

**Statement of Acquiescence
No. 03- 001
September 10, 2003
Individual Income Tax**

Joseph P. and Ann H. Perez v. Secretary of the Louisiana Department of Revenue and Taxation, 98-0330 (La.App. 1 Cir, 3/8/99), 731 So.2d 406

Purpose: This Statement of Acquiescence applies to residents of Louisiana who are shareholders of S corporations and file a Louisiana resident individual income tax return claiming a credit for the income tax paid by the corporation to another state. The Court of Appeal of Louisiana, First Circuit, in *Joseph P. and Ann H. Perez v. Secretary of the Louisiana Department of Revenue and Taxation, 98-0330 (La.App. 1 Cir, 3/8/99), 731 So.2d 406*, determined that another state's income tax paid by an S corporation may be considered a net income tax paid by individual shareholders of the S corporation, and such individuals may be entitled to a credit for tax paid to another state against their Louisiana tax liability.

Authority: La. Rev. Stat. Ann. § 47:33

City of New Orleans v. Scramuzza, 507 So.2d 215 (La. 1987)

Analysis/Discussion: Joseph P. and Ann H. Perez were Louisiana residents and sole shareholders of a Louisiana S corporation. The Perezes filed a Louisiana resident individual income tax return claiming a credit for the tax paid by the S corporation to another state based on La. Rev. Stat. Ann. § 47:33. In pertinent part, La. Rev. Stat. Ann. § 47:33(A) provides:

“Subject to the following conditions, resident individuals shall be allowed a credit against the taxes imposed by this Chapter for net income taxes imposed by and paid to another state on income taxable under this Chapter, provided that: (1) The credit shall be allowed only for taxes paid to the other state on income which is taxable under its law irrespective of the residence or domicile of the recipient.”

The Louisiana Department of Revenue and Taxation denied their claim. The Perezes appealed to the Board of Tax Appeals who upheld the assessment, viewing the tax as the obligation of the S corporation and not an obligation of the Perezes individually. The Perezes then appealed to the Nineteenth Judicial District Court who affirmed the decision.

The Court of Appeal of Louisiana, First Circuit, reversed the decision of the district court. The appellate court determined that the “... resolution of this case initially turns on the question of whether the Texas franchise tax is a net income tax under Louisiana law.” In order to resolve this question, the court relied upon the decision of the Supreme Court of Louisiana in *City of New Orleans v. Scramuzza, 507 So.2d 215 (La. 1987)*, where the court held that “Ultimately, it is not what the tax is called that is important. The decisive element is how the tax operates.”

The Court of Appeal of Louisiana, First Circuit, concluded that “the Texas tax, to the extent it was imposed on an income base, is a net income tax imposed by and paid to another state on income also taxable under Louisiana's income tax laws, as required for the application of La. Rev. Stat. Ann. § 47:33.” The Court of Appeal also held that “... the fact that the corporation paid the Texas tax does

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not prevent the tax from being available to an individual taxpayer for a credit pursuant to La. Rev. Stat. Ann. § 47:33.”

Conclusion: Taxes on net income paid by an S corporation shall be considered taxes on net income paid by shareholders of the S corporation for purposes of computing the credit allowed under La. Rev. Stat. Ann. § 47:33.

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