

**Revenue Ruling**  
**No. 14 - 001**  
**September 30, 2014**  
**Corporation Income Tax**

**Qualified Subchapter S Subsidiary Exclusion**

**Purpose**

The purpose of this Revenue Ruling is to determine whether a domestic corporation, that was incorporated outside of Louisiana, that is a one hundred percent owned subsidiary of a parent corporation may amend Louisiana income tax returns in order to apply the QSub exclusion, provided that the parent corporation files original Louisiana income and franchise tax returns, including all of the income of the QSub in the parent corporations net income.

**Example**

Company A is a domestic corporation, incorporated outside of Louisiana. Company A is a one hundred percent owned subsidiary of Parent Corporation. Parent Corporation is a domestic corporation, incorporated and headquartered outside of Louisiana. Parent Corporation has elected to be an S corporation for federal income tax purposes, pursuant to I.R.C. § 1362.

Company A is a QSub, as provided for in I.R.C. § 1361(b)(3). Parent Corporation executed a valid election in order to treat Company A as a QSub for federal income tax purposes. Subsequent to the federal election, Parent Corporation included all of the assets, liabilities, and items of income, deduction, and credit of Company A in its own federal income tax returns. Both Parent Corporation and Company A are calendar year taxpayers. Parent Corporation does not have nexus with Louisiana as a separate corporation. Parent Corporation has multiple shareholders, none of which are Louisiana residents.

Company A is headquartered outside of Louisiana. During 2010 and 2011, Company A was subject to Louisiana corporation franchise tax, due to its activities in Louisiana. When Company A timely filed Louisiana corporation income and franchise tax returns, it computed and remitted corporation franchise tax, along with corporation income tax, computed on a separate corporation basis, in accordance with RIB 04-003. Since Company A filed Louisiana corporation income and franchise tax returns for 2010 and 2011, Parent Corporation was not responsible for filing Louisiana corporation income and franchise tax returns, because it did not have nexus with Louisiana and did not conduct any business in Louisiana.

Parent Corporation intends to file Louisiana income and franchise tax returns for the 2010 and 2011 tax years, even though such returns would be delinquent. In computing its Louisiana net income for the 2010 and 2011 tax years, Parent Corporation intends to include Company A's income, in accordance with RIB 04-003. Parent Corporation intends to claim a QSub exclusion and intends to compute its Louisiana net income and pay any associated Louisiana income tax on the percentage of income attributable to nonresidents, that do not pay Louisiana income tax.

Any shareholder taking advantage of the QSub exclusion would need an amended K-1 and Parent Corporation would need to include the shareholder's K-1s along with their return. Parent Corporation will not be subject to Louisiana franchise tax. Instead, franchise tax will continue to be paid on the returns filed by Company A.

Prior to December 31, 2014, Company A intends to file amended 2010 and 2011 Louisiana corporation income and franchise tax returns, in order to apply for the QSub exclusion, pursuant to La. R.S. 47:287.732.1(C)(1). On the amended returns, Company A will continue to pay franchise tax as a separate corporation, but will claim a refund for Louisiana income taxes paid as a separate corporation.

### **Analysis/Discussion**

According to La. R.S. 47:287.732.1(A),

“Except as provided in Subsection C of this Section, a corporation treated as a qualified Subsidiary S subsidiary for purposes of the Internal Revenue Code shall be required to comply with this Part the same as any other corporation. The provisions of this Part shall apply as if the qualified Subchapter S subsidiary and its parent had been required to file income tax returns with the Internal Revenue Service as C corporations for the current and all prior taxable years in accordance with federal law.”

Corporations treated as QSubs for purposes of the Internal Revenue Code would compute their Louisiana income tax as if the QSub and its parent corporation had been required to file federal income tax returns as C corporations for the current and all prior taxable years.

