CORPORATION INCOME AND FRANCHISE TAXES LAWS AND REGULATIONS

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Corporation Income and Franchise Taxes Division
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Foreword

This publication contains general information on the corporation income tax and the corporation franchise tax. It also contains the current text of laws and regulations about the Louisiana corporation income tax and corporation franchise tax, as well as miscellaneous tax provisions that affect one or both of these corporation taxes.

The statutes contained within this publication are current through the 1997 Regular Session of the Louisiana Legislature. Listed after each statute is the pertinent regulation or rule that has been promulgated by this Department in accordance with the Administrative Procedures Act. The codified section numbers used for the regulations are those appearing in Title 61, Part I, of the Louisiana Administrative Code.

If you have any questions or need additional information, please contact our Corporation Income and Franchise Taxes Division at (504) 925-4611.

John Kennedy

John Neely Kennedy
Secretary
Louisiana Department of Revenue

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Corporation Income Tax

Who must file

All corporations deriving income from Louisiana sources, whether or not they have any net income, must file an income tax return. Corporations that obtain a ruling of exemption from the Internal Revenue Service must submit a copy of the ruling to the Department to obtain an exemption.

Rate of Tax

Corporations will pay tax on net income computed at the following rates:

- Four percent (4%) on the first $25,000 of net income
- Five percent (5%) on the next $25,000
- Six percent (6%) on the next $50,000
- Seven percent (7%) on the next $100,000
- Eight percent (8%) on the excess over $200,000

Date tax due

Returns and payments are due on or before the fifteenth day of the fourth month following the close of an accounting period (April 15 for a calendar year).

Extension of time to file returns

The secretary may grant a reasonable extension of time to file the combined corporate income and franchise tax returns not to exceed seven months from the due date of the return or the extended due date of the federal income tax return, whichever is later. A copy of the extension request granted by the Internal Revenue Service **must** be attached to your Louisiana return.

Declaration of estimated tax

Any corporation that can reasonably expect its estimated tax for the taxable year to be one thousand dollars ($1,000) or more must file a declaration of estimated tax and pay installments of the tax according to a schedule shown on the declaration voucher (Form ICFT-620ES). Underpayment of or failure to pay estimated tax may result in an additional amount due determined at the rate of twelve percent (12%) per annum on the amount underpaid.

Date payment due

Any tax not previously remitted by declaration must be paid on or before the original due date of the return.

Forms

	Corporation Income and Franchise Tax Return (ICFT-620)
R-6942	Corporation Apportionment and Allocation Schedules (ICFT-620A)
R-6975	Estimated Income Tax Declaration Voucher (ICFT-620ES)
R-6612	Application for Extension of Time to File Corporation Income and Franchise Tax Return
R-6701	Request for a Tentative Refund Resulting from the Election to Carryback a Net Operating Loss (CIT-624)

Assistance

Corporation Income and Franchise Taxes Division
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Baton Rouge, LA 70821•0201
504•925•4611 (Assistance)
504•925•7532 (Forms)

Corporation Franchise Tax

Who must file

Any corporation meeting any one or more of the following provisions, unless specifically exempted under the provisions of R.S. 47:608, must file a Louisiana corporation franchise tax return:

(1) Organized under the laws of Louisiana.

(2) Qualified to do business in this state or actually doing business in this state.

(3) Exercising or continuing the corporate charter within this state.

(4) Owning or using any part, or all, of the corporate capital, plant, or other property in this state in a corporate capacity.

Rate of tax

The tax liability for the year shall be computed at the rate of one dollar and fifty cents ($1.50) for each one thousand dollars ($1,000) or major fraction thereof up to three hundred thousand dollars ($300,000) of capital employed in Louisiana, and three dollars ($3) for each one thousand dollars ($1,000) or major fraction thereof in excess of three hundred thousand dollars ($300,000) of capital employed in Louisiana, subject to the requirement that the minimum tax is ten dollars ($10) per year. For information concerning capital employed in Louisiana and computation of the tax, see the instructions for the Corporation Income and Franchise Tax Return, and the Apportionment and Allocation Schedules, R-6942. The corporation franchise tax due on the initial return is ten dollars ($10).

Date returns due

Initial return: An initial return, covering the period beginning with the date the corporation first becomes liable for filing a return and ending with the next close of an accounting period, must be filed on or before the fifteenth day of the third month after the corporation first becomes liable.

Annual return: Louisiana corporation franchise tax accrues on the first day of each accounting year, and the return for that period must be filed on or before the fifteenth day of the fourth month of that accounting year.

Extension of time to file returns

The secretary may grant a reasonable extension of time to file the combined corporation income and franchise tax returns not to exceed seven months from the due date of the return or the extended due date of the federal income tax return, whichever is later. A copy of the request filed with the Internal Revenue Service **must** be attached to your Louisiana return.

Date payment due

All Louisiana corporation franchise taxes must be paid by the earlier of: (1) the original due date of the return or (2) the filing of the return.

Forms

	Corporation Income and Franchise Tax Return (ICFT-620)
R-6942	Apportionment and Allocation Schedules (ICFT-620A)
R-6612	Application for Extension of Time for Filing
R-6906A	Initial Franchise Tax Return (CFT-4)

Assistance

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504•925•7532 (Forms)

Corporation Income Tax Laws and Regulations

R.S. 47:287.2. Short title

This Act shall be known as and may be cited as the "Louisiana Corporation Income Tax Act".

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.11. Tax imposed

A. There shall be levied, collected, and paid for each taxable year a tax upon the Louisiana taxable income of corporations other than insurance companies as hereinafter provided.

B. Corporations shall be taxed on their Louisiana taxable income, except as otherwise exempted.

C. Taxable years affected.

(1) The provisions of this Part shall apply to taxable years beginning after December 31, 1986, including taxable years deemed to have commenced on January 1, 1987, by the provisions of R.S. 47:287.443.

(2) Taxable years beginning prior to January 1, 1987, shall not be affected by the provisions of this Part, but shall remain subject to the applicable provisions of R.S. 47:21 et seq.

D. Insurance companies shall not be subject to this Part but shall continue to be taxed pursuant to the provisions of R.S. 47:21 and R.S. 47:221 et seq., and as otherwise provided by law.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.12. Rates of tax

The tax to be assessed, levied, collected, and paid upon the Louisiana taxable income of every corporation shall be computed at the rate of:

(1) Four percent upon the first twenty-five thousand dollars of Louisiana taxable income.

(2) Five percent on the amount of Louisiana taxable income above twenty-five thousand dollars but not in excess of fifty thousand dollars.

(3) Six percent on the amount of Louisiana taxable income above fifty thousand dollars but not in excess of one hundred thousand dollars.

(4) Seven percent on the amount of Louisiana taxable income above one hundred thousand dollars but not in excess of two hundred thousand dollars.

(5) Eight percent on all Louisiana taxable income in excess of two hundred thousand dollars.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.34. Credits against the tax

There shall be allowed as a credit against the tax imposed by this Part for the taxable year a credit as provided in R.S. 47:287.749, R.S. 47:287.752, R.S. 47:287.753, R.S. 47:287.755, and R.S. 47:287.756.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1991, No. 312, §1, effective January 1, 1991; Acts 1994 3rd Ex.Sess., No. 104, §1.

R.S. 47:287.61. Gross income defined

"Gross income" of a corporation means the same items and the same dollar amount required by federal law to be reported as gross income on the corporation's federal income tax return for the same taxable year, subject to the modifications specified in this Part, whether or not a federal income tax return is actually filed.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.63. Allowable deductions defined

"Allowable deductions" for a taxable year means the deductions from federal gross income allowed by federal law in the computation of taxable income of a corporation for the same taxable year, subject to the modifications specified in this Part.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.65. Net income defined

"Net income" of a corporation for a taxable year means the taxable income of the corporation computed in accordance with federal law for the same accounting period and under the same method of accounting, including statutorily required accounting adjustments, subject to the modifications specified in this Part.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.67. Louisiana net income defined

"Louisiana net income" means net income which is earned within or derived from sources within the state of Louisiana.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.69. Louisiana taxable income defined

"Louisiana taxable income" means Louisiana net income, after adjustments, less the federal income tax deduction allowed by R.S. 47:287.85. "After adjustments" means after the application of the net operating loss adjustment allowed by R.S. 47:287.86.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.71. Modifications to federal gross income

A. There shall be added to gross income determined under federal law, unless already included therein, the following items:

(1) Interest on obligations or securities issued by other states or their political or municipal subdivisions.

(2) Interest or dividend income on obligations or securities issued by any authority, commission, or instrumentality of the United States, its territories or possessions, or of any foreign government, which the laws or treaties of the United States exempt from federal income tax, but not from state income taxes.

(3) Any gain on the sale of assets not recognized due to the provisions of Section 633(d) of the Tax Reform Act of 1986 which provides a transitional rule for certain small corporations.

(4) Any gain not recognized under I.R.C. Section 1033 resulting from the involuntary conversion of property located in Louisiana not replaced with property located in Louisiana.

(5) Inclusions from Subpart F of this Part, where applicable.

B. There shall be subtracted from gross income determined under federal law, unless already excluded therefrom, the following items:

(1) Income which Louisiana is prohibited from taxing by the constitution or laws of the United States.

(2) Funds accrued by a corporation engaged in operating a public transportation system from any federal, state, or municipal governmental entity to subsidize the operation and maintenance of such a transportation system.

(3) Refunds of Louisiana corporation income tax received during the taxable year.

(4) Interest on obligations or securities issued by the state of Louisiana or its political or municipal subdivisions.

(5) Foreign dividend "gross-up". Any amounts required by I.R.C. Section 78 to be included in gross income.

(6) Amounts received as dividend income from banking corporations organized under the laws of Louisiana, from national banking corporations doing business in Louisiana, and from capital stock associations whose stock is subject to ad valorem taxation.

(7) Exclusions from Subpart F of this Part, where applicable.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1987, No. 5, §1, eff. May 20, 1987.

R.S. 47:287.73. Modifications to deductions from gross income allowed by federal law

A. The deductions from federal gross income allowed by federal law shall be modified by the deletions and additions specified herein.

B. Deletions. The following deductions allowed by federal law are declared inoperative and shall not form a part of allowable deductions in the computation of net income:

(1) The net operating loss deduction allowed by I.R.C. Section 172.

(2) Income taxes imposed by this Part.

(3) The dividends received deductions allowed by I.R.C. Sections 243, 244, and 245.

(4) Depletion for oil and gas wells.

(5) Deletions required by the provisions of Subpart F of this Part, where applicable.

C. Additions. The following items are declared allowable as deductions in the computation of net income and shall be added to the deductions allowed under federal law to the extent not already included therein:

(1) Dividends received deduction. The amount received as dividends from another corporation, to the extent that:

(a) Such dividends have been earned within the state of Louisiana, and

(b) The income (surplus) from which such dividends were paid has been taxed under this Part.

(2) Depletion for oil and gas wells is allowed as a deduction as provided by R.S. 47:287.745.

(3) Intangible drilling and development costs. Intangible drilling and development costs are allowed as a deduction as provided by R.S. 47:287.743.

(4) Expenses disallowed by I.R.C. Section 280(C). Expenses which would otherwise be deductible under federal law, but for the disallowance provisions of I.R.C. Section 280(C), relative to certain expenses for which credits are allowable.

