardless of where the charges are billed or paid;

(e). revenue from mobile telecommunications service:

(i). revenue from mobile telecommunications services shall be attributed to the place of primary use, which is the residential or primary business street address of the customer;

(ii). if a customer receives multiple services, such as multiple telephone numbers, the place of primary use of each separate service shall determine where the revenue from that service is attributed;

(iii). revenue from mobile telecommunications services shall be attributed to Louisiana if the place of primary use of the service is Louisiana.

(f). Definitions. For the purpose of this Subparagraph, the following terms have the following meanings unless the context clearly indicates otherwise.

(i). *Call*—a specific telecommunications transmission.

(ii). *Customer*—any person or entity that contracts with a home service provider or the end user of the mobile telecommunications service if the end user is not the person or entity that contracts with the home service provider for mobile telecommunications service.

(iii). *Home Service Provider*—the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(iv). *Place of Primary Use of Mobile Telecommunications Service*—the street address representative of where the customer's use of mobile telecommunications service primarily occurs. This address must be within the licensed service area of the home service provider and must be either the residential or the primary business street address of the customer. The home service provider shall be responsible for obtaining and maintaining the customer's place of primary use as prescribed by R.S. 47:301(14)(i)(ii)(bb)(XI).

(v). *Service Address*—the address where the telephone equipment is located and to which the telephone number is assigned.

(vi). *Telecommunications*—the electronic transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through the use of any medium such as wires, cables, satellite, microwave, electromagnetic wires, light waves or any combination of those or similar media now in existence or that might be devised, by telecommunications does not include the information content of any such transmission.

(vii). *Telecommunication Service*—providing telecommunications including service provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

ii. Revenue derived from services, other than from transportation, or telephone, telecommunications, and similar services, shall be attributed to the state in which the services are rendered. Services are rendered where they are received by the customer.

iii. In any case in which it can be shown that charges for services constitute a pure recovery of the cost of performing the services and do not include a reasonable rate of profit, amounts received in reimbursement of such costs shall not be construed to be revenues received and shall be omitted from both the numerator and denominator of the attribution ratio.

e. Rents and Royalties from Immovable or Corporeal Movable Property

i. Rents and royalties from immovable or corporeal movable property shall be attributed to the state where the property is located at the time the revenue is derived, which is construed to be the place at which the property is used resulting in the rental payment. Rents, royalties, and other income from mineral leases, royalty interests, oil payments, and other mineral interests shall be allocated to the state or states in which the property subject to such interest is located.

ii. In the case of movable property which is used in more than one state or when the lessor has no knowledge of where the property is located at all times, application of the general rule for attributing the revenue from rental of the property may be sufficiently difficult so as to require use of a formula or formulas to determine the place of use for which the rents were paid. The specific formula to be used must be determined by reference to the basis on which rents are charged, the basis of which is usually set forth in the rental agreement. In those cases in which time of possession in the hands of the lessee is the only consideration in calculating rental charges, time used by the lessee in each state will be used as the basis for attributing the revenue to each state. Where miles traveled is the basis for the rental charge, revenue shall be attributed on that basis; where ton miles or traffic density in combination with miles traveled is the basis for the rental charges, revenue will be attributed to each state on that basis. In the case of drilling equipment where rentals are based on the number of feet drilled, income will be attributed to each state based on the ratio of the number of feet drilled within that state to the total number of feet drilled in all states by the rented equipment during the taxable period covered by the rental agreement.

f. Interest on Customers' Notes and Accounts

i. Interest on customers' notes and accounts can generally be associated directly with the specific credit instrument or account upon which the interest is paid and shall be attributed to the state at which the goods were received by the purchaser or services rendered. Interest is construed to include all charges made for the extension of credit, such as finance charges and carrying charges.

ii. When the records of the taxpayer are not sufficiently detailed so as to enable direct attribution of the revenue, interest, as defined herein, shall be attributed to each state on the basis of a formula or formulas which give due consideration to credit sales in the various states, outstanding customer accounts and notes receivable, and variances in the rates of interest charged or permitted to be charged in each of the states where the taxpayer makes credit sales.

g. Other Interest and Dividends

i. Interest, other than on customers' notes and accounts, and dividends shall be attributed to the state in which the securities producing such revenue have their situs,

which shall be at the business situs of such securities if they have been so used in connection with the taxpayer's 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.

