



Private Letter Ruling
Redacted Version
No. 08-007

Corporation Income Tax and Corporation Franchise Tax
Whether or Not a Member of an Affiliated Group will be Subject to Louisiana Corporation
Income or Corporation Franchise Taxes
March 12, 2008

This is in reply to your request for a private letter ruling concerning whether or not subsidiaries of Company A will owe Louisiana corporation income or Louisiana franchise tax.

Factual Scenario

You provided these facts:

The Taxpayers are part of a group of affiliated entities (the “Group”) engaged in the manufacture and sale of tangible personal property throughout the world, including the United States. Two of the Group’s significant United States affiliates are (i) Company A Inc. (Co. A), a manufacturer and distributor of tangible personal property, and (ii) Company B Corporation (B Corp.), a corporation that finances wholesale and retail purchases (including consumer leases) of the Group’s (including Co. A’s) products.

Co. A makes sales of tangible personal property in Louisiana and B Corp. makes consumer and wholesale loans to purchasers of the Group’s (including Co. A’s) products in Louisiana. B Corp. also leases the Group’s (including CO. A’s) products to retail consumers in Louisiana. The Taxpayers, subsidiaries of B Corp., are organized for the sole purpose of facilitating structured debt financing of B Corp.’s consumer and wholesale lending activities. Co. A and B Corp. file Louisiana Corporation Income and Franchise Tax returns, but the Taxpayers herein and the subjects of this private letter ruling do not.

Co. A sells tangible personal property in Louisiana to a network of independent dealers which maintain physical locations in Louisiana. Co. A, through the totality of its activities and contacts with Louisiana, believes that it has taxable nexus in Louisiana. Accordingly, Co. A has historically filed tax returns in Louisiana.

B Corp. owns tangible personal property in Louisiana by virtue of its consumer leasing activities. Thus, B Corp. believes that it has taxable nexus in Louisiana. Accordingly, B Corp. has historically filed tax returns in Louisiana.

The Taxpayers, are Delaware corporations formed to facilitate the securitization of B Corp.'s loans. These can be retail loans or loans to independent dealers. The Taxpayers handle the securitization for only one type of loan (retail or independent dealers) and only for a certain period of time. The principal vehicle used by the Taxpayers to facilitate structured debt financing is the asset-backed securitization of personal property loans made by B Corp. The asset-backed securitization that is effected through the Taxpayers allows B Corp. to raise capital. B Corp.'s credit rating places restrictions on the amount that it may finance and the cost of funds. By utilizing bankruptcy-remote entities like the Taxpayers, B Corp. is able to raise capital without reference to these limitations and at a lower cost than other more customary forms of financing.

Asset-backed securitizations involve B Corp. selling a portfolio of loans along with the underlying security interests to the Taxpayers. The transaction between B Corp. and the Taxpayers is structured to provide a legally-binding (i.e. respected for bankruptcy purposes) true sale of the loans to the Taxpayers. The Taxpayers then convey the portfolio of loans, along with their underlying security interests, to a newly-created trust. Because the trust is disregarded for federal income tax purposes, the Taxpayers are treated as if they still directly own the pool of loans, along with their underlying security interests, for federal income tax purposes.

The trust then issues debt securities (i.e. notes) guaranteed by the value of the loans it has received to third-party investors for cash—through offerings arranged by underwriters. The income and cash-flow from the loan portfolio is then used by the trust to service the debt securities held by the third-party investors. The trust also issues certificates to the Taxpayers which are subordinated to the debt securities. This is a way to assure investors that the cash received from the loans will be sufficient to cover the required payments on the debt securities. These types of transactions are standard within the industry and, at times, B Corp. has sold loan portfolios to third-parties, rather than the Taxpayers.

The Taxpayers outsource the administration of the loan portfolios to B Corp. under portfolio-specific servicing agreements in exchange for a fee. B Corp., in turn, conducts the loan servicing activities, principally in another state. The activities performed by B Corp. include the allocation of funds received on the loans according to the terms of the securitization, making interest and principal payments on the notes to investors, and principal payments on the trust certificates. The Taxpayers receive the remainder of the interest payments. The fee B Corp. charges for servicing a loan portfolio is one percent of the annual aggregate loan balance, an amount which is standard within the industry.

The Taxpayers do not have any employees or property located in Louisiana and do not conduct any business activities in Louisiana.

The Taxpayers have historically taken the position that they do not have nexus in Louisiana and, therefore, have not filed tax returns. However, given the uncertain nature of nexus determinations, the Taxpayers request from the Louisiana Department of Revenue ("LDOR") a private letter ruling whether the corporation income and franchise tax is applicable given the facts as stated herein.

