



**Private Letter Ruling 03-013**  
**Redacted Version**

December 12, 2003

A Private Letter Ruling concerning the application of Louisiana corporation income tax and Louisiana corporation franchise tax has been requested. Specifically, the Department of Revenue was asked whether a banking corporation that is paying the Louisiana bank shares tax, but is organized under the laws of another state, qualifies for the Louisiana corporation income tax exemption and the Louisiana corporation franchise tax exemption provided for Louisiana banking corporations. In addition, the Department of Revenue was asked whether a banking corporation in such a situation was due a refund for the years during which both Louisiana corporation income/franchise tax and the bank shares tax were remitted.

**Facts:**

The following is a summary of the facts as supplied by the taxpayer requesting the Private Letter Ruling (Banking Corporation A):

- Banking Corporation A is incorporated under the banking laws of another state and is subject to the applicable provisions of that state's banking laws and the laws of the various states in which it operates, as well as federal law.
- Banking Corporation A is headquartered in another state and has commercial banking operations in several states.
- Banking Corporation A provides commercial banking, leasing, mortgage origination and servicing, life insurance, brokerage, and trust services to corporate customers, local governments, individuals, and other financial institutions through an extensive network of branches and offices.
- Banking Corporation A has branches located in several Louisiana parishes.
- Banking Corporation A is a calendar year taxpayer.
- Beginning with the year ending 12/31/00 through 2003, Banking Corporation A has paid Louisiana corporation income tax and Louisiana corporation franchise tax.
- For tax years 2000-2002, Banking Corporation A has paid the Louisiana bank shares tax.

**Discussion:**

Prior to 1994, banks were not allowed to operate across state lines. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338, allowed banks to branch across state lines. A provision within the Riegle-Neal Interstate Banking and Branching Efficiency Act allowed states to prohibit interstate branch banking by state and national banks as

long as they acted prior to June 1, 1997.

In 1995, La. Rev. Stat. Ann. § 6:533(3) was enacted, which provides that “Effective June 1, 1997, an out of state bank holding company may convert its Louisiana bank or banks into branches of the out of state bank.” Also in 1995, La. Rev. Stat. Ann. § 6:537.1 was enacted, which provides:

In accordance with the provisions of the Riegle-Neil Interstate Banking and Branching Efficiency Act, a Louisiana bank or bank holding company may acquire an out of state bank or bank holding company or may branch into any other state to the same extent as any state chartered bank, national bank, foreign bank, or other similar institution in the host state in question may do so and shall have the right and power to exercise and enjoy all rights, powers, privileges, and immunities accorded to any state chartered bank, national bank, foreign bank, or other similar institution in the host state.

The imposition of the tax commonly called the bank shares tax is based on La. Rev. Stat. Ann. § 47:1967(A), which provides:

The shares of stock of *all banks*, banking companies, firms, associations or corporations, *doing a banking business in this state*, chartered by the laws of this state or of the United States are hereby declared subject to taxation for all purposes in this state. (emphasis added)

The Louisiana corporation income tax exemption pertaining to banking corporations was enacted in 1986 and is located at La. Rev. Stat. Ann. § 47:287.501(B)(1). It provides:

Mutual savings banks, national banking corporations and banking corporations *organized under the laws of the state of Louisiana* who pay a tax for their shareholders or whose shareholders pay a tax on their shares of stock under other laws of this state and building and loan associations shall be exempt from taxation under this Part. (emphasis added)

La. Rev. Stat. Ann. § 47:608(2), enacted in 1935, provides an exemption from the Louisiana corporation franchise tax for:

Mutual savings banks, national banking corporations and banking corporations *organized under the laws of the state of Louisiana* who pay a tax for their shareholders or whose shareholders pay a tax on their shares of stock under other laws of this state, and building and loan associations. (emphasis added)

The bank shares tax applies to all banks doing a banking business in Louisiana. However, both the corporation income and franchise tax exemptions apply to banks organized under the laws of the state of Louisiana. On their face, these exemptions appear to violate the Commerce Clause of the United States Constitution, U.S. Const. art. 1, § 8, cl. 3.

The Supreme Court of Louisiana, in *Union Sulphur Co. v. Parish of Calcasieu et al.*, 96 So. 787 (La. 1923), held that "... laws, like contracts, are to be construed in the light of conditions as they exist at the time of their passage."

Based on *Union Sulphur Co.*, both La. Rev. Stat. Ann. § 47:287.501(B)(1) and La. Rev. Stat. Ann. § 47:608(2) are to be construed in light of the conditions that existed at the time of their passage. At the time of their passage, banks could only operate in Louisiana if they were organized under Louisiana law or were national banks. Therefore, the exemptions had the effect of exempting all banks paying the bank shares tax. The phrase "organized under the laws of the state of Louisiana" must be interpreted as reflecting this condition at the time of passage rather than reflecting an intent by the legislature to unconstitutionally discriminate against banks organized under the laws of other states. The exemptions are therefore interpreted to exempt all banks paying the bank shares tax from the Louisiana corporation income and franchise tax.

**Ruling:**

Since Banking Corporation A is required to pay the Louisiana bank shares tax, it qualifies for the exemptions provided in La. Rev. Stat. Ann. § 47:287.501(B)(1) and La. Rev. Stat. Ann. § 47:608(2). Banking Corporation A would be due a refund of income and franchise tax for all periods not prescribed.

Sincerely,

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Cynthia Bridges  
Secretary

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Attorney  
Policy Services Division

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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. A PLR 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 supersedes it.