ii. Used in connection with the taxpayer's business is construed to mean use of a continuing nature in the regular course of business and does not include the mere holding of the instrument at a location or the use of the property as security for credit. Business situs must be established on the basis of facts, indicating precisely the use to which the securities have been put and the manner in which the taxpayer conducts its business.

iii. Commercial Domicile is in that 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 and protection provided by that state. The location of board of directors' meetings is not presumed to create commercial domicile at the location.

iv. Interest and dividends from a parent or subsidiary corporation shall be attributed as provided in R.S. 47:606(B) and the regulations issued thereunder.

h. Royalties or Similar Revenue from the Use of Patents, Trademarks, Secret Processes, and Other Similar Intangible Rights

i. Royalties or similar revenue received for the use of patents, trademarks, secret processes, and other similar intangible rights shall be attributed to the state or states in which such rights are used by the licensee from whom the income is received.

ii. In those cases where the rights are used by the licensee in more than one state, royalties and similar revenue will be attributed to the states on the basis of a ratio which gives due consideration to the proportion of use of the right by the licensee within each of the states. When the royalty is based on a measurable unit of production, sales, or other measurable unit, the attribution ratio shall be based on such units within each state to the total of such units for which the royalties were received. When the royalty or similar revenue is not based on measurable units, the attribution ratio will be based on the relative amounts of income produced by the licensee in each state or on such other ratio as will clearly reflect the proportion of use of the rights by the licensee in each state.

i. Revenue from a Parent or Subsidiary Corporation. Revenue from a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606(B) and the regulations issued thereunder.

j. All Other Revenues

i. All revenues which are not specifically described in §306.A.l.a-i shall be attributed within and without Louisiana on the basis of such ratio or ratios as may be reasonably applicable to the type of revenue and business involved.

ii. In the case of revenue from construction, repairs, and similar services, generally, all of the work will be performed at a specific geographical location and the total revenue, including all billings by the taxpayer without regard to the method of reporting gain for purpose of the income tax statutes, shall be attributed to the place where the work is performed. In the case of contracts wherein a material part or parts of the work may have been performed in another state, such as the design, engineering, manufacture, fabrication, or preassembly of component parts, total revenue from the specific elements will be attributed to the place at which that segment of the work was performed on the basis of segregated charges contained in the performance contract. In the absence of segregated charges in the contract, revenues shall be allocated on the basis of a formula or formulas which give due consideration to such factors as direct cost, time devoted to the separate elements, and relative profitability of the specific function. Such ratios may be based on estimates of costs compiled during calculation of bid amounts for purposes of securing the contract in the absence of sufficient contract segregation of the charges between functions or sufficient records necessary to determine direct cost.

iii.(a). Revenues from partnerships shall be attributed within and without Louisiana based on the proportion of the partnership's capital employed in Louisiana. The proportion of the partnership's capital employed in Louisiana is the allocation ratio, also known as the franchise tax apportionment ratio, that would be computed for the partnership if the partnership were a corporation subject to franchise tax.

(b). Revenues from a partnership are the partner's distributive share of partnership net income when the partner's distributive share of partnership net income is a positive amount. Losses from a partnership are not revenues from a partnership.

(c). Revenue from a partnership should be revenue from the partnership as reflected on the taxpayer's books. However, if there is no difference in the proportions of incomes, expenses, gains, losses, credits and other items accruing to the taxpayer from the partnership for book purposes and tax purposes the taxpayer may use tax basis revenue from a partnership. Once a taxpayer uses either book basis revenue or tax basis revenue, that basis must be used for all future tax periods.

iv. The term partnership includes a syndicate, group, pool, joint venture, limited liability company, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on.

2. Property and Assets. For the purpose of calculating the ratio of the value of property situated or used by a corporation in Louisiana to the value of all property wherever situated, both tangible and intangible property must be considered. The minimum value to be included in both the numerator and denominator is the value recorded on the books of the taxpayer. Both the cost recorded on the books of the corporation and the reserves applicable thereto are subject to examination and revision by the secretary when such revision is found to be necessary in order to reflect properly the extent to which capital of the corporation is employed in the exercise of its charter; in no event, however, shall the revision by the secretary to any asset value or applicable reserve result in a net valuation which exceeds actual cost of the asset to the taxpayer. Assets will be allocated as follows.

a. Cash on hand shall be allocated to the state in which the cash is physically located.

b. Cash in banks and temporary cash investments shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, cash in banks and temporary cash investments shall

be allocated to the state in which the commercial domicile of the taxpayer is located.