(5) Additions required by the provisions of Subpart F of this Part, where applicable.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

LAC 61:I.1115. Modifications to Deductions from Gross Income Allowed by Federal Law

A. Dividends Received by a Corporation. R.S. 47:287.73(C)(1) allows a deduction for dividends received by one corporation from another to the extent that the income from which the dividends are paid has been earned from Louisiana sources and has borne Louisiana income tax. The amount of the income from which the dividends are paid that has borne Louisiana income tax shall be determined by relating the Louisiana net taxable income to the total book net income of the declaring corporation, less adjustments.

B. Example. During the calendar year 1986, ABC Inc., a Louisiana corporation, derived a total Louisiana net taxable income of $10,000 and $10,000 of net income from Texas. The depreciation expense deducted on the tax return exceeds depreciation expense deducted on the books by $10,000. The depletion expense deducted on the tax return exceeds depletion expense deducted on the books by $10,000 which is a noncompensating difference. The total net income determined from the books of the corporation is $60,000. The book income includes $20,000 of interest on U.S. obligations that is not included in taxable income. On January 7, 1987, the corporation paid a dividend of $30,000. The allowable deduction to recipient corporations is computed as follows:

Items	*Per Books*	*Per Louisiana Income Tax Return*
Net Income	*$60,000*	*$10,000*
Less: Excess of tax depreciation over book depreciation	*$10,000*	
Adjusted Net Income	*$50,000*	*$10,000*
Ratio		*20%*
Dividend Paid		*$30,000*
Allowable Deduction		*$6,000*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.73.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:95 (February 1988).

R.S. 47:287.75. Computation of net income

The net income of a corporation is computed by subtracting allowable deductions from gross income for a taxable year.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.77. Computation of Louisiana net income or loss

Louisiana net income or loss of a corporation is determined by applying the allocation and apportionment provisions of this Part to the corporation's gross income, allowable deductions, and net income for a taxable year as determined and computed pursuant to this Part.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.79. Computation of Louisiana taxable income

Louisiana taxable income is computed by subtracting the federal income tax deduction allowed by R.S. 47:287.85 from Louisiana net income, after adjustments.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.81. Items not deductible; amounts attributable to income not taxed

In computing Louisiana net income or Louisiana taxable income no deduction shall in any case be allowed in respect of any amount otherwise allowable as a deduction which is attributable to income which, for any reason whatsoever, will not bear the tax imposed by this Part.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.83. Taxes not deductible

A. In computing Louisiana taxable income, no federal income tax deduction shall be allowed on net income upon which no Louisiana income tax has been incurred, or upon which, for any reason whatsoever, no Louisiana income tax will be paid. For purposes of this Section, the federal income tax deduction may be recomputed and reduced to reflect the application of a net operating loss adjustment. Any such reduction shall be taken into account as prescribed by the secretary.

B. The alternative minimum tax is a federal income tax deductible to the extent that it is applicable to regular federal taxable income. Any alternative minimum tax paid on tax preference items is not deductible. The deductible portion of the alternative minimum tax shall be determined as prescribed by the secretary.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

LAC 61:I.1122. Taxes Not Deductible

A. General. R.S. 47:287.83 provides that federal income tax levied on net income upon which no Louisiana income tax has been incurred, or upon which, for any reason whatsoever, no Louisiana income tax will be paid, is not deductible.

B. Federal Alternative Minimum Tax

1. Federal alternative minimum tax attributable to tax preferenced items such as, but not limited to, accelerated depreciation, depletion, and intangible drilling and development cost, is not deductible. The nondeductible portion of federal alternative minimum tax after credits is the excess of the total federal alternative minimum tax after credits over the deductible portion of federal alternative minimum tax attributed to Louisiana net income.

2. Federal alternative minimum tax on federal alternative minimum taxable net income from sources other than tax preferenced items is deductible to the extent the alternative minimum taxable net income is taxed by Louisiana. The deductible portion of federal alternative minimum tax attributable to Louisiana apportionable and allocable net income, which is taxed at alternative minimum taxable income rates, is the result obtained by multiplying the federal alternative minimum tax after credits by a fraction, the numerator of which is Louisiana apportionable and allocable net income which is taxed at alternative minimum *taxable net income rates and the denominator of which is the excess of federal alternative minimum taxable income over regular federal taxable income. The determination of the amount of deductible and nondeductible federal alternative minimum tax is illustrated by the following example.*

C. Example. The ABC Corporation earns 100 percent of its net income in Louisiana. The ABC Corporation is on a fiscal year beginning 7-1-87 and ending 6-30-88. ABC's regular federal taxable income for fiscal year ending June 30, 1988, was $200,000 and regular federal income tax was $56,250. Book net income before federal income tax was $450,000. Of the total difference between book and tax net income, $150,000 was due to the tax preferenced item, excess tax depreciation expense over book depreciation expense, and $100,000 was due to interest income earned on municipal bonds exempt from regular federal income tax, but not from Louisiana income tax. Louisiana apportionable and allocable net income before the federal income tax deduction is $300,000.

Computation of Alternative Minimum Taxable Income

1.	*Regular federal taxable income*	*$200,000*
2.	*Income from tax preferenced items (excess tax depreciation over book depreciation expense)*	*$150,000*
3.	*Book income adjustment (interest on municipal bonds issued by a state or its political subdivisions other than Louisiana: 100,000 multiplied by 50%*	*$50,000*
4.	*Alternative minimum taxable income (AMTI, the sum of lines 1, 2 and 3)*	*$400,000*

Computation of Alternative Minimum Tax

5.	*Alternative minimum taxable income (ATMI from line 4)*	*$400,000*
6.	*Less exemption*	*-0-*
7.	*AMTI after exemption*	*$400,000*
8.	*Federal alternative minimum tax rate*	*20%*
9.	*Tentative alternative minimum tax rate (line 7 multiplied by line 8)*	*$80,000*
10.	*Less credits*	*-0-*
11.	*Less regular federal income tax (after credits)*	*$56,250*
12.	*Alternative minimum tax (AMT line 9 minus line 11)*	*$23,750*

Computation of Alternative Minimum Tax Attributable to Louisiana Net Income Which is Taxed at AMTI Rates

13.	*Louisiana allocable and apportionable net income*	*$300,000*
14.	*Less: 1. Louisiana net income which is taxed at federal ordinary and alternative capital gain tax rates $200,000* *2. Louisiana net income which is not taxed by federal (interest on municipal bonds $100,000 multiplied by 50%) $50,000*	*$250,000*
15.	*Louisiana net income which is taxed at AMTI rates (line 13 minus line 14)*	*$50,000*
16.	*Excess of AMTI over regular federal taxable income ($400,000 minus $200,000)*	*$200,000*
17.	*Ratio (Louisiana net income which is taxed at AMTI rates over the excess of AMTI over regular federal taxable income, line 15 divided by line 16)*	*25%*
18.	*AMT (from line 12)*	*$23,750*
19.	*AMT deductible (the amount attributable to Louisiana net income which is taxed at AMTI rates, line 18 multiplied by line 17)*	*$5,938*
20.	*AMT not deductible (line 18 minus line 19)*	*$17,812*

D. Net Operating Loss Carryback. Federal income tax deducted from Louisiana net income in taxable periods to which a net operating loss is carried back shall be computed to determine the amount of federal income tax attributable to net income which is taxed by the federal but which is not taxed by Louisiana as a result of a net operating loss carryback. Federal income tax attributable to net income which is not taxed by Louisiana as a result of a net operating loss carryback is the excess of allowable federal income tax deducted from Louisiana net income before the net operating loss carryback over the allowable deduction after the net operating loss carryback. The federal income tax attributable to net income which is not taxed by Louisiana shall be treated as a reduction to the net operating loss deduction. If the amount of the federal income tax attributable to the net income which is not taxed by Louisiana exceeds the Louisiana net operating loss deduction, such excess shall be treated as income in the year of the transaction that gave rise to the excess. These principles are illustrated in the following examples.

E. *Examples:*

Example 1

The ABC Corporation does not include its net income in a consolidated federal income return as provided by Section 1501 of the Internal Revenue Code. ABC files state and federal income tax returns on a calendar year basis. ABC Corporation's net income and other financial information used to file state and federal income tax returns for the four-year period ending December 31, 1987, include the following:

Taxable Periods	***1984***	***1985***	***1986***	***1987***
Federal net income or (loss)	*$2,000,000*	*$4,000,000*	*$5,000,000*	*$600,000*
Louisiana net income or (loss)	*1,200,000*	*1,800,000*	*3,000,000*	*(1,000,000)*
Federal income tax	*800,000*	*1,600,000*	*2,000,000*	*240,000*
Federal income tax deducted from Louisiana net income	*467,280*	*706,240*	*1,171,200*	*-0-*
State income tax deducted from federal net income but not Louisiana net income	*57,500*	*86,000*	*144,000*	*-0-*
Income tax apportionment ratio	*55%*	*40%*	*50%*	*50%*
Louisiana taxable income	*732,720*	*1,093,760*	*1,828,800*	*-0-*

ABC Corporation elects to carry their 1987 Louisiana net operating loss back to 1984 pursuant to R.S. 47:287.86. Federal income tax attributable to net income which is not taxed by Louisiana as a result of the net operating loss carryback is computed as follows:

1. *Louisiana net income, 1984 .... $1,200,000*
2. *Less: State income tax deduction allowed by the federal but not Louisiana $57,500*
   Multiplied by the income tax apportionment ratio 55% Balance $31,625
   Louisiana net operating loss, 1987 .... $1,000,000
   Adjustment $1,031,625
3. *Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2) $168,375*
4. *Federal net income, 1984 .... $2,000,000*
5. *Ratio (line 3 divided by line 4) 8.4188%*
6. *Federal income tax, 1984 .... $800,000*
7. *Allowable federal income tax deduction after the Louisiana net operating loss carryback (line 6 multiplied by line 5) $67,350*
8. *Federal income tax deducted from Louisiana net income before the net operating loss carryback $467,280*
9. *Federal income tax attributable to net income which is not taxed by Louisiana (line 8 minus line 7) $399,930*
10. *Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana $1,000,000*
11. *Federal income tax attributable to net income which is not taxed by Louisiana (from line 9) $399,930*
12. *Louisiana net operating loss after deduction for federal income tax attributable to net income which is not taxed by Louisiana (line 10 minus line 11) $600,070*

Example 2

Assume the same facts in Example 1 except that the ABC Corporation sustained a $2,000,000 federal net operating loss in 1987 and elects to carry the federal loss back to 1984. Federal income tax after the net operating loss carryback is zero.

1.	*Louisiana net income, 1984*		*$1,200,000*
2.	*Less: State income tax deduction allowed by the federal but not Louisiana*	*$57,500*	
	Multiplied by the income tax apportionment ratio	*55%*	
	Balance	*$31,625*	
	Louisiana net operating loss, 1987	*$1,000,000*	
	Adjustment		*$1,031,625*
3.	*Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)*		*$168,375*
4.	*Federal net income, 1984*		*$2,000,000*
5.	*Federal net operating loss carryback from 1987*		*$(2,000,000)*
6.	*Federal net income after federal net operating loss carryback from 1987 (line 4 minus line 5)*		*-0-*
7.	*Ratio (line 3 divided by line 6)*		*-0-*
8.	*Federal income tax after the federal net operating loss carryback*		*-0-*
9.	*Allowable federal income tax deduction after the net operating loss carryback (line 8 multiplied by line 7)*		*-0-*
10.	*Federal income tax deducted from Louisiana net income before the net operating loss carryback*		*$467,280*
11.	*Federal income tax attributable to net income which is not taxed by Louisiana (line 10 minus line 9)*		*$467,280*
12.	*Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana*		*$1,000,000*
13.	*Federal income tax attributable to net income which is not taxed by Louisiana (from line 11)*		*$467,280*
14.	*Louisiana net operating loss after deduction for federal income tax attributable to net income which is not taxed by Louisiana (line 12 minus line 13)*		*$532,720*

Example 3

Assume the same facts in Examples 1 and 2 except that the Louisiana and federal net operating losses in 1987 are $350,000 and $1,800,000 respectively. Federal income tax after the net operating loss carryback is $80,000.