In compliance with Louisiana Administrative Code (“LAC”) 61:III.101(C) (2) (g), the Taxpayers attest to the following:

1. The Taxpayers do not have the same issue under audit or appeal with the LDOR or other taxing or revenue authorities;
2. The Taxpayers have not been notified by the LDOR of an examination or audit;
3. The Taxpayers are not currently litigating this nexus issue;
4. Neither the LDOR nor other taxing or revenue authorities have previously issued an advisory opinion on this issue;
5. The Taxpayers have not requested, and will not request, that the Louisiana Attorney General issue an opinion on this issue; and
6. Taxpayers agree to notify the LDOR of examinations or audits received by Taxpayers from the LDOR or other taxing or revenue authorities prior to the issuance of the requested private letter ruling.

Taxpayer’s Analysis

Income Tax

Pursuant to Louisiana Revised Statute Annotated (“LA Rev. Stat. Ann.”) § 47: 287.11(A), Louisiana levies a corporation income tax on the Louisiana taxable income of corporations and other entities taxed as corporations for federal income tax purposes. “Louisiana taxable income” is defined as Louisiana net income, after adjustments, less the federal income tax deduction. LA Rev. Stat. Ann. § 47:287.69. “Louisiana net income” is defined as net income which is earned within or derived from sources within the state of Louisiana. LA Rev. Stat. Ann. § 47:287.67.

Franchise Tax

Louisiana imposes a franchise tax on domestic and foreign corporations for exercising its charter, being qualified to do business, actually doing business, or owning or using any part or all of its capital, plant, or any other property in the state of Louisiana. LA Rev. Stat. Ann. § 47:601(A). “Doing business” means “each and every act, power, right, privilege, or immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations, as well as, the buying, selling, or procuring of services or property”. LA Rev. Stat. Ann. § 47:601(A) (1).

Taxpayers assert they are not subject to Louisiana Corporation Income and Franchise Tax because:

1. Taxpayers do not exercise their charters or transact business within Louisiana;
2. Taxpayers do not have any employees within Louisiana;
3. Taxpayers do not have physical, intangible or other property within Louisiana; and
4. Taxpayers do not derive revenue from Louisiana sources.

Ruling Request

You have asked for a ruling on the following:

The Taxpayers respectfully request a private letter ruling by the Louisiana Department of Revenue on the corporation income and franchise taxability of the Taxpayers in the State of Louisiana.

Discussion

Income Tax

The taxpayer's analysis gives accurate definitions for both Louisiana taxable income and Louisiana net income. "Louisiana taxable income" is defined as Louisiana net income, after adjustments, less the federal income tax deduction. LA Rev. Stat. Ann. § 47:287.69. "Louisiana net income" is defined as net income which is earned within or derived from sources within the state of Louisiana. LA Rev. Stat. Ann. § 47:287.67. As the definition of Louisiana net income states, in order for a corporation to be required to file a Louisiana corporation income tax return, the corporation must have taxable income earned within or derived from sources within Louisiana. From the facts stated in the ruling request, the taxpayers in question do not have taxable income earned within or derived from sources within Louisiana.

Nothing in this discussion precludes the Secretary of Department of Revenue from exercising her authority under R.S. 47:287.480. This statute allows the Secretary to allocate items of income and deductions among taxpayers and require allocation among related businesses and consolidated returns. Because the taxpayers' sole income source appears to be interest on the loans, it is unlikely that the Secretary would require a consolidated return because interest income is now exempt from tax in Louisiana. However, the Secretary still has the right to require consolidated returns with CO. A and/or B Corp. if necessary.

Franchise Tax

R.S. 47:601 imposes a franchise tax on a corporation for exercising its charter, being qualified to do business, actually doing business, or owning or using any part or all of its capital, plant, or any other property in the state of Louisiana. The taxpayers in this case are merely buying and selling paper that might have originated in Louisiana. This activity does not rise to the level of doing business in the state. The taxpayers also must not be qualified to do business in the state as well. So long as the taxpayers have not registered with the Louisiana Secretary of State's office this requirement should also be met.

Ruling

Assuming the facts as stated by the taxpayers in question are accurate, the taxpayers do not appear to owe any Louisiana corporation income or franchise tax.

If you have any questions or need additional information, please call Michael Pearson, Senior Policy Consultant or Danielle B. Clapinski, Attorney, Policy Services Division, at 219-2780.

Sincerely,

Cynthia Bridges
Secretary

By

Danielle B. Clapinski
Attorney
Policy Services

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.