

**Revenue Ruling
No. 03- 005
August 22, 2003
Corporation Income and Franchise Tax**

Inclusion of the Federal Excise Tax on Gasoline in the Sales Ratio

Purpose: This Revenue Ruling addresses whether or not the excise tax amount included in the sales price of gasoline is also included in the income and franchise tax sales ratios.

Analysis/Discussion: For franchise tax, La. Rev. Stat. Ann. § 47:606(A)(West 2003), provides in pertinent part that:

“For the purpose of ascertaining the tax imposed in this Chapter, every corporation subject to the tax is deemed to have employed in this state the proportion of its entire issued and outstanding capital stock, surplus, undivided profits, and borrowed capital, computed on the basis of the ratio obtained by taking the arithmetical average of the following ratios: (1) The ratio that the net sales made to customers in the regular course of business and other revenue attributable to Louisiana bears to the total net sales made to customers in the regular course of business and other revenue.”

The income tax sales ratio provided by La. Rev. Stat. Ann. § 47:287.95(F)(1)(c)(West 2003), is “The ratio of net sales made in the regular course of business and other gross apportionable income attributable to this state to the total net sales made in the regular course of business and other gross apportionable income of the taxpayer.”

If a taxpayer is required to collect a tax, such as a sales tax, from its customer on behalf of a government the amount so collected is not a sale by the taxpayer. In this case the taxpayer would not include the tax collected in the ratio. On the other hand, if a tax is imposed upon the taxpayer itself, such as an income tax, and the taxpayer chooses to itemize a portion of the tax on its invoice to its customer, the itemized amount collected is revenue from a sale.

In Gurley, DBA Gurley Oil Co. v. Rhoden, Chairman, Tax Commission of Mississippi, 421 U.S. 200, 95 S.Ct. 1605, 44 L.Ed.2d 110 (1975), the Supreme Court stated “A majority of courts that have considered the question have held ... that the legal incidence of the federal excise tax (on gasoline) is upon the statutory ‘producer’ ... and not upon his purchaser-consumer.” The Court goes on to state “Our independent examination ... persuades us also that the legal incidence ... falls upon the statutory ‘producer’ ...”

The federal excise tax on gasoline is imposed on the product itself and is imposed only once regardless of how many times the product changes hands. If a taxpayer pays the excise tax, it could recoup the associated expenses by passing on the cost to the purchaser-consumer in the form of an itemized amount. However, this pass on of the expense is not a collection of excise tax on behalf of the government.

guidance to the public and to Department of Revenue employees. It is a written statement issued 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.

Conclusion: In compliance with La. Rev. Stat. Ann. § 47:606(A)(West 2003) and La. Rev. Stat. Ann. § 47:287.95(F)(1)(c)(West 2003), since the excise tax is included in the sales price of gasoline sold to consumers in the regular course of business, it should properly be included in the income and franchise tax sales ratios.

Cynthia Bridges
Secretary

By: _____
William (Mac) E. Little
Attorney
Policy Services Division