1.	*Louisiana net income, 1984*		*$1,200,000*
2.	*Less: State income tax deduction allowed by the federal but not Louisiana*	*$57,500*	
	Multiplied by the income tax apportionment ratio	*55%*	
	Balance	*$31,625*	
	Louisiana net operating loss, 1987	*$350,000*	
	Adjustment		*$381,625*
3.	*Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)*		*$818,375*
4.	*Federal net income, 1984*		*$2,000,000*
5.	*Federal net operating loss carryback from 1987*		*$(1,800,000)*
6.	*Federal net income after federal net operating loss carryback from 1987 (line 4 minus line 5)*		*$200,000*
7.	*Ratio (line 3 divided by line 6)*		*100%*
8.	*Federal income tax after the federal net operating loss carryback*		*$80,000*
9.	*Allowable federal income tax deduction after the net operating loss carryback (line 8 times line 7)*		*$80,000*
10.	*Federal income tax deducted from Louisiana net income before the net operating loss carryback*		*$467,280*

11. Federal income tax attributable to net income which is not taxed by Louisiana, 1984 (line 10 minus line 9) $387,280
12. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana $350,000
13. Federal income tax attributable to net income which is not taxed by Louisiana (from line 11) $387,280
14. Louisiana net operating loss after deduction for the amount of federal income tax attributable to net income which is not taxed by Louisiana (line 12 minus line 13) .... -0-
15. Additional Louisiana taxable income for 1987 due to excess of federal income tax attributable to net income which is not taxed by Louisiana over the Louisiana net operating loss (line 13 minus line 12) $37,280

F. Definitions. For the purposes of this Section, alternative minimum tax, regular federal income tax, alternative tax on capital gains, and regular tax on ordinary net income are defined as provided in §1123.F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.83.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:96 (February 1988).

R.S. 47:287.85. Federal income tax deduction

A. In computing Louisiana taxable income under R.S. 47:287.79, there shall be allowed as a deduction federal income taxes paid.

B. For purposes of this Section, federal income taxes shall include taxes based on net income, accumulated earnings, war profits, excess profits, personal holding company income, and tax from recomputation of investment credit. The alternative minimum tax is a federal income tax allowable to the extent provided in R.S. 47:287.83(B).

C. (1) The amount of federal income tax to be deducted shall be that portion of the total federal income tax, after all credits, which is levied with respect to the particular income derived from sources in this state to be computed in accordance with rules and regulations prescribed by the secretary. Proper adjustment shall be made for the actual tax rates applying to different classes of income and for all differences in the computation of net income for purposes of federal income taxation as compared to the computation of net income under this Part.

(2) "Credits" as used in this Subsection does not include overpayments of prior year taxes allowed as a credit, estimated tax payments or similar prepayments, or credit for prior year alternative minimum tax which is allowed as a credit against the current regular federal income tax.

D. A corporation that files or is included with affiliates in a consolidated federal income tax return shall compute its federal income tax deduction in accordance with rules and regulations prescribed by the secretary.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1987, No. 53, §1.

LAC 61:I.1123. Federal Income Tax Deduction

A. General. R.S. 47:287.85(C) permits corporations to claim as a deduction in computing net income that portion of the federal income tax levied with respect to the Louisiana net income, which is applicable to the year for which the Louisiana return is filed, regardless of the method of accounting utilized (cash, accrual, etc.). For determination of the deductible amount of federal alternative minimum tax attributable to Louisiana net income, refer to §1122. When a corporation includes its net income in a consolidated federal income tax return, total federal income tax for the purpose of this Section shall be the amount determined pursuant to §1123.E.

B. Computations. The deductible portion of the federal income tax, the tax attributable to Louisiana income, is the sum of the amounts determined in §1123.B.1 and 2.

1. The deductible portion of federal income tax attributable to Louisiana apportionable and allocable net income which is taxed at alternative capital gain rates is the result obtained by multiplying the federal income tax which is calculated at alternative capital gain rates by a fraction, the numerator of which is Louisiana apportionable and allocable net income which is taxed at alternative capital gain rates and the denominator of which is federal net income which is taxed at alternative capital gain rates.

2. The deductible portion of federal income tax attributable to Louisiana apportionable and allocable net income, less adjustment for the net operating loss deduction if applicable, which is taxed at ordinary rates, is the result obtained by multiplying the federal income tax which is calculated at ordinary rates by a fraction, the numerator of which is Louisiana apportionable and allocable net income, less adjustment for the net operating loss deduction if applicable, which is taxed at ordinary rates and the denominator of which is federal net income which is taxed at ordinary rates.

C. Numerator. The numerator to be used in §1123.B shall be determined as set forth in §1123.C.1 and 2.

1. The numerator in the case of Louisiana net income which is taxed by federal at alternative capital gain rates is the sum of:

a. the amount of net apportionable and net allocable income, subject to tax at alternative capital gain rates for federal income tax purposes, apportioned and allocated to Louisiana;

b. any compensating item of income attributable to Louisiana and which is taxed by federal at alternative capital gain rates but which is not taxed by Louisiana; and

c. any compensating loss item of income, of a character which would be allowable by federal in arriving at income which is taxed at alternative capital gain rates, attributed to and allowed by Louisiana but not allowed by federal, reduced by the sum of:

d. any compensating item of income, of a character which would be subject to tax by federal at alternative capital gain rates, attributed to and taxed by Louisiana but which is not taxed by federal;

e. any compensating loss item of income attributable to Louisiana and allowed by federal in arriving at income which is taxed at alternative capital gain rates but not allowed by Louisiana; and

f. any excess of the sum of:

i. any noncompensating loss item of income attributable to Louisiana and allowed by federal in arriving at income which is taxed at alternative capital gain rates, but not allowed by Louisiana, and

ii. any noncompensating item of income, of a character which would be subject to tax by federal at alternative capital gain rates, attributed to and taxed by Louisiana but which is not taxed by federal, over

iii. any noncompensating loss item of income, of a character which would be allowable in arriving at income which is taxed at alternative capital gain rates by federal, attributed to and allowed by Louisiana but not allowed by federal.

2. The numerator in the case of Louisiana net income which is taxed by federal at ordinary rates is the sum of:

a. the amount of net apportionable and net allocable income, less adjustment for the net operating loss deduction if applicable, subject to tax at ordinary rates for federal income tax purposes, apportioned and allocated to Louisiana;

b. any compensating item of gross income attributable to Louisiana and taxed by federal at ordinary rates but which is not taxed by Louisiana; and

c. any compensating item of deduction, of a character which would be allowable by federal in arriving at income which is taxed at ordinary rates, attributed to and allowed by Louisiana but not allowed by federal, and not attributable to any item of gross income taxable by Louisiana but not by federal; reduced by the sum of:

d. any compensating item of gross income, which would be subject to tax by federal at ordinary rates, attributed to and taxed by Louisiana but which is not taxed by federal;

e. any compensating item of deduction attributable to Louisiana and allowed by federal in arriving at income which is taxed at ordinary rates but not allowed by Louisiana;

f. any excess of the sum of:

i. any noncompensating item of deduction attributable to Louisiana and allowed by federal in arriving at income which is taxed at ordinary rates, but not allowed by Louisiana, and not attributable to any item of gross income taxable by federal but not by Louisiana; and

ii. any noncompensating item of gross income, of a character which would be subject to tax at ordinary rates, attributed to and taxed by Louisiana but which is not taxed by federal; over

iii any noncompensating item of deduction, which would be allowable by federal in arriving at income which is taxed at ordinary rates, attributed to and allowed by Louisiana but not allowed by federal, and not attributable to any item of gross income taxable by Louisiana but which is not by federal.

D. Example. The following example illustrates these principles. Facts: The income reported and deductions claimed by ABC, Inc., a Delaware corporation having its commercial domicile in Louisiana and having several places of business outside this state, are reflected below. The difference between the federal depreciation deduction and the depreciation deducted in arriving at total net income is a compensating item. One-half of the total royalty income, depletion, and other expenses related thereto are attributable to a Louisiana oil property. There are $15,000 in expenses attributable to the royalty income in addition to the depletion deduction. The portion of net income from royalties allocable to Louisiana is $25,000. Of the total profit from the sale of capital assets, $25,000 is allocable to Louisiana.

	—— RETURNS ——	
Items	Federal	Louisiana
Income		
Gross profit from sales	$1,400,000	$1,400,000
Royalties	100,000	100,000
Interest—Bond, State of Mississippi	-0-	5,000
Interest—Bond, U.S. Government	5,000	-0-
Long-term gain from sale of capital assets	100,000	100,000
Total Income	$1,605,000	$1,605,000
Deductions		
Louisiana income tax	10,000	-0-
Officers' compensation	50,000	50,000
Repairs	10,000	10,000
Interest	15,000	15,000
Bad debts	5,000	5,000
Depletion	27,500	35,000
Depreciation	25,000	35,000
Contributions	5,000	5,000
Other deductions	350,000	350,000
Total deductions	$497,500	$505,000
Net Income	$1,107,500	$1,100,000
Federal income tax—		
Ordinary income	$518,400	
Capital gains	25,000	
Total	$543,400	

The taxpayer files on the apportionment basis and the following computation discloses the net allocable and net apportionable income derived from Louisiana sources.

