



**Revenue Ruling**

**No. 02-001**

**May 13, 2002**

**Corporation Income Tax**

**Taxation of Certain Trademark Holding Companies**

Purpose: The purpose of this revenue ruling is to address whether or not certain foreign trademark holding companies have nexus with the state of Louisiana for purposes of the corporation income tax.

Discussion: Under LSA R.S. 47:287.11, corporations are taxed on their Louisiana taxable income. Louisiana taxable income is defined as Louisiana net income after adjustments less the federal income tax deduction. Louisiana net income is net income that is earned within or derived from sources within the state of Louisiana. The Secretary of Revenue construes these provisions to allow taxation of domestic and foreign (chartered outside of Louisiana) corporations to the full extent permitted by the Constitution and laws of the United States.

Income that is earned within or derived from sources within the state of Louisiana includes income that is earned from the use of intangible property in the state. Intangible property generally includes, but is not limited to, copyrights, patents, trademarks, trade names, trade secrets, service marks, and know-how. Under LSA R.S. 47:287.93(A), income from the use of intangibles is allocated to the state or states in which the intangibles are used.

In order for a state to impose a tax, the Due Process and Commerce Clauses of the United States Constitution require that the taxpayer have a certain minimum connection, or nexus, with the state. Under the Due Process Clause, the United States Supreme Court has held that the minimum connection would exist so long as a foreign corporation purposefully availed itself of the benefits of an economic market in the taxing state. Under the Commerce Clause, a state's right to tax will be upheld if the tax is applied to an activity with a substantial nexus to the state, is fairly apportioned, does not discriminate against interstate commerce and is fairly related to the services provided by the state.

A foreign corporation having income that is earned within or derived from sources within the state is not subject to the Louisiana corporation income tax if the taxpayer is protected by Public Law 86-272 (15 U.S.C. / 381 et seq.). Public Law 86-272 precludes a state from imposing a corporate tax measured by net income when a foreign corporation's sole activity in the state is the solicitation of sales of tangible personal property. Public Law 86-272 does not protect activities that are more than *de minimus* and that fall outside the scope of solicitation. A *de minimus* activity is one that is only a trivial additional connection with the state and serves no independent business function separate from the solicitation of sales such as in-state recruitment, training, and evaluation of sales representatives. This revenue ruling focuses on transactions in which a foreign corporation derives income from licensing, sublicensing, or otherwise transferring intangible property for continuing commercial exploitation in this state. These types of transactions are not protected by Public Law 86-272.

Application: A foreign corporation that earns or derives Louisiana income solely through the use of its intangible property within Louisiana will be subject to the corporation income tax when:

1. The intangible property generates, or is otherwise a source of, income within the state for the corporation, including through a license, sub-license, or franchise; and
2. The activity through which the corporation obtains such income from its intangible property is purposeful; and
3. The corporation's presence within the state, as indicated by its intangible property and its activities with respect to that property, is more than *de minimis*.

Examples: The following examples are provided to illustrate the application of this revenue ruling and are not intended to be exhaustive.

1. A trademark holding company owns a trademark that it licenses to an unrelated manufacturing company. The manufacturing company and all its plants are located outside Louisiana. The manufacturing company manufactures products that display the trademark. The payment for the use of the trademark is unrelated to the retail sales of the licensed products. Once the products are manufactured, the trademark holding company loses all rights to control of the trademark. For example, it cannot dictate the price at which the products are sold or the type of retailers that can carry the products. The manufacturing company sells some of the products bearing the trademark through retail stores in several states, including Louisiana. The retail stores are unrelated to the trademark holding company. The products are advertised by the manufacturer or by the retailers. Other than the presence of their trademark on these products in retail stores, there is no activity in Louisiana by the trademark holding company, its affiliates, agents, or representatives. The trademark holding company does not have nexus with Louisiana.
2. A trademark holding company owns a trademark that it licenses to a related manufacturing company. The manufacturing company manufactures products that display the trademark. The manufacturing facility is located in Louisiana. The trademark holding company has nexus with Louisiana.

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Secretary

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A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is issued under Section 61:III.101(C) of the Louisiana Administrative Code to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.