Louisiana provides an exception to the general treatment of QSubs, generally known as the QSub exclusion, found in La. R.S. 47:287.732.1(C), which states that

“An exclusion is allowed for corporations classified as qualified Subchapter S subsidiaries under federal law for the taxable year as follows:

(1) In computing Louisiana taxable income pursuant to this Part, a qualified Subchapter S subsidiary may exclude all of its Louisiana net income for the taxable year, provided that the S corporation that owns the stock of the qualified Subchapter S subsidiary files a Louisiana income tax return that includes all of the income of the qualified Subchapter S subsidiary in computing its net income for the taxable year.

(2) If the Louisiana taxable income of a qualified Subchapter S subsidiary qualifies for the exclusion provided in Paragraph (1) of this Subsection, the qualified Subchapter S subsidiary shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, credit, and any other items of the qualified Subchapter S subsidiary shall be treated as assets, liabilities, and items of income, deduction, credit, and other items of the corporation owning the stock of the qualified Subchapter S subsidiary.

(3) If the Louisiana taxable income of a qualified Subchapter S subsidiary is excluded for the taxable year under Paragraph (1) of this Subsection, the S

corporation that owns the stock of the qualified Subchapter S subsidiary may exclude the percentage of the qualified Subchapter S subsidiary's Louisiana net income for the taxable year as provided in R.S. 47:287.732(B)."

As such, the QSub exclusion allows a QSub to be treated as a disregarded entity, with no income tax obligation of its own. However, the QSub would continue to be responsible for Louisiana franchise tax. The QSub's parent corporation would report any income related to the QSub, along with its own income, on a single return, computing Louisiana income tax accordingly.

RIB 04-003 provides further guidance concerning the procedural application of the QSub exclusion. Specifically, RIB 04-003 states,

"Whether or not the QSub is treated as a disregarded entity for state income tax purposes is at the election of the taxpayer. This election is made by simply filing returns following the elected methods. No election forms are necessary.

In most cases, for Louisiana income tax purposes, taxpayers will elect to treat the QSub as a disregarded entity and part of the S Corp parent. It is to the QSub's advantage to attribute all of the income to its parent because the parent is eligible for the S corporation exclusion allowed by Louisiana Revised Statutes § 47:287.732(B). If this election is made, a corporation income tax return must still be filed for the QSub. However, Louisiana income will be reported as zero. A statement that the QSub income, expenses, and credits are being reported on the S Corp parent's return must be attached. The S Corp parent's income tax return will include all assets, liabilities, and items of income, deduction and credit, and any other items of the QSub. Income tax credits earned by the QSub are attributed to the S Corp parent. Credits that can be applied against income or franchise tax will be attributed to the S Corp parent to the extent they are not applied against the CFT of the QSub.

Under the alternative election, the taxpayer may elect to treat the QSub as a separate corporation for income tax purposes. If the taxpayer elects to treat the QSub as a separate corporation, then the parent S corporation and the QSub are each required to compute their Louisiana corporation income tax as if they have been required to file income tax returns with the Internal Revenue Service as C corporations for the current and all prior taxable years. Under this election the S corp is entitled to take the S corp exclusion allowed by Louisiana Revised Statutes § 47:287.732(B), but the QSub is not entitled to a S corp exclusion."

## **Conclusion**

Neither La. R.S. 47:287.732.1 nor RIB 04-003 provide any prohibition against the filing of amended returns in order to claim the QSub exclusion. In fact, according to RIB 04-003, the QSub exclusion can be "made by simply filing returns" that follow preferred methods.

In the example above, Company A could file amended 2010 and 2011 Louisiana income tax returns, in order to apply the QSub exclusion, pursuant to La. R.S. 47:287.732.1(C)(1), thereby claiming a refund for Louisiana income taxes paid during those years, provided that Parent

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Corporation first files original 2010 and 2011 Louisiana income and franchise tax returns, including all of the income of Company A when computing Parent Corporation's net income.

Tim Barfield  
Secretary

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