Total net income		$1,100,000
Deduct allocable income		
Profit from sale of capital assets	$100,000	
Interest—Bonds, State of Mississippi	5,000	
Net royalty income	50,000	$155,000
Net income for apportionment		$945,000
Net income apportioned to Louisiana (20% of $945,000)		$189,000
Add Louisiana allocable income		
Interest	$5,000	
Profit from sale of capital assets	25,000	
Royalty income	25,000	55,000
Total Louisiana apportionable and allocable income		$244,000

2. Computations		*Ordinary Rates*	*Alternative Capital Gains Rates*
Net income apportioned and allocated to Louisiana		*$219,000*	*$25,000*
Add: Compensating items of income attributable to Louisiana and taxed by federal but which is not taxed by Louisiana		*-0-*	*-0-*
Compensating items of deduction attributed to Louisiana and allowed by Louisiana but not allowed by federal depreciation (20% of $10,000)		*2,000*	*-0-*
Total:		*$221,000*	*$25,000*
Deduct: Compensating items of income attributed to and taxed by Louisiana but not taxed by federal		*-0-*	
Compensating items of deduction attributable to Louisiana and allowed by federal but not allowed by Louisiana		*-0-*	*-0-*
TOTAL:		*$221,000*	*$25,000*
Excess of the sum of noncompensating items of deduction attributable to Louisiana and allowed by federal but not allowed by Louisiana			
*Louisiana income tax (20% of $10,000)**	*$2,000*		
Noncompensating items of gross income attributed to and taxed by Louisiana but which is not taxed by federal			
Bond interest—State of Mississippi	*5,000*		
Total	*$7,000*		
Over			
Noncompensating items of deduction attributed to and allowed by Louisiana but not allowed by federal			
depletion on oil royalties	*$3,750*		
Excess		*$3,250*	*-0-*
Louisiana net income which is taxed by federal		*$217,750*	*$25,000*
Federal net income		*$1,007,500*	*$100,000*
Ratio		*21.61%*	*25.00%*
Federal income tax liability		*$518,400*	*$25,000*
Deductible federal income tax			
21.61% of $518,400		*$112,026*	
25% of $25,000			*$6,250*
			112,026
Grand Total			*$118,276*

** Where the separate method of reporting is used, the entire amount of Louisiana income tax deducted in the federal return is attributed to Louisiana under this item.*

E. Consolidated Returns. When a corporation includes its net income in a consolidated federal income tax return, the portion of the consolidated federal income tax after credits attributable to such corporation shall consist of the sum of the amounts determined in §1123.E.1, 2, and 3:

1. the consolidated regular tax on ordinary net income multiplied by the percentage determined by a fraction, the numerator of which is regular tax on ordinary net income of each member of the consolidated group computed on a separate return basis and the denominator of which is regular tax of all members of the group so computed, plus

2. the consolidated alternative tax on net capital gains multiplied by the percentage determined by a fraction, the numerator of which is alternative tax on net capital gains of each member of the consolidated group computed on a separate return basis and the denominator of which is alternative tax on net capital gains of all members of the group so computed, plus

3. the consolidated alternative minimum tax multiplied by the percentage determined by a fraction, the numerator of which is alternative minimum tax of each member of the consolidated group computed on a separate return basis and the denominator of which is alternative minimum tax of all members of the group so computed.

F. Definitions

Alternative Minimum Tax—the excess of the federal tentative minimum tax after credits for the tax year, over the federal regular tax after credits for the taxable year.

Alternative Tax on Capital Gains—the net tax liability imposed by Section 1201(a)(2) of the Internal Revenue Code on net capital gains, less credits.

Compensating Item—any difference in any deduction or item of income for a particular year arising solely by reason of the fact that the item is accounted for in different periods for federal and Louisiana income tax purposes. However, if a larger federal income tax deduction would be allowable were an item treated as a compensating item than would be allowable were the item treated as a noncompensating item, the item is a compensating item only to the extent that it is equal to the result obtained by multiplying the difference in the item by a fraction determined as follows:

a. in the case of a deduction:

i. the numerator shall be the excess, if any, of the amount of the item allowed by federal over the amount allowed by Louisiana in each prior year in which the federal allowance exceeded the Louisiana allowance and which has been taken into consideration fully in determining the allowable federal income tax deduction for Louisiana income tax purposes for such prior years, plus the excess, if any, of the amount of the item to be allowed by federal over the amount to be allowed by Louisiana in each future year in which the federal allowance will exceed the Louisiana allowance and which reasonably can be expected to be taken into consideration in determining the allowable federal income tax deduction for Louisiana income tax purposes in such future years;

ii. the denominator shall be the total of all excesses of the amount of the item allowed by federal over the amount of the item allowed by Louisiana in each prior year and of all excesses of the amount of the item to be allowed by federal over the amount to be allowed by Louisiana in each future year;

b. in the case of an item of income:

i. the numerator shall be the excess, if any, of the amount of the item taxed by Louisiana over the amount taxed by federal in each prior year in which the amount taxed by Louisiana exceeded the amount taxed by federal and which has been fully taken into consideration in determining the allowable federal income tax deduction for Louisiana income tax purposes for such prior years, plus the excess, if any, of the amount of the item to be taxed by Louisiana over the amount to be taxed by federal in each future year in which the amount to be taxed by Louisiana will exceed the amount to be taxed by federal and which can reasonably be expected to be fully taken into consideration in determining the allowable federal income tax deduction in such future years for Louisiana income tax purposes;

ii. the denominator shall be the total of all excesses of the amount of the item taxed by Louisiana over the amount taxed by federal in each prior year and of all excesses of the amount of the item to be taxable by Louisiana over the amount to be taxable by federal in each future year.

Income Taxed—income included in taxable income, regardless of whether tax has been paid thereon.

Item of Deduction—each individual deduction rather than each category of deduction, and includes loss items of gross income. For example, the amount of depreciation on a particular property, as distinguished from the amount of depreciation on all properties of the taxpayer, would be an item of deduction. Similarly, the term item of income means each amount of income rather than each category of income. The amount of a Louisiana item of income or deduction is the amount apportioned or allocated to Louisiana. Thus, where a taxpayer has a 10 percent apportionment ratio and has an item of deduction of $10,000 allowed by

Louisiana in arriving at apportionable net income but not allowed by federal, the amount of the Louisiana item is 10 percent of $10,000 or $1,000.

Noncompensating Item—any item of difference between federal and Louisiana income or deductions for a particular year other than a compensating item.

Regular Federal Income Tax—the sum of the tax defined in regular tax on ordinary net income and alternative tax on capital gains.

Regular Tax on Ordinary Net Income—the federal net tax liability imposed on net income after net income is reduced by the amount of net capital gain subject to alternative tax rates, less credits.

Taken into Consideration Fully in Determining the Allowable Federal Income Tax Deduction for Louisiana Income Tax Purposes for ... Prior Years—as used in this Section means fully used in reducing the amount of the federal income tax deduction for such prior years. The purpose of this provision is to allow an adjustment for an item which will increase the federal income tax deduction only to the extent that adjustments applicable to the item in prior years were used to decrease the federal income tax deduction. Similarly, the term to be fully taken into consideration in determining the allowable federal income tax deduction in ... future years for Louisiana income tax purposes means to be used fully in reducing the amount of the federal income tax deduction for such future years.

G. Special Rules

1. The computations prescribed in §1123.B are subject to the rules provided in R.S. 47:287.442. That is, the computations cannot have the effect of attributing refunds of federal income tax which arose on account of conditions or transactions occurring after the close of the taxable year, to any year other than that in which arose the transactions or conditions giving rise to the refund. Accordingly, appropriate changes shall be made when necessary to attribute the refund to the proper year.

2. Notwithstanding the definition provided in §1123.F. Noncompensating Item and Compensating Item, deductions which are declared as allowable in the computation of Louisiana net income pursuant to R.S. 47:287.73(C)4 shall be treated as a compensating item of deduction for the purpose of computing the amount of federal income tax deduction under §1123.C.

3. The federal income tax deduction determined under §1123 must take into account R.S. 47:287.83 which provides in part that no federal income tax deduction shall be allowed on net income upon which no Louisiana income tax has been incurred, or upon which, for any reason whatsoever, no Louisiana income tax will be paid.

4. If the tax of any member computed on a separate return basis under §1123.E.1, 2, and 3 is less than zero, then for the purposes of §1123.E, such member's separate return tax shall be zero.

5. The secretary may adjust the consolidated federal income tax allocation formula prescribed in §1123.E when in his opinion such action is necessary to obtain a reasonable allocation and to clearly reflect Louisiana taxable income.

6. The sum of the net consolidated federal income tax attributed to all members of the consolidated group for the taxable period cannot exceed the amount of consolidated federal income tax paid to the U.S. government for the taxable period.

7. When the alternative tax rate on net capital gains is the same as the regular tax rate on ordinary net income reduced by net capital gains, consolidated regular tax on ordinary net income and alternative tax on capital gains, after credits, may be combined and then attributed to each member of the consolidated group.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47.287.85.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:98 (February 1988).

R.S. 47:287.86. Net operating loss deduction

A. Deduction from Louisiana net income. Except as otherwise provided, there shall be allowed for the taxable year an adjustment reducing Louisiana net income in an amount equal to the aggregate of:

(1) The net operating loss carryovers to such year, plus

(2) The net operating loss carrybacks to such year.

B. Net operating loss carrybacks and carryovers. The taxable years to which a Louisiana net loss may be carried shall be:

(1) A net operating loss carryback to each of the three taxable years preceding the taxable year of such loss, unless carryback treatment is relinquished pursuant to R.S. 47:287.86(D).

Amended by Acts 1992, No. 1083, §1.

(2) For losses incurred for taxable years beginning before January, 1984, a net operating loss carryover to each of the five taxable years following the taxable year of such loss. For losses incurred for taxable years beginning on or after January 1, 1984, a net operating loss carryover to each of the fifteen taxable years following the taxable year of such loss.

C. Manner and amount of carrybacks and carryovers. The entire amount of Louisiana net loss for any taxable year, hereinafter the "loss year", shall be carried back to the earliest of the taxable years allowed, unless an election to relinquish carryback treatment is made, in which case such loss shall be carried to the earliest of the taxable years allowed for carryovers. The portion of such loss which shall be carried to each of the other taxable years allowed by Subsection B shall be the excess, if any, of the amount of such loss over the aggregate of the Louisiana taxable income for each of the prior taxable years to which such loss may be carried. For the purposes of this Subsection:

(1) Louisiana taxable income shall not be adjusted to less than zero.

(2) In calculating the aggregate Louisiana taxable incomes in cases where more than one loss year must be taken into account, the various net operating loss carryovers and carrybacks to such taxable year are considered to be applied in reduction of Louisiana net income in the order of the taxable years from which such losses are carried over or carried back, beginning with the loss for the earliest taxable year.

D. Election to relinquish carryback. Any taxpayer may make an election to relinquish the carryback treatment allowed and have its Louisiana net loss treated only as a carryover. Such election shall be made as prescribed by the secretary.

E. Statement with tax return. Every corporation claiming a net operating loss deduction for any taxable year shall file with its return for such year a concise statement setting forth the amount of the net operating loss claimed and all material and pertinent facts relative thereto, including a detailed schedule showing the computation of the net operating loss deduction.

F. Adjustment dependent upon Louisiana net loss carryback. If in computing the net operating loss deduction the taxpayer is entitled to a carryback which cannot be ascertained at the time the return is due, the deduction, if any, shall be computed without regard to such carryback. When the taxpayer ascertains the correct amount of such carryback, a claim for credit or refund of the overpayment, if any, resulting from the failure to compute the deduction for the taxable year with the inclusion of such carryback may be filed within the prescriptive period, or the taxpayer may file an application for a tentative refund as provided in Subsection G.

G. Tentative refund. A taxpayer may request a tentative refund resulting from the application of a net operating loss carryback in the manner and with forms prescribed by the secretary. If the tentative refund is paid, the secretary may recover any amount thereof determined not to be an overpayment through any collection remedy authorized by R.S. 47:1561 within two years from December thirty-first of the year in which the refund was paid. Any tentatively refunded amount determined not to be an overpayment shall bear interest at the rate provided in R.S. 47:1601, which shall be computed from the date the tentative refund was issued to the date payment is received by the secretary.

H. Interest on refunds. Any amount actually refunded as an overpayment resulting from the application of a net operating loss carryback, tentative or otherwise, shall bear interest at the rate provided in R.S. 47:1624, which shall be computed:

(1) From the latest of the following dates:

(a) Ninety days after the date the request for tentative refund or claim for refund (amended return) is filed.

(b) Ninety days after the due date of the loss year return without regard to extensions of time to file.

(2) To the date such refund is issued by the secretary.

I. Net operating loss carryover. Notwithstanding any other provisions of this Chapter to the contrary, the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the aggregate net operating loss carryovers of the distributors or transferor corporation as determined under this Section, subject to federal law and the limitations provided thereunder.

