



**Private Letter Ruling
Redacted Version
No. 04-004**

September 13, 2004

**Corporation Income Tax and Corporation Franchise Tax
Location of the Commercial Domicile of a Corporation**

This is in reply to your request for a private letter ruling concerning the location of the commercial domicile of ABC, Inc.

Facts

You provided the following facts:

ABC is a corporation engaged in exploration and production activity within the oil and gas industry. While ABC maintains an office in City B, Louisiana, the executive decisions regarding the company's oil and gas properties and rig operations come from the office in City, State A.

ABC's corporate headquarters is located in its City, State A office and corporate governance records are maintained there. The finance department is also located in the City, State A office, and all financing is obtained from non-Louisiana lending institutions. All depository accounts are kept with banks in State A, and all company checks are signed at the City, State A office. All significant business transactions, including sales and acquisitions, are closed in the City, State A office (or in any such other location as the conditions may require); however, no such transactions or closing take place in Louisiana. An executive located in the City, State A office must approve all decisions of strategic or significant importance, and no meetings of the Board of Directors are held in Louisiana. In addition, quarterly management meetings are conducted at the State A office. Finally, the majority of ABC's corporate assets are not located and shall not be located in the future in Louisiana.

Approximately 98% of ABC's producing properties are located outside the territorial limits of Louisiana. While these properties produce the company's income, the decisions to buy each of these properties and the decisions to sell or trade earlier owned properties were made and consummated in City, State A or outside Louisiana. This activity, the buying and selling of properties, is the "heart and soul" of ABC's activities and what determines whether in the long run ABC is a successful company.

The buying and selling activities involve many different facets. The company's CEO sets the course for the company. His work is almost substantially all involved in this buying and selling activity. These "deals" can take months or years from start to finish to consummate. The CEO works on these deals in City, State A. City, State A is where the other parties to these deals are

*617 North Third Street
Baton Rouge, Louisiana 70802
225-219-2700 • 225-219-2708 Fax
www.rev.state.la.us*

located, and City, State A is where other key company personnel and all the data and other due diligence materials are located.

The company's Vice-President of Acquisitions and its Acquisitions Manager have been in City, State A for some period of time. All of their time is spent in City, State A, and they are each residents of State A. All of the data for these deals is presented in City, State A, is evaluated in City, State A, and all decisions about whether to pursue the deal or not are made in City, State A. All negotiations take place in City, State A, and all contracts are signed and sealed in City, State A.

The company's CFO is located in the City, State A headquarters office together with his Finance Department staff. The financing of these deals is an integral part of each transaction, and the financing activity is in City, State A with City, State A sources of capital or with sources of capital not located in Louisiana.

Executive management activities in City, State A:

All matters of strategic or significant importance are initiated or approved by an executive in the headquarters office. These activities include the following:

1. Acquisition and divestiture offers (a mainstay of the corporate strategy).
2. Acquisition and divestiture agreements are signed and maintained in the headquarters office.
3. Any authorization for expenditure in excess of \$1,000,000.
4. Drilling and exploration agreements with other companies must be approved by an executive in the headquarters office.
5. Quarterly meetings of key managers with executives occur in the headquarters offices.
6. Consent for operations in excess of \$1,000,000 proposed for a non-operated property must be approved by an executive in the headquarters office.
7. Construction or drilling contracts in excess of \$1,000,000 must be approved and signed by an executive in the headquarters offices.
8. Any matter subject to litigation or arbitration must first be approved by an executive in the headquarters office.
9. All matters regarding casualty insurance are handled by an executive in the City, State A office.

All matters relating to finance are initiated or approved by an executive in the headquarters office. These activities include the following:

1. Daily review of cash deposits.
2. Draws and pay downs of bank lines must be initiated by headquarters.
3. Wire transfers must be approved and initiated at headquarters.
4. Bank records are maintained at headquarters.
5. Budget review and approval for all departments is done at headquarters.
6. Loan negotiations and closings (no Louisiana banks are involved) are conducted in the headquarters office.
7. Merger and acquisition opportunities are evaluated by the finance department staff based in headquarters.
8. Checks are printed and signed in the headquarters office.