c. Trade accounts and trade notes receivable are construed to mean only those accounts and notes receivable resulting from the sale of merchandise or the performance of services for customers in the regular course of business of the taxpayer. Such accounts and notes shall be allocated to the location at which the merchandise was delivered or at which the services were performed resulting in the receivable. In the absence of sufficient recorded detail upon which to base the allocation of specific accounts and notes receivable to the various states, such accounts and notes may, by agreement between the secretary and the corporation, be allocated to the separate states based upon the ratio of credit sales within any particular state to the total of all credit sales.

d. Investments in and advances to a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606(B) and the regulations issued thereunder.

e. Notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary, shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary shall be allocated to the state in which the commercial domicile of the taxpayer is located. See §306.A.1.g relative to business situs and commercial domicile.

f. Stocks and bonds other than temporary cash investments and investments in or advances to a parent or subsidiary corporation shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, stocks and bonds other than temporary cash investments and advances to a parent or subsidiary corporation shall be allocated to the state in which the commercial domicile of the corporation is located.

g. Immovable property and corporeal movable property which is used entirely within a particular state shall be allocated to the state in which the property is located. Movable property which is not limited in use to any particular state shall be allocated among the states in which used on the basis of a ratio which gives due consideration to the extent of use in each of the states. For the purpose of determining the amount to be included in the numerator of the property ratio with respect to corporeal movable property used both within and without Louisiana, the following rules shall apply.

i. The value of diesel locomotives shall be allocated to Louisiana on the basis of the ratio of diesel locomotive miles traveled in Louisiana to total diesel locomotive miles.

ii. The value of other locomotives shall be allocated to Louisiana on the basis of the ratio of other locomotive miles traveled in Louisiana to total other locomotive miles.

iii. The value of freight train cars shall be allocated to Louisiana on the basis of the ratio of freight car miles traveled in Louisiana to total freight car miles.

iv. The value of railroad passenger cars shall be allocated to Louisiana on the basis of the ratio of passenger car miles traveled in Louisiana to total passenger car miles.

v. The value of passenger buses shall be allocated to Louisiana on the basis of the ratio of passenger bus miles traveled in Louisiana to total passenger bus miles.

vi. The value of diesel trucks shall be allocated to Louisiana on the basis of the ratio of diesel truck miles traveled in Louisiana to total diesel truck miles.

vii. The value of other trucks shall be allocated to Louisiana on the basis of the ratio of other truck miles traveled in Louisiana to total other truck miles.

viii. The value of trailers shall be allocated to Louisiana on the basis of the ratio of trailer miles traveled in Louisiana to total trailer miles.

ix. The value of towboats shall be allocated to Louisiana on the basis of the ratio of towboat miles traveled in Louisiana to total towboat miles. In the determination of Louisiana towboat miles, one-half of the mileage of navigable rivers or streams bordering on both Louisiana and another state shall be considered Louisiana miles.

x. The value of tugs shall be allocated to Louisiana on the basis of the ratio of tug miles traveled in Louisiana to total tug miles. In the determination of Louisiana tug miles, one-half of the mileage of navigable rivers or streams bordering on both Louisiana and another state shall be considered Louisiana miles.

xi. The value of barges shall be allocated to Louisiana on the basis of the ratio of barge miles traveled in Louisiana to total barge miles. In the determination of Louisiana barge miles, one-half of the mileage of navigable rivers or streams bordering on both Louisiana and another state shall be considered Louisiana miles.

xii. The value of work and miscellaneous equipment shall be allocated to Louisiana in the following manner:

(a). in the case of a railroad, on the basis of the ratio of track miles in Louisiana to total track miles;

(b). in the case of truck and bus transportation, on the basis of the ratio of route miles operated in Louisiana to total route miles; and

(c). in the case of inland waterway transportation, on the basis of the ratio of bank miles in Louisiana to total bank miles. In the determination of bank mileage of navigable rivers or streams bordering on both Louisiana and another state, one-half of such mileage shall be considered Louisiana miles.

xiii. The value of other floating equipment shall be allocated to Louisiana on the basis of the ratio of operating equipment miles within Louisiana to total operating equipment miles for the particular equipment to be allocated. In the determination of Louisiana operating equipment miles, one-half of the mileage of navigable rivers or streams bordering on both Louisiana and another state shall be considered Louisiana miles.

xiv. The value of flight equipment shall be allocated to Louisiana on the basis of the ratio of ton miles flown within Louisiana to total ton miles. For the purpose of determining Louisiana ton miles, a passenger and his luggage shall be assigned a weight factor of 1/10 of 1 ton.