Amended by Acts 1990, No. 849, §2; Acts 1992, No. 1083, §1.

R.S. 47:287.91. Determination of Louisiana net income or loss

A. The Louisiana net income of a corporation is the sum produced by combining the net allocable income or loss as provided in R.S. 47:287.93 and the net apportionable income or loss as provided in R.S. 47:287.94 when the result is more than zero.

B. The Louisiana net loss of a corporation is the sum produced by combining the net allocable income or loss as provided in R.S. 47:287.93 and the net apportionable income or loss as provided in R.S. 47:287.94 when the result is less than zero.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.92. Segregation of items of gross income

> Note: Act 690, enacted by the Louisiana Legislature during the 1993 Regular Session, was ruled unconstitutional in Dow Hydrocarbons & Resources v. John Neely Kennedy, et al., 694 So.2d 215 (La. 5/20/97). In that decision, the Louisiana Supreme Court declared the act to be void "ab initio" as if it had never been made into law. Therefore, R.S. 47:287.92-95, as reflected in this booklet, is the law as it existed prior to Act 690, with amendments enacted through the 1997 Regular Legislative Session that are unaffected by the Court's ruling.

A. All items of gross income, not otherwise exempt, shall be segregated into two general classes designated as allocable income and apportionable income.

B. Allocable income. The class of gross income to be designated as "allocable income" shall include only the following:

(1) Rents and royalties from immovable or corporeal movable property.

(2) Profits or losses from sales or exchanges of property, including such items as stocks, bonds, notes, land, machinery, and mineral rights not made in the regular course of business.

(3) Interest income, except interest income which is treated as apportionable income pursuant to R.S. 47:287.95(E).

(4) Dividends from corporate stock.

(5) Royalties or similar revenue from the use of patents, trade marks, copyrights, secret processes, and other similar intangible rights.

(6) Income from estates, trusts, and partnerships.

(7) Income from construction, repair, or other similar services.

Amended by Acts 1992, No. 1029, §1; Acts 1993, No. 690, §1, eff. for taxable periods beginning on or after January 1, 1993.

C. Apportionable income. The class of income to be designated as "apportionable income" shall include all items of gross income which are not properly includable in allocable income as defined in this Section.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

LAC 61:I.1128. Segregation of Items of Gross Income

A. For the purpose of applying rules for determining the amount of income earned within or derived from sources in Louisiana, all items of gross income must be divided into two general classes-allocable income and apportionable income. The various types of income constituting allocable income are set forth in R.S. 47:287.92(B), and the specific basis for allocating each of these types of income is prescribed in R.S. 47:287.93. Any income which does not fall within any of the types of allocable income as listed in the statute must be treated as apportionable income. When Louisiana net apportionable income is derived primarily from the business of making loans, refer to R.S. 47:287.95(E) and §1134.E for the determination of the Louisiana apportionment percent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.92.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:101 (February 1988).

R.S. 47:287.93. Computation of net allocable income from Louisiana sources

> Note: Act 690, enacted by the Louisiana Legislature during the 1993 Regular Session, was ruled unconstitutional in Dow Hydrocarbons & Resources v. John Neely Kennedy, et al., 694 So.2d 215 (La. 5/20/97). In that decision, the Louisiana Supreme Court declared the act to be void "ab initio" as if it had never been made into law. Therefore, R.S. 47:287.92-95, as reflected in this booklet, is the law as it existed prior to Act 690, with amendments enacted through the 1997 Regular Legislative Session that are unaffected by the Court's ruling.

A. Allocation of items of gross allocable income. Items of gross allocable income or loss shall be allocated directly to the states within which such items of income are earned or derived, as follows:

(1) Rents and royalties from immovable or corporeal movable property, and profits or losses from sales and exchanges of capital assets consisting of immovable or corporeal movable property, shall be allocated to the state where such property is located at the time the income is derived.

(2) Interest on customers' notes and accounts shall be allocated by reference to the transactions from which the receivables arose, on the basis of the location at which ultimate delivery was made in the case of sale of merchandise or the location at which the services were performed in the case of charges for services rendered.

(3) Profits or losses from sales or exchanges not made in the regular course of business of property, other than capital assets consisting of incorporeal property or rights, shall be allocated to the state where such property is located at the time of the sale. A mineral lease, royalty interest, oil payment, or other mineral interest shall be located in the state in which the property subject to such mineral interest is situated.

(4) Other interest, dividends and profits or losses from sales and exchanges of capital assets consisting of incorporeal property or rights shall be allocated to the state in which the securities or credits producing such income have their situs, which shall be at the business situs of such securities or credits if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs, shall be at the commercial domicile of the taxpayer; provided that dividends upon stock having a situs in Louisiana received by corporation from another corporation which is controlled by the former, through ownership of fifty percent or more of the voting stock of the latter, shall be allocated to the state or states in which is earned the income from which the dividends are paid, such allocation to be made in proportion to the respective amounts of such income earned in each state; and provided, further, that interest on securities and credits having a situs in Louisiana received by a corporation from another corporation which is controlled by the former through ownership of fifty percent or more of the voting stock of the latter, shall be allocated to the state or states in which the real and tangible personal property of the controlled corporation is located, on the basis of the ratio of the value of such property located in Louisiana to the total value of such property within and without the state.

(5) Royalties or similar revenue from the use of patents, trademarks, copyrights, secret processes, and other similar intangible rights shall be allocated to the state or states in which such rights are used.

(6) Income from construction, repair, or other similar services shall be allocated tot he state in which the work is done.

(7) For purposes of this Part only, estates, trusts, and partnerships having a corporation as a member or beneficiary shall compute, allocate, and apportion their incp>• or loss within and without this state in accordance with the processes and formulas prescribed by this Part, and the share of any corporation member or beneficiary in the net income or loss from sources in this state so computed shall be allocated to this state in the return of such corporation.

Amended by Acts 1993, No. 690, §1, eff. for all taxable periods beginning after December 31, 1992.

B. Net allocable income. Net allocable income or loss is computed by subtracting the following from Louisiana gross allocable income:

(1) All expenses, losses, and other deductions defined in R.S. 47:287.63 as allowable deductions which are directly attributable to Louisiana gross allocable income.

(2) A ratable portion of such allowable deductions which are not directly attributable to any item or class of gross income.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1987, No. 53, §1.

LAC 61:I.1130. Computation of Net Allocable Income From Louisiana Sources

A. R.S. 47:287.93 provides that items of gross allocable income or loss shall be allocated directly to the states within which such items of income are earned or derived.

1. Blank

2. Blank

3. Profits from sales or exchanges of property not made in the regular course of business requires that both profits and losses from such transactions be included in income allocated directly to the state in which the property had its situs at the time of the transaction. Whether a sale or exchange is a sale not made in the regular course of business is a factual determination required to be made with respect *to each property sold which will take into consideration such factors as the frequency of sales of similar properties and the relationship of the particular sale to other business transacted by the taxpayer.*

4. Dividends, profits from the sale or exchange of capital assets consisting of incorporeal property or rights, and interest, other than interest on customers' notes and accounts and interest on securities having their situs in Louisiana received from a controlled corporation by its parent, shall be allocated to the state in which the securities or credits have their situs. If the securities or credits have been so employed as to acquire a business situs, the place of business situs controls. In the absence of a business situs the place of commercial domicile controls in the case of a corporation. (For special rules governing the situs of stock canceled in corporate liquidations see R.S. 47:287.747.) These rules are subject to the exception that dividends upon stock having a situs in Louisiana received by a corporation from another corporation which is controlled by the former, through ownership of 50 percent or more of the voting stock of the latter, shall be allocated to the state or states in which is earned the income from which the dividends are paid, such allocation to be made in proportion to the respective amounts of such income earned in each state.

5. Royalties or similar revenue received for the use of patents, trademarks, copyrights, secret processes and other similar intangible rights shall be allocated to the state or states in which such rights are used. The use referred to is that of the licensee rather than that of the licensor.

Example: X Company, Inc., a Delaware corporation with its commercial domicile in California, owns certain patents relating to the refining of crude oil, which at all times were kept in its safe in California. During 1987, the X Company, Inc. entered into an agreement with the Y Corporation whereby that company was given the right to use the patents at its refineries in consideration for the payment of a royalty based upon units of production. The Y Corporation used the patents exclusively at its Louisiana refinery and paid the X Company, Inc. the amount of $100,000 for such use. The entire royalty income of $100,000 is allocable to Louisiana.

6. Income from construction, repair or other similar services is allocable. The phrase other similar services means any work which has as its purpose the improvement of immovable property belonging to a person other than the taxpayer where a substantial portion of such work is performed at the location of such property. For the purpose of this Section, mineral properties, whether under lease or not, constitute immovable properties. It is not necessary that the services rendered actually result in the improvement of the immovable property. Thus, the drilling of a well on a mineral lease is considered to have as its purpose the improvement of such property not withstanding the fact that the well may have been dry. Examples of other similar services are: (a) landscaping services; (b) the painting of houses; (c) the removal of stumps from farm land; (d) the demolition of buildings.

7. Interest on securities and credits having a situs in Louisiana which is received by a corporation from another corporation controlled by the former through the ownership of 50 percent or more of the voting stock of the latter shall be allocated to the state or states in which the real and tangible personal property of the controlled corporation is located. The allocation shall be made on the basis of the ratio of the value of such property located in Louisiana to the value of such property within and without the state, determined as provided below. Whether the securities and credits have a situs in Louisiana shall be determined in accordance with the rules provided in §1130.A.4. For the purpose of this Section, real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income which it produces.

a. Value of Property to be Used. For purposes of this Section, the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, depletion, and obsolescence. The reserves reflected on the books of the taxpayer shall be deemed reasonable, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

b. Average Values. For the purpose of this Section, the value of Louisiana real and tangible property and real and tangible property within and without the state shall be the average of such property at the beginning and close of the year, determined on a comparable basis.

B. From the total gross allocable income from all sources and from the gross allocable income allocated to Louisiana there shall be deducted all expenses, losses, and other deductions, except federal income taxes, allowable under the Louisiana income tax law which are directly attributable to such income plus a ratable portion of the allowable deductions, except federal income taxes, which are not directly attributable to any item or class of gross income.

1. Direct and indirect expenses attributed to allocable income from foreign sources for federal purposes are deductible in arriving at total net allocable income. Expenses sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be attributed to such income.

2. The approach set forth in these regulations for the allocation and apportionment of interest expense is based upon the concept of the fungibility of money and requires that interest expense ordinarily be allocated to all of the taxpayer's income-producing activities and properties, regardless of the specific purpose for which the borrowing was incurred; it does not directly require allocation of interest deductions to income. That is, these regulations assume that: (a) money is fungible in that all of the taxpayer's activities and properties need funds; (b) the taxpayer's management has substantial flexibility in the source and use of its funds; (c) the creditors of the taxpayer look to its general credit for repayment and thereby subject the money loaned to the risk of all of the taxpayer's activities; and (d) the use of money for one purpose frees funds for other purposes. Accordingly, the reasoning continues, it is appropriate to associate part of the cost of money borrowed for a specific purpose to other purposes as well.

