

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Books of the Corporation (LAC 61:I.320)

Under the authority of R.S. 47:604, R.S. 47:605 and 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, proposes to adopt LAC 61:I.320 to define "books of the corporation" relative to the computation of the corporation franchise tax.

This proposed regulation will provide the definition of "books of the corporation" by formally adopting the federal provisions set forth in Internal Revenue Service regulations section 1.56-1(c). The "books of the corporation" are not defined in prior or current statutes and regulations. Previously, the department has informally applied these federal provisions to determine the "books of the corporation" and prioritize records to be used in the calculation of the corporation franchise tax.

#### Title 61

### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 3. Corporation Franchise Tax

#### §320. Books of the Corporation

A. Generally the "books of the corporation" are financial statements that will include an income statement, a balance sheet (listing assets, liabilities, and owners equity including changes thereto), and other appropriate information. The following may be considered applicable financial statements.

1. Statement required to be filed with the Securities and Exchange Commission (SEC). A financial statement that is required to be filed with the Securities and Exchange Commission.

2.a. Certified audited financial statement. A certified audited financial statement that is used for credit purposes, for reporting to shareholders or for any other substantial non-tax purpose. Such a statement must be accompanied by the report of an independent (as defined in the American Institute of Certified Public Accountants Professional Standards, Code of Professional Conduct, Rule 101 and its interpretations and rulings) certified public accountant or, in the case of a foreign corporation, a similarly qualified and independent professional who is licensed in any foreign country. A financial statement is "certified audited" for purposes of this Section if it is:

- i. certified to be fairly presented (an unqualified or "clean" opinion);
- ii. subject to a qualified opinion that such financial statement is fairly presented subject to a concern about a contingency (a qualified "subject to" opinion);
- iii. subject to a qualified opinion that such financial statement is fairly presented, except for a method of accounting with which the accountant disagrees (a qualified "except for" opinion); or
- iv. subject to an adverse opinion, but only if the accountant discloses the amount of the disagreement with the statement.

b. Any other statement or report, such as a review statement or a compilation report that is not subject to a full audit is not a certified audit statement.

3. A financial statement provided to a government regulator. A financial statement that is required to be provided to the federal government, or any agency thereof (other than the Securities and Exchange Commission), a state government or agency thereof, or a political subdivision of a state or agency thereof. Except as otherwise provided herein, an income tax return, franchise tax return or other tax return prepared solely for the purpose of determining any tax liability that is filed with a federal, state or local government or agency cannot be an applicable financial statement.

4. Other financial statements. A financial statement that is used for credit purposes, for reporting to shareholders, or for any other substantial non-tax purpose, even though such financial statement is not described in Paragraphs A.1-3 of this Section.

#### B. Priority Among Statements

1. In general, if a taxpayer has more than one financial statement described in Paragraphs A.1-4 of this Section, the taxpayer's applicable financial statement is the statement with the highest priority.

a. Priority is determined in the following order:

- i. a financial statement described in Paragraph A.1 of this Section;
- ii. a certified audited statement described in Paragraph A.2 of this Section;
- iii. a financial statement provided to a government regulator described in Paragraph A.3 of this Section;
- iv. any other financial statement described in Paragraph A.4 of this Section.

b. For example, corporation A, which uses a calendar year for both financial accounting and tax purposes, prepares a financial statement for calendar year 2003 that is provided to a state regulator and an unaudited financial statement that is provided to A's creditors. The statement provided to the state regulator is A's financial statement with the highest priority and thus is A's financial statement.

2. Special priority rules for use of certified audit financial statements and other financial statements.

a. In the case of financial statements described in Paragraphs A.2 and A.4 of this Section, within each of these categories the taxpayer's applicable financial statement is determined according to the following priority:

- i. a statement used for credit purposes;
  - ii. a statement used for disclosure to shareholders;
- and
- iii. any other statement used for other substantial non-tax purposes.

b. For example, corporation B uses a calendar year for both financial accounting and tax purposes. B prepares a financial statement for 2003 that it uses for credit purposes and prepares another financial statement for calendar year 2003 that it uses for disclosure to shareholders. Both financial statements are unaudited. The statement used for credit purposes is B's financial statement with the highest priority and thus is B's applicable financial statement.

3. Priority among financial statements provided a government regulator. In the case of two or more financial statements described in Paragraph A.3 of this Section that are of equal priority, the taxpayer's applicable financial statement is determined according to the following priority:

a. a statement required to be provided to the federal government or any of its agencies;

b. a statement required to be provided to a state government or any of its agencies; and

c. a statement required to be provided to any subdivision of a state or any agency of a subdivision.

C. Whenever more than one entity, for franchise tax purposes, is included in a corporation's books, as herein defined, separate books shall be constructed for each entity doing business in Louisiana. These books shall be constructed following the same principles and methods as were employed when constructing the original books.

D. Nothing in this regulation shall restrict the secretary's authority to revise the books of the corporation as needed for the purpose of ascertaining the correct franchise tax liability.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:604, R.S. 47:605 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 30:

#### **Family Impact Statement**

The proposed adoption of LAC 61:1.320, regarding the definition and priority of the books of the corporation for the calculation of the corporation franchise tax, should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed Rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4:30 p.m. Thursday, February 26, 2004. A public hearing will be held on Friday, February 27, 2004 at 10 a.m. in the River Room Conference Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Cynthia Bridges  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Books of the Corporation**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Proposed regulation, which defines the "books of the corporation" relative to the computation of the corporation franchise tax, will formally adopt the federal provisions set forth in the Internal Revenue regulations section 1.56-1(c), which has been the Department's administrative practice.

There are no estimated implementation costs or savings to state or local government units.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be no directly affected persons or non-governmental groups. Current filing requirements will not change.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed repromulgation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0401#035

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office