xv. The value of inventories of merchandise in transit shall be allocated to the state in which their delivery destination is located in the absence of conclusive evidence to the contrary.

xvi. All other corporeal movable property shall be allocated to Louisiana on the basis of such ratio or ratios as will reasonably reflect the extent of their use within this state. In any case where the information necessary to determine the prescribed ratio is not readily available from the taxpayer's records, the secretary may require the allocation of the value of the property on the basis of any method deemed reasonable by the secretary.

h. All other assets shall be allocated within or without Louisiana on such basis as may be reasonably applicable to the particular asset and the type of business involved. Investments in or advances to a partnership shall be attributed within and without Louisiana based on the proportion of the partnership's capital employed in Louisiana. The proportion of the partnership's capital employed in Louisiana is the allocation ratio, also known as the franchise tax apportionment ratio, that would be computed for the partnership if the partnership were a corporation subject to franchise tax.

B. Allocation of Intercompany Items

1. Without regard to the legal or commercial domicile of a corporation subject to the corporation franchise tax, and without regard to the business situs of investments in or advances to a subsidiary or parent corporation by a corporation subject to the corporation franchise tax , all such investments in, advances to, and revenue from such parent or subsidiary shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana by the parent or subsidiary corporation for franchise tax purposes. The corporation franchise tax ratio of the parent or subsidiary shall be the measure of the extent to which the investment in, advances to, and revenues from the parent or subsidiary are attributable to Louisiana for purposes of determining the revenue and property ratios to be used in allocating the total taxable base of any corporation subject to the corporation franchise tax.

2. A subsidiary corporation is any corporation the majority of the capital stock of which is actually, wholly, or substantially owned by another corporation and whose management, business policies, and operations are, howsoever, actually, wholly, or substantially controlled by another corporation. Such latter corporation shall be termed the parent corporation.

3. In general, the ownership, either directly or indirectly, of more than 50 percent of the voting stock of any corporation constitutes control of that corporation's management, business policies, and operations, whether such control is documented by formal directives from the owner of such stock or not.

4. Other criteria which will be construed to constitute control of the management, business policies, and operations of a corporation are:

a. the filing of a consolidated income tax return in which operations of the corporation are included with operations of the corporation owning more than 50 percent of its stock for purposes of determining its federal income tax liability, foreign tax credits, investment credits, other credits against its tax, and the alternative minimum tax; or

b. the requirement or policy that the purchase of a majority of the merchandise, equipment, supplies, or services required for operations be made from the corporation owning more than 50 percent of its stock, its designee, or from another corporation in which the owning corporation owns more than 50 percent of the stock; or

c. the requirement or policy that a majority of sales of merchandise, products, or service be made to the corporation owning more than 50 percent of its stock, its designee, or to another corporation in which the owning corporation owns more than 50 percent of the stock; or

d. the participation in a retirement, profit-sharing, or stock option plan administered by or participating in the profits or purchase of stock of the corporation owning more than 50 percent of its stock; or

e. the filing of reports with the Securities and Exchange Commission or other regulatory bodies in which its operations, assets, liabilities, and other financial information are reflected as a part of similar information of the corporation owning more than 50 percent of its stock; or

f. the presence on its board of directors of a majority of members who are directors, officers, or employees of the corporation owning more than 50 percent of its stock.

5. In the case of a corporation that owns more than 50 percent of a corporation, the burden of proving that control of the management, business policies, and operations of the latter does not exist shall rest with the taxpayer.

6. Accounts receivable which may be considered to be advances resulting from normal trading between the companies in the regular course of business and the sales of merchandise, products, or services in such transactions shall not be included in advances to or revenue from a parent or subsidiary under this provision, but shall be allocated and attributed as provided in R.S. 47:606(A) and the regulations issued thereunder.

C. Minimum Allocation; Assessed Value of Real and Personal Property. The minimum amount of taxable capital upon which the corporation franchise tax is calculated shall be the total assessed value of all real and personal property of a corporation in this state. Total assessed value is construed to be the value, after any and all exemptions, upon which the ad valorem tax is based. The assessed value to be used as the basis for the minimum tax calculation is the value upon which the ad valorem tax was calculated for the calendar year preceding the year in which the corporation franchise tax is due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:606.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:453 (March 2004), amended LR 31:696 (March 2005), LR 32:0000 (March 2006).

Cynthia Bridges
Secretary

0603#027