3. Interest expense which is applicable to investments which produce or which are held for the production of allocable income within and without Louisiana, shall be an item of deduction in determining net allocable income or loss. For the purpose of this Subsection, investments which produce or which are held for the production of allocable income include but are not limited to investments in and advances or loans to affiliated corporations whether or not such investments, advances, or loans produce any income. The amount of interest which is applicable to such investments shall be determined by multiplying the total amount of interest expense by a ratio, the numerator of which is the average value of investments which produce or which are held for the production of allocable income, and the denominator of which is the average value of all assets of the taxpayer. Although interest on U.S. government bonds and notes is not taxable and hence is not included in allocable income, the adjustment for the amount of interest expense applicable to investments producing such income is computed in the same manner as in the case of investments producing allocable income. Thus for convenience of computation such investments are grouped with investments producing or held for the production of allocable income. Whenever interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments determined as provided above, exceeds the amount of income derived from such investments, the interest expense which is attributable to such investments shall be limited to the amount so derived. The amount of interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments, determined without reference to the income therefrom, is that portion of the interest expense applicable to investments which produce or which are held for the production of allocable income, which the ratio of the average value of U.S. government bonds and notes held as temporary cash investments bears to the average value of all investments which produce or which are held for the production of allocable income.

4. Interest expense which is applicable to investments which produce or which are held for the production of Louisiana allocable income shall be an item of deduction in determining net allocable income or loss from Louisiana. Except when Louisiana apportionable income is determined on the separate accounting method, the amount of interest which is applicable to such investments shall be determined by multiplying the amount of interest expense allocated to total allocable investments, determined without reference to the income limitation in the case of investments in U.S. government bonds and notes held as temporary cash investments, by a ratio, the numerator of which is the average value of investments which produce or which are held for the production of Louisiana allocable income and the denominator of which is the average value of investments which produce or which are held for the production of allocable income within and without Louisiana. When Louisiana net apportionable income is determined on the separate accounting method, refer to §1132.C.1 for rules pertaining to the determination of the amount of interest expense applicable to Louisiana allocable income.

5. Value to be Used. For purposes of this Section, value means cost to the taxpayer, less a reasonable reserve for depreciation, depletion, and obsolescence. The reserves reflected on the books of the taxpayer shall be considered reasonable, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

6. Average Value. For purposes of this Section, average value means the average of the value of the property at the beginning and at the close of the year.

7. Example: The XYZ Corporation has incurred interest expense in the amount of $150,000 during the year 1986. During 1986 it derived total allocable income and Louisiana allocable income as follows:

	Louisiana	Total
*Interest on U.S. Treasury notes	$-0-	$15,000
Dividends	-0-	5,000
Net rent income	10,000	10,000
Total	$10,000	$30,000

*Treated as allocable income only for convenience in computing the applicable expense.

Its assets, liabilities, and net worth as of January 1, 1986, and December 31, 1986, were as follows:

		12-31-86		**1-1-86**
Cash		$100,000		$150,000
Accounts receivable		780,000		800,000
Inventories		600,000		1,000,000
Stocks		100,000		100,000
U.S. Treasury Notes		420,000		650,000
Real estate (rental property)	100,000		100,000	
Less depreciation reserve	20,000		25,000	
Net		80,000		75,000
Real estate	5,000,000		5,125,000	
Less depreciation reserve	1,080,000		1,300,000	
Net		3,920,000		3,825,000
Total Assets		$6,000,000		$6,600,000
Liabilities:				
Accounts payable	$400,000		$1,000,000	
Bonds	3,000,000		3,000,000	
Total Liabilities		$3,400,000		$4,000,000
Net Worth:				
Capital stock	$2,000,000		$2,000,000	
Earned surplus	600,000		600,000	
Net worth		$2,600,000		$2,600,000
Total Liabilities and Net Worth		$6,000,000		$6,600,000

The amount of interest which is applicable to the investments which produce or are held for the production of allocable income within and without Louisiana is $16,963.50, determined as follows:

	Allocable Investments		**Total Assets**	
	1-1-86	**12-31-86**	**1-1-86**	**12-31-86**
U.S. Treasury Notes	$420,000	$650,000	$420,000	$650,000
Rental property (net)	$80,000	75,000	80,000	75,000
Stock	100,000	100,000	100,000	100,000
Other assets	0	0	5,400,000	5,775,000
Totals	$600,000	$825,000	$6,000,000	$6,600,000
1-1-86 totals		600,000		6,000,000
Totals		$1,425,000		$12,600,000
Average		$712,500		$6,300,000
Ratio				.11309

Interest expense allocated to total allocable assets (.11309 x $150,000) $16,963.50

The amount of interest expense which is applicable to the investments which produce or are held for the production of Louisiana allocable income is $1,845.12, determined as follows:

Louisiana allocable assets (rental property):	
January 1, 1986	*$80,000*
December 31, 1986	*75,000*
Total	*$155,000*
Average	*$77,500*
Total allocable assets - average	*712,500*
Ratio	*10.877*
Interest expense allocated to total allocable assets	*$16,963.50*
Interest expense allocated to Louisiana allocable assets (.10877 x $16,963.50)	*$1,845.12*

8. Overhead expense attributable to items of gross allocable income derived from sources within and without Louisiana, except gross allocable income from rent of immovable or corporeal movable property or from construction, repair or other similar services, may be determined by any reasonable method which clearly reflects net allocable income from such items of income.

9. Overhead expense attributable to total gross allocable income derived from rent of immovable or corporeal movable property or from construction, repair, or other similar services shall be deducted from such income for the purposes of determining net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying total overhead expense by the arithmetical average of two ratios, as follows:

a. The ratio of the amount of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross income derived from all sources.

b. The ratio of the amount of direct cost incurred in the production of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of gross income from all sources.

10. Overhead expense attributable to Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services shall be deducted from such income for the purposes of determining Louisiana net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying overhead expense attributed to total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services by the arithmetical average of two ratios, as follows:

a. The ratio of the amount of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross allocable income from such sources.

b. The ratio of the amount of direct cost incurred in the production of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of such income.

11. Special Rules

a. When a corporation has a Louisiana commercial domicile and directly owns 50 percent or more of the voting stock of another corporation, the stock shall be included in Louisiana allocable assets in calculating the amount of interest expense attributable to investments which produce or which are held for the production of Louisiana allocable income, except stock owned in a corporation exempt from Louisiana corporation income tax. The stock shall be attributed to Louisiana allocable assets on the basis of the respective amounts of income earned within Louisiana to the income earned everywhere of the controlled corporation.

b. When a corporation has a Louisiana commercial domicile and advances interest bearing funds to a corporation of which it directly owns 50 percent or more of the voting stock, the receivable shall be included in Louisiana allocable assets in calculating the amount of interest expense attributable to investments which produce or which are held for the production of Louisiana allocable income. The receivable shall be attributed to Louisiana allocable assets on the same basis as the income from which the receivable is attributed to Louisiana. For the purpose of this Subparagraph, real and tangible personal property includes all such property of the controlled corporation whether or not the property is idle or productive and regardless of the type of income which it produces.

c. Accounts or notes receivable resulting from advances on non-interest bearing funds from one corporation to another corporation are deemed to be assets producing or held for the production of allocable income for the purpose of determining the amount of interest expense applicable to investments which produce or which are held for the production of allocable income from sources within and without Louisiana.

d. When a corporation has a Louisiana commercial domicile, accounts or notes receivable resulting from advances of non-interest bearing funds from one corporation to another corporation shall not be included in the numerator of the interest expense allocation formula for the purpose of §1130.B.4, except when the secretary, in order to clearly reflect Louisiana apportionable and allocable net income, imputes interest income on such receivables.

e. For the purpose of §1130.B.11.a and b, direct ownership of 50 percent or more of the voting stock of a corporation constitutes control of that corporation.

f. The secretary is authorized to adjust the allocation of interest expense and/or overhead expense applicable to investments which produce or which are held for the production of allocable income within and without Louisiana if he determines that such adjustment is necessary in order to clearly reflect apportionable and allocable net income.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.93.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:101 (February 1988).

R.S. 47:287.94. Computation of net apportionable income from Louisiana sources

Note: Act 690, enacted by the Louisiana Legislature during the 1993 Regular Session, was ruled unconstitutional in Dow Hydrocarbons & Resources v. John Neely Kennedy, et al., 694 So.2d 215 (La. 5/20/97). In that decision, the Louisiana Supreme Court declared the act to be void "ab initio" as if it had never been made into law. Therefore, R.S. 47:287.92-95, as reflected in this booklet, is the law as it existed prior to Act 690, with amendments enacted through the 1997 Regular Legislative Session that are unaffected by the Court's ruling.

A. Total net apportionable income. Total net apportionable income or loss is computed by subtracting the following from gross apportionable income:

(1) All expenses, losses, and other deductions defined in R.S. 47:287.63 as allowable deductions which are directly attributable to gross apportionable income.

(2) A ratable portion of such allowable deductions which are not directly attributable to any item or class of gross income.

B. Apportionment to Louisiana. Net apportionable income or loss is computed by multiplying the total net apportionable income or loss by the Louisiana apportionment percent determined in accordance with the provisions of R.S. 47:287.95.

C. Separate accounting of apportionable income. In lieu of the apportionment as provided in this Section, a taxpayer may apply to the secretary for permission to compute the net apportionable income derived from sources in this state by means of the separate accounting method. The secretary shall grant such permission if the taxpayer shows that the apportionment method produces a manifestly unfair result, and that the unit of the taxpayer's business operating in this state could be successfully operated independently of the units in other states, and makes all of its sales in this state or derives all of its gross revenues from sources in this state, and any merchandise or products sold by the unity in this state are either:

(1) Produced by the taxpayer in Louisiana;

(2) Purchased by the taxpayer from nonaffiliated sources within or without this state;

(3) Purchased from an affiliated source at not more than the price at which similar merchandise or products in similar quantities could be purchased from nonaffiliated sources; or

(4) Transferred from another department of the taxpayer's business at not more than the actual cost to the taxpayer; or where it is otherwise shown to the satisfaction of the secretary that the apportionment method produces a manifestly unfair result and that the separate accounting method produces a fair and equitable determination of the amount of net income taxable in this state.

D. If such permission is granted by the secretary, the taxpayer shall compute the net apportionable income derived from sources in this state by means of a separate accounting method which shall comply with the regulations to be prescribed by the secretary. When a taxpayer has secured permission to employ the separate accounting method, a change to the method of apportionment shall not be made for any subsequent year without securing the permission of the secretary.

E. When the secretary finds that the use of the apportionment method by a taxpayer produces a manifestly unfair result and that the separate accounting method would more equitably determine the amount of net income derived from sources in Louisiana, the secretary may require that the separate accounting method be used in such cases.

F. Whenever there is a dispute between the taxpayer and the secretary as to whether the separate accounting method or the apportionment method should be used, the burden shall be upon the party urging the use of the separate accounting method to show that the apportionment method produces a manifestly unfair result.

G. In any case where the secretary requires that a taxpayer change to the separate method of accounting, the secretary may, absent the negligence of the taxpayer and upon a showing of reasonable cause by the taxpayer, remit or waive payment of the whole or any part of any accrued interest which would be due from such taxpayer with respect to any additional taxes due as a result of the required change to the separate method of accounting. The secretary shall not waive any interest accruing thirty days after the first issuance to the taxpayer of a proposed assessment in connection with the change to the separate method of accounting.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Added by Acts 1993, No. 690, §1, eff. June 21, 1993. Added by Act 1993, No. 690, §1, eff. for all taxable periods beginning after December 31, 1992.