9. Monthly review of financial results occur with the CFO and CEO in the headquarters offices, together with analysis and decision making thereon.

The Company has an administrative office in City B, Louisiana. Certain day-to-day operational issues are handled in City B, Louisiana. For example, engineers and geologists work with the field on issues relating to production and drilling operations. Accounts payable and receivable personnel process invoices and input them into the computer system. The human resource function is controlled from the City B office. Land men act in support of these operations locally, particularly as it relates to the US Minerals Management Service office in Louisiana.

Currently, all of the Company's properties are located outside the territorial limits of Louisiana, primarily in the federal Outer Continental Shelf waters.

Discussion

The Louisiana tax statutes do not define "commercial domicile." The Department relies on decisions rendered in *United Gas Corp. v. Fontenot*, 241 La. 488, 129 So.2d 748 (La. 1961), and *North Baton Rouge Development Co., Inc. v. Collector of Revenue*, 304 So.2d 293 (La. 1974), *Pelto Oil Co. v. Collector of Revenue*, 384 So.2d 533 (La. App. 4th Cir. 1980), and *Kevin Associates, L.L.C. v. Crawford*, 865 So.2d 34 (La. 2004) and its regulation, LAC 61:I: 306(A)(1)(h)(iii), for guidance.

In the most recent Louisiana case on commercial domicile, *Kevin Associates*, the Louisiana Supreme Court observed that the commonly used definition of the term "commercial domicile" is the place from which the business is directed or managed. The court stated that the concept underlying commercial domicile permits a state to determine that it is the state of domicile for a corporation for tax purposes when it furnishes the bulk of the governmental protection to that corporation. This determination is to be based on the corporation's actual commercial practices rather than its structure on paper and is to be made by considering the material facts as a whole.

The court also noted that this concept has been incorporated into the Department's regulation. The court determined that its definition of the term "domicile" was appropriate because the state where the actual commercial practices of the corporation are conducted is the state that furnishes the bulk of governmental protection to the corporation.

The Department's regulation, LAC 61:I: 306(A)(1)(h)(iii), defines "commercial domicile" as follows:

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 that state. Commercial domicile cannot be assigned to a state where the taxpayer has no substantial operation or facility, other than the location of one or more management level employees. The location of board of directors' meetings is not presumed to create commercial domicile at the location.

There is, therefore, no "bright line" test to determine a corporation's commercial domicile. Instead, the facts and circumstances of the corporation's actual commercial practices must be looked at as a whole in order to determine from which state the business is directed or managed.

Prior to making this determination, it is necessary to assume that certain facts exist in addition to the facts provided. When your facts state that certain transactions are completed, certain

decisions are made, and certain documents are signed in City, State A, we assume that the majority of the processes leading to those actions took place in State A. For example, when you state that all significant business transactions will be “closed” in City, State A, the Department assumes that is not a simple matter of bringing documents to City, State A for signature.

Although ABC does have significant operations in Louisiana and many of the day-to-day business activities and decision-making take place in Louisiana, when all of the corporation’s business operations are taken as a whole it appears that the business is directed and managed from corporate headquarters in City, State A. Therefore State A is the commercial domicile of ABC.

Ruling

Based on the information as provided and necessary assumptions, the commercial domicile of ABC, Inc. is in State A.

Sincerely

Cynthia Bridges
Secretary

This correspondence constitutes a private letter ruling (PLR) by the Louisiana Department of Revenue, as provided for by section 61:III.101 of the Louisiana Administrative Code. A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement that applies principles of law to a specific set of facts or a particular tax situation. A PLR does not have the force and effect of law, and is not binding on the person who requested it or on any other taxpayer. This PLR is binding on the department only as to the taxpayer to whom it is addressed, and only if the facts presented were truthful and complete and the transaction was carried out as proposed. It continues as authority for the department's position unless a subsequent declaratory ruling, rule, court case, or statute supersedes it.