



M. J. "MIKE" FOSTER, JR.
Governor

STATE OF LOUISIANA
DEPARTMENT OF REVENUE
POLICY SERVICES DIVISION

CYNTHIA BRIDGES
Secretary

Private Letter Ruling 01-001

Redacted Version

July 25, 2001

A Private Letter Ruling based upon the following scenario has been requested:

A Louisiana corporation has sales in another state which cannot charge income tax on those sales due to the federal Interstate Income Law (P.L. 86-272). P.L. 86-272 restricts the ability of a state to charge income tax on sales which are solicited in the state, but the orders are filled by shipment or delivery from outside the state. If a sale is not taxable in a destination state because of P.L. 86-272, the sales remain subject to throwback to the appropriate state which does have jurisdiction to impose its net income tax upon the income derived from those sales.

The Department of Revenue was asked to confirm that Louisiana law does not contain a throwback provision which would cause the sales referred to above to be attributable to Louisiana in apportionment ratios.

According to Black's Law Dictionary, pg. 1481 (6th ed. 1990), a throwback rule is used if there is no income tax in the state to which a sale would otherwise be assigned for apportionment purposes, the sale essentially is exempt from state income tax, even though the seller is domiciled in a state that levies an income tax. Nonetheless, if the seller's state has adopted a throwback rule, the sale is attributed to the seller's state, and the transaction is subjected to a state-level tax.

A typical throwback rule can be found in Section 16 of the Uniform Division of Income for Tax Purposes Act (UDITPA). Section 16 provides:

Sales of tangible personal property are in this state if:

- (a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

- (b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

Louisiana has not enacted legislation consistent with UDITPA. As such, Louisiana's statutes do not provide a throwback rule for corporation income or franchise taxes.

For income tax purposes in Louisiana, La. R.S. 47:287.95(F)(3) provides:

For the purpose of this Subsection, sales attributable to this state shall be all sales where the goods, merchandise, or property is received in this state by the purchaser. In the case of delivery of goods by common 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. However, direct delivery into the state by the taxpayer to a person or firm designated by purchaser from within or without the state shall constitute delivery to the purchaser in this state.

For corporation franchise tax purposes in Louisiana, La. R.S. 47:606(A)(1)(a) provides:

Sales attributable to this state shall be all sales where the goods, merchandise or property is received in this state by the purchaser. In the case of delivery of goods by common 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. However, direct delivery into this state by the taxpayer to a person or firm designated by a purchaser from within or without the state shall constitute delivery to the purchaser in this state. Revenue derived from a sale of property not made in the regular course of business shall not be considered.

Questions should be directed to the Policy Services Division at (225) 925-6047.

Sincerely,

Cynthia Bridges

Secretary

By: _____

William (Mac) E. Little

Attorney

Policy Services Division

A Private Letter Ruling (PLR) is issued under the authority of LAC 61:III.101(C). A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement issued to apply principles of law to a specific set of facts or a particular tax situation and is limited to the matters specifically addressed. A PLR does not have the force and effect of law and may not be used or cited as precedent. APLR is binding on the Department only as to the taxpayer making the request and only if the facts provided with the request were truthful and complete and the transaction was carried out as proposed. The Department's position concerning the particular tax situation addressed remains in effect for the requesting taxpayer until a subsequent declaratory ruling, rule, court case, or statute