LAC 61:I.1132. Computation of Net Apportionable Income from Louisiana Sources

A. General

1. From the total gross apportionable income there shall be deducted all expenses, losses and other deductions except federal income taxes, allowable under this Chapter, which are directly attributable to such income, and there also shall be deducted a ratable portion of allowable deductions, except federal income taxes, which are not directly attributable to any item or class of gross income. Direct and indirect expenses attributed to total allocable income derived from foreign sources, for federal purposes, are not deductible in arriving at total net apportionable income. Expenses sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be attributed to such income.

2. R.S. 47:287.94 provides two methods for computing the amount of net apportionable income from Louisiana sources, viz., the apportionment method and the separate accounting method. The apportionment method must be used unless it produces a manifestly unfair result and the conditions prescribed by R.S. 47:287.94 are met. Where the apportionment method is utilized, the apportionment percentage must be applied to the total apportionable net income without exception. For rules pertaining to the determination of the apportionment percentage refer to §1134.

B. Separate Accounting Method; Permission Obtained from Secretary. Any taxpayer desiring to use the separate accounting method in determining the portion of the total net apportionable income derived from Louisiana sources must first obtain permission from the secretary to use that method. A written request for such permission should be submitted to the secretary not more than 30 days after the close of the taxable year for which the first use of the separate accounting method is to be made if the permission is granted. The secretary will grant such permission if the taxpayer demonstrates to his satisfaction that the apportionment method as applied to the business operations of the taxpayer would produce a manifestly unfair result, that the separate accounting method produces a fair and equitable determination of the amount of net income taxable by Louisiana, and that the other conditions of R.S. 47:287.94 are met. The application of the taxpayer must be accompanied by the following information:

1. a complete description of the nature of the business operations of the taxpayer in Louisiana;

2. a complete description of the nature of the business operations of the taxpayer in other states;

3. a comprehensive statement as to the sources of goods or commodities sold by the taxpayer in Louisiana;

4. a comprehensive statement as to the disposition of goods or commodities produced by the taxpayer in Louisiana;

5. a computation for the preceding taxable year showing the Louisiana net apportionable income on the apportionment basis and on the separate accounting basis;

6. a statement of the particular circumstances in the taxpayer's business operations and the particular factors or elements in the apportionment formula which give rise to the difference between the amounts of Louisiana net apportionable income as computed under the two methods;

7. a statement as to whether the circumstances, factors, and elements mentioned in §1132.B.6 are relatively permanent so that the two methods would reasonably be expected to yield similar differences in results each year, or whether in the ordinary course of the taxpayer's business those circumstances have changed from time-to-time and may be expected to do so in the future; and

8. any other information which the taxpayer may consider pertinent.

C. Separate Accounting of Apportionable Income.

1. When the separate accounting method is used, the net apportionable income taxable in Louisiana shall be determined by deducting from the gross apportionable income from sources in Louisiana all costs and expenses directly attributable to such income and a ratable part of overhead expenses and other expenses which are attributable in part to the Louisiana gross apportionable income.

2. When Louisiana net apportionable income is determined on the separate accounting method, interest expense applicable to Louisiana gross apportionable and allocable income shall be deducted from such gross income for the purposes of determining Louisiana net apportionable and allocable income or loss. The amount of interest expense applicable to Louisiana gross apportionable and allocable income shall be determined by multiplying total interest expense by a ratio, the numerator of which is the average value of assets in Louisiana and the denominator of which is the average value of all assets of the taxpayer.

3. For the purposes of this Paragraph, value to be used and average value mean the same as defined in §1130.B.6 and 7. Special rules as provided in §1130.B.12 also apply to this Section.

4. When Louisiana net apportionable income is determined on the separate accounting method, overhead expense shall be deducted from Louisiana gross apportionable income for the purposes of determining Louisiana net apportionable income or loss. The amount of such overhead expense shall be determined by multiplying total overhead expense attributable to gross apportionable income by a ratio, the numerator of which is the amount of direct cost incurred in the production of Louisiana gross apportionable income determined on a separate accounting method and the denominator of which is total direct cost incurred in the production of gross apportionable income from all sources. For the purpose of this Paragraph, the secretary is authorized to adjust the amount of overhead expense allocated to Louisiana gross apportionable income if he determines that such action is necessary in order to clearly reflect Louisiana apportionable net income. For rules pertaining to the determination of the amount of overhead expense attributable to gross allocable income refer to §1130.B.8, 9 and 10.

5. Income from Natural Resources. If the separate accounting method is used by a taxpayer whose business includes the production of natural resources, such as oil, gas, other liquid hydrocarbons, or sulphur, (a) which are sold by the taxpayer prior to refining or processing, or (b) which are transported by the taxpayer into or from the state of Louisiana for refining or processing prior to sale and at the time of production or transfer into or from this state have an ascertainable market value, the Louisiana net apportionable income of such taxpayer shall be computed as set forth below.

a. The gross apportionable income of the taxpayer from sources in Louisiana shall be determined by dividing the activities of the taxpayer into three classes: (i) the production of natural resources; (ii) the marketing of refined or manufactured products; and (iii) all other activities.

b. The Louisiana gross apportionable income from the production of natural resources shall include (i) sales of natural resources produced in Louisiana and sold in this state; (ii) the market value, at the time of transfer, of all natural resources produced in this state and transferred by the taxpayer to another state for sale, refining, or processing, provided that if the natural resources are sold by means of an "arm's length" transaction prior to refining or processing, the market value prescribed herein shall not exceed the selling price; and (iii) the market value, at the time of transfer, of all natural resources produced by the taxpayer in Louisiana and transferred to a refinery or processing plant of the taxpayer located in Louisiana.

c. The Louisiana gross apportionable income from the marketing of refined or manufactured products shall be the amount of gross sales of such products in this state. From such gross sales there shall be deducted, in lieu of the usual deduction for cost of goods sold, the market value of the products sold as of the time of transfer into this state. In determining the market value, the customary prices for the quantities transferred shall be applied.

d. The Louisiana gross apportionable income from all activities in this state other than the production of natural resources and the marketing of refined or manufactured products shall include all sales and other apportionable revenues derived in this state from such other activities.

e. The net income of the taxpayer from each of the three classes of income set forth in §1132.C.5.b, c, and d shall be determined by deducting from each such class of gross income all allowable deductions directly attributable to the *production of such income and a ratable part of all allowable deductions which are attributable in part to the production of such class of income.*

6. For the purpose of this Section, a natural resource shall be deemed to be sold in Louisiana if it is located in this state at the time title thereto passes to the purchaser.

7. In the absence of specific proof of the value of natural resources at the time of transfer from or into this state, the value of the natural resources at the time of production, to be determined in accordance with the methods prescribed for the determination of "gross income from the property" for purposes of percentage depletion under R.S. 47:287.745(B), shall be deemed to be the market value at the time of transfer.

D. Change from Separate Accounting to Apportionment Method. A taxpayer who has obtained permission to use the separate accounting method, or who has been required by the secretary to use that method, shall continue to use that method for succeeding taxable years until a change occurs in the nature of the taxpayer's operations which would warrant a change in accounting method. When such a change occurs, the taxpayer shall report the facts to the secretary not later than 30 days after the close of the taxable year in which the change occurred. If the secretary finds, on the basis of the facts reported by the taxpayer or otherwise obtained by the secretary, that the apportionment method should be used, the taxpayer will be notified to use that method for the year in which the change in operations occurred. The apportionment method shall then be used until a change is made pursuant to R.S. 47:287.94.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.94.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:104 (February 1988).

R.S. 47:287.95. Determination of Louisiana apportionment percent

Note: Act 690, enacted by the Louisiana Legislature during the 1993 Regular Session, was ruled unconstitutional in Dow Hydrocarbons & Resources v. John Neely Kennedy, et al., 694 So.2d 215 (La. 5/20/97). In that decision, the Louisiana Supreme Court declared the act to be void "ab initio" as if it had never been made into law. Therefore, R.S. 47:287.92-95, as reflected in this booklet, is the law as it existed prior to Act 690, with amendments enacted through the 1997 Regular Legislative Session that are unaffected by the Court's ruling.

A. **Air transportation.** The Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of transportation by aircraft shall be the arithmetical average of two ratios, as follows:

(1) The ratio of the value of immovable and corporeal movable property, other than aircraft, owned by the taxpayer and located in Louisiana to the value of all immovable and corporeal movable property, other than aircraft, owned by the taxpayer and used in the production of apportionable income.

(2) The ratio of the amount of gross apportionable income derived from Louisiana sources to the total gross apportionable income of the taxpayer.

For the purposes of this Subsection, gross apportionable income from Louisiana sources shall include all gross receipts derived from passenger journeys and cargo shipments originating in Louisiana and any other items of gross apportionable income or receipts derived entirely from sources in this state.

B. **Pipeline transportation.** The Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of transportation by pipeline shall be computed by means of the ratios provided in R.S. 47:287.95(F).

C. **Other transportation.** The Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of transportation, other than by aircraft or pipeline, shall be the arithmetical average of two ratios, as follows:

(1) The ratio of the value of immovable and corporeal movable property owned by the taxpayer and located in Louisiana to the value of all immovable and corporeal movable property owned by the taxpayer and used in the production of apportionable income.

(2) The ratio of the amount of gross apportionable income from Louisiana sources to the total amount of gross apportionable income of the taxpayer.

For the purposes of this Subsection, gross apportionable income from Louisiana sources shall include all such income that is derived entirely from sources within the state and a portion of revenue from transportation partly without and partly within this state, to be prorated subject to rules and regulations of the secretary, which shall give due consideration to the proportion of service performed in Louisiana.

For the purposes of this Subsection, the value of immovable and corporeal movable property owned by the taxpayer and used in Louisiana shall include the value of all such property regularly situated in this state, plus a pro rata of the value of all rolling stock and other mobile equipment owned by the taxpayer and used in the production of apportionable income, whether within or without this state, said proration to be made subject to rules and regulations of the secretary, which shall give due consideration to the mileage operated and traffic density within and without this state.

D. Service enterprises. The Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from a service business in which the use of property is not a substantial income-producing factor shall be the arithmetical average of two ratios, as follows:

(1) The ratio of the amount paid by the taxpayer for salaries, wages, and other compensation for personal services rendered in Louisiana to the total amount paid by the taxpayer for salaries, wages, and other compensation for personal services in connection with the production of the net apportionable income.

(2) The ratio of the gross apportionable income of the taxpayer from Louisiana sources to the total gross apportionable income of the taxpayer.

For the purposes of this Subsection, the gross apportionable income from Louisiana sources shall include the revenue from services performed in this state, and any other gross income derived entirely from sources within this state.

E. Loan business. The Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of making loans shall be the arithmetical average of two ratios, as follows:

(1) The ratio of the amount paid by the taxpayer for salaries, wages, and other compensations for personal services rendered in Louisiana to the total salaries and wages paid by the taxpayer in connection with the production of the net apportionable income.

(2) The ratio of the amount of loans made by the taxpayer in this state to the total amount of loans made by the taxpayer.

F. (1) Manufacturing, merchandising, and other business. The Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of transportation by pipeline or from any business not included in Subsections A through E of this Section shall be the arithmetical average of three ratios, as follows:

(a) The ratio of the value of the immovable and corporeal movable property owned by the taxpayer and located in Louisiana to the value of all immovable and corporeal movable property owned by the taxpayer and used in the production of the net apportionable income.

(b) The ratio of the amount paid by the taxpayer for salaries, wages, and other compensation for personal services rendered in this state to the total amount paid by the taxpayer for salaries, wages, and other compensation for personal services in connection with the production of net apportionable income.

