



**Statement of Acquiescence
No. 01- 001
October 29, 2001
Corporation Income Tax**

***Ouachita Coca-Cola Bottling, Co., Inc. v. Secretary, Department of Revenue, B.T.A.
Docket No. 5382 (2001)***

Purpose: This Statement of Acquiescence applies to all corporations liable for accrued interest resulting from reliance upon 1993 La. Acts 690 to determine the corporation's income tax liability. The Board of Tax Appeals in *Ouachita Coca-Cola Bottling, Co., Inc. v. Secretary, Department of Revenue, B.T.A. Docket No. 5382 (2001)*, determined that the interest shall accrue from May 20, 1997, the date of the *Dow Hydrocarbons & Resources v. Kennedy et al.*, 96-2471 (La. 5/20/97), 694 So.2d 215, decision.

Authority: La. Const. art. III, § 2(A)

1993 La. Acts 690

Dow Hydrocarbons & Resources v. Kennedy et al., 96-2471 (La. 5/20/97), 694 So.2d 215

Analysis/Discussion: Ouachita Coca-Cola Bottling Co., Inc., relied upon 1993 La. Acts 690 in calculating its 1996 corporation income tax liability. Under the provisions of 1993 La. Acts 690, dividends, interest, and gains on sales of assets not made in the regular course of business were changed from allocable income to apportionable income. However, in 1997, in *Dow Hydrocarbons & Resources v. Kennedy et al.*, 96-2471 (La. 5/20/97), 694 So.2d 215, the Supreme Court of Louisiana affirmed the decision of the 19th Judicial District Court that declared 1993 La. Acts 690 unconstitutional. The Supreme Court of Louisiana also declared 1993 La. Acts 690 *void ab initio* and in violation of La. Const. art. III, § 2(A). La. Const. art. III, § 2(A) provides: "No measure levying a new tax or increasing an existing tax shall be introduced or enacted during a regular session held in an odd-numbered year." 1993 La. Acts 690 was passed on June 21, 1993, during a regular session. In *Dow Hydrocarbons & Resources v. Kennedy et al.*, 96-2471 (La. 5/20/97), 694 So.2d 215, the Supreme Court of Louisiana also held that 1993 La. Acts 690 "changed the classification of dividend income from allocable to apportionable income." The court determined that this reclassification was either a new tax or an increase of an existing tax and as such violated La. Const. art. III, § 2(A).

Relying upon 1993 La. Acts 690, Ouachita Coca-Cola Bottling Co., Inc., understated its 1996 income tax liability. As a result, accrued interest was charged on its additional income tax liability. The resulting question was whether or not the taxpayer should be liable for the accrual of the additional

written statement to provide guidance to the public and to Department of Revenue employees. An SA/SNA is a written statement issued to announce the Department's acceptance or rejection of specific unfavorable court or administrative decisions. If a decision covers several disputed issues, an SA/SNA may apply to just one issue, or more, as specified. An SA/SNA is not binding on the public, but is binding on the Department unless superceded by a later SA/SNA, declaratory ruling, rule, statute, or court case.

interest. The Board of Tax Appeals in *Ouachita Coca-Cola Bottling, Co., Inc. v. Secretary, Department of Revenue*, B.T.A. Docket No. 5382 (2001), determined that the interest shall accrue from May 20, 1997, the date of the *Dow Hydrocarbons & Resources v. Kennedy et al.*, 96-2471 (La. 5/20/97), 694 So.2d 215, decision.

Conclusion: Any corporation that is liable for accrued interest on the corporation's income tax liability because it relied on 1993 La. Acts 690 to calculate its original tax liability shall calculate such interest from May 20, 1997. This shall only apply to the computation of interest on additional tax resulting from an original underpayment of tax due to reliance of the provisions of 1993 La. Acts 690. Interest on deficiencies arising from other reasons is not affected.

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