(c) 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.

(2) For the purpose of this Subsection, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of manufacturing or merchandising shall be computed by means of the ratios provided in Subparagraphs (1)(a) through (c) of this Subsection, except that the ratio of net sales as provided in Subparagraph (c) shall be double-weighted or counted twice, and the Louisiana apportionment percent shall be the arithmetical average of the four ratios. The term "business of manufacturing or merchandising" shall only include a taxpayer whose net apportionable income is derived primarily from the manufacture, production, or sale of tangible personal property. The term "business of manufacturing or merchandising" shall not include:

(a) A taxpayer subject to the tax imposed pursuant to Chapter 8 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950.

(b) Any taxpayer whose income is primarily derived from the production or sale of unrefined oil and gas.

(3) For the purpose of this Subsection, sales attributable to this state shall be all sales where the goods, merchandise, or property is received in this state by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. However, direct delivery into this state

by the taxpayer to a person or firm designated by a purchaser from within or without the state shall constitute delivery to the purchaser in this state.

(4) For the purpose of this Subsection, salaries, wages, and other compensation for personal services paid by a taxpayer whose principal office is located in Louisiana to officers and employees responsible for the direction and supervision of operations of the taxpayer partly within and partly without Louisiana and salaries, wages, and other compensation for personal services paid to general office employees whose duties pertain to the operations of the taxpayer partly within and partly without Louisiana shall be allocated in part to this state on the basis of the ratio of the amount of direct operating salaries, wages, and other compensation for services rendered in Louisiana to the total of such direct operating salaries, wages, and other compensation paid in connection with the production of net apportionable income.

(5) For the purpose of this Subsection, gross apportionable income attributable to this state derived from the transportation of crude petroleum, natural gas, petroleum products, or other commodities for others through pipelines shall include all gross revenue derived from operations entirely within this state plus a portion of any revenue from operations partly within and partly without this state, based upon the ratio of the number of units of transportation service performed in Louisiana in connection with such revenue to the total of such units. A unit of transportation service shall be the transporting of any designated quantity of crude petroleum, natural gas, petroleum products, or other commodities for any designated distance. All other classes of gross apportionable income shall be prorated within or without this state on the basis of such ratio or ratios, prescribed by the secretary, as may be reasonably applicable to the type of business involved.

G. Value. For the purposes of this Section, the value at which immovable and corporeal movable property should be included in the apportionment factor is the average of the beginning and close of year values on a comparable basis within and without the state. If the average at the beginning and end of the year does not fairly represent the average of the property owned during the year, the average may be obtained by dividing the sum of the monthly balances by twelve. For the purposes of this Section, the value of property is deemed to be cost to the taxpayer less a reasonable reserve for depreciation, depletion, and obsolescence. Such reserves, reflected on the books of the taxpayer, shall be used in determining value, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

H. Location. For purposes of this Section, corporeal movable property located in Louisiana in United States customs-bonded warehouses or foreign trade zones established under the Foreign Trade Zones Act shall be considered as located outside of Louisiana.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1988, No. 841, §1, eff. July 18, 1988.

Added by Acts 1993, No. 690, §1, eff. for all taxable periods beginning after December 31, 1992. Amended by Acts 1996, No. 19, eff. for taxable years beginning on or after January 1, 1997.

LAC 61:I.1134. Determination of Louisiana Apportionment Percent

A. General. R.S. 47:287.95 provides for an apportionment percent which is to be applied to the taxpayer's total net apportionable income in determining the Louisiana net apportionable income. Specific formulas are prescribed for air, pipeline, and other transportation businesses, certain service enterprises, and loan businesses. A general formula is prescribed for manufacturing, merchandising and any other business for which a formula is not specifically prescribed. The statute contemplates that only one specific formula be used in determining the apportionment percent, that being the formula prescribed for the taxpayer's primary business. As a general rule, where a taxpayer is engaged in more than one business, the taxpayer's primary business shall be that which is the primary source of the taxpayer's net apportionable income. When the numerator and denominator is zero in any one or more factors in the apportionment formula, such factor shall be dropped from the apportionment formula and the arithmetical average determined from the total remaining factors.

B. Property Factor

1. The value of immovable and corporeal movable property owned by the taxpayer and used in the production of net apportionable income is a factor in each formula except those provided for loan businesses and certain service businesses. Where only a part of the property is used in the production of apportionable income, only the value of that portion so used shall be included in the property factor. However, where the entire property is used in the production of both allocable and apportionable income, such as a railroad track owned by the taxpayer and used jointly with another, the value of the entire property shall be included in the property factor. Idle property and property under construction, during such construction and prior to being placed in service, shall not be included in the property factor. Property held as reserve or standby facilities, *or property held as a reserve source of materials shall be considered used. For example, a taxpayer who purchases a lignite deposit which is held as a reserve source of fuel, should include the value of such deposits in the property factor. Non-productive mineral leases are considered to be held for such use and should be included in the property factor. Aircraft owned by a taxpayer whose net apportionable income is derived primarily from air transportation should not be included in the property factor. The value of inventories of merchandise in transit shall be allocated to the state in which their delivery destination is located in the absence of conclusive evidence to the contrary.*

2. Value of Property to be Used. For purposes of this Section, the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, depletion and obsolescence. Such reserves, reflected on the books of the taxpayer, shall be used in determining value, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

3. Proration of Rolling Stock and Other Mobile Equipment. The average value of rolling stock and other mobile equipment owned by the taxpayer shall be prorated within and without Louisiana as set forth below.

a. The value of diesel locomotives shall be allocated to Louisiana on the basis of the ratio of diesel locomotive miles in Louisiana to total diesel locomotive miles.

b. The value of other locomotives shall be allocated to Louisiana on the basis of the ratio of other locomotive miles in Louisiana to total other locomotive miles.

c. The value of freight train cars shall be allocated to Louisiana on the basis of the ratio of freight car miles in Louisiana to total freight car miles.

d. The value of passenger cars shall be allocated to Louisiana on the basis of the ratio of passenger car miles in Louisiana to total passenger car miles.

e. The value of passenger buses shall be allocated to Louisiana on the basis of the ratio of bus miles in Louisiana to total bus miles.

f. The value of diesel trucks shall be allocated to Louisiana on the basis of the ratio of diesel truck miles in Louisiana to total diesel truck miles.

g. The value of other trucks shall be allocated to Louisiana on the basis of the ratio of other truck miles in Louisiana to total other truck miles.

h. The value of trailers shall be allocated to Louisiana on the basis of the ratio of trailer miles in Louisiana to total trailer miles.

i. The value of towboats shall be allocated to Louisiana on the basis of the ratio of towboat miles in Louisiana to total towboat miles. In the determination of Louisiana towboat miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

j. The value of tugs shall be allocated to Louisiana on the basis of the ratio of tug miles in Louisiana to total tug miles. In the determination of Louisiana tug miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

k. The value of barges shall be allocated to Louisiana on the basis of the ratio of barge miles in Louisiana to total barge miles. In the determination of Louisiana barge miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

l. The value of work and miscellaneous equipment shall be allocated to Louisiana on the basis of the ratio of track miles in Louisiana to total track miles in the case of a railroad, on the basis of the ratio of bank miles operated in Louisiana to total bank miles operated in the case of inland waterway transportation and on the basis of the ratio of route miles operated in Louisiana to total route miles operated in the case of truck and bus transportation. In the determination of bank miles, one half of the bank mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana bank miles.

m. The value of other floating equipment shall be allocated to Louisiana on the basis of the ratio of operating equipment miles within Louisiana to the total operating equipment miles, for the particular equipment to be allocated. In the determination of Louisiana operating equipment miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana bank miles.

4. Insufficient Records. In any case where the information necessary to determine the ratios listed above is not readily available from the taxpayer's records, the secretary, in his discretion, may permit or require the allocation of such equipment on any method deemed reasonable by him.

C. Wage Factor. Salaries, wages and other compensation for personal services as used in R.S. 47:287.95 includes only compensation paid to employees or to a deferred plan for the benefit of employees of the taxpayer for services *rendered in connection with the production of net apportionable income. It does not include fees and commissions paid to independent contractors.*

D. Revenue Factor. Revenue is a factor in each formula except that provided for loan businesses. This factor is generally composed of sales, charges for service, and other gross apportionable income.

1. Revenue from Transportation other than Air Travel. Gross apportionable income attributable to Louisiana from transportation other than air includes all such revenue derived entirely from sources within Louisiana plus a portion of revenue from transportation performed partly within and partly without Louisiana, based upon the ratio of the number of units of transportation service performed in Louisiana to the total of such units. A unit of transportation shall consist of the following:

a. in the case of the transportation of passengers, the transportation of one passenger a distance of one mile;

b. in the case of the transportation of liquid commodities, including petroleum or related products, the transportation of one barrel of the commodities a distance of one mile;

c. in the case of the transportation of property other than liquids, the transportation of one ton of the property a distance of one mile;

d. in the case of the transportation of natural gas, the transportation of one MCF a distance of one mile. (See, however, §1134.D.2)

e. Transportation revenue should be segregated on the basis of the four classes enumerated above and the gross apportionable income attributable to Louisiana shall be determined by application of the respective ratios to each segregated amount. In any case where another method would more clearly reflect the gross apportionable income attributable to Louisiana, or where the above information is not readily available from the taxpayer's records, the secretary, in his discretion, may permit or require the use of any method deemed reasonable by him.

2. Sales Made in the Regular Course of Business

a. The sales attributable to Louisiana under R.S. 47:287.95 are those sales made in the regular course of business where the goods, merchandise or property are received in Louisiana by the purchaser. Similarly, where the goods, merchandise or property are received in some other state, the sale is attributable to that state. Sales made in the regular course of business include all sales of goods, merchandise or product of the business or businesses of the taxpayer. They do not include the sale of property acquired for use in the production of income. Where a taxpayer under a contract performs essentially a management or supervision function and receives therefor a reimbursement of his costs plus a stipulated amount, the amounts received as reimbursed costs are not sales although the contract so designates them. The stipulated amount constitutes other gross apportionable income and shall be attributed to the state where the contract was performed. Where goods are delivered into Louisiana by a public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. The transportation in question is the initial transportation relating to the sale by the taxpayer, and not the transportation relating to a sale or subsequent use by the purchaser.

b. Where the goods are delivered by the taxpayer-vendor in his own equipment, it is presumed that such transportation relates to the sale. Where the goods are delivered by a common or contract carrier, whether shipped F.O.B. shipping point, and whether the carrier be a pipeline, trucking line, railroad, airline or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation by the carrier has ended is deemed to be the place where the goods are received by the purchaser. Actual delivery rather than technical or constructive delivery controls.

c. Where the transportation involved is transportation by the purchaser, in determining whether or not the transportation relates to the sale by taxpayer, consideration must be given to the following principles.

i. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent circumstances.

ii. The intent of the parties to the sale must also be considered. The intent and purpose of the purchaser may be determined directly, or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time of the sale.

iii. In order for the transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser, such transportation must be generally the same in nature and scope as that performed by the vendor or by the carrier. There is no difference between a case where a taxpayer in Houston ships F.O.B., Houston, to a purchaser in

Baton Rouge, by common carrier, and a case where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

d. The sales of natural resources to a pipeline company are attributable to the state in which the goods are placed in the pipeline. Such purchasers are engaged in the business of moving or transporting their own property through their own lines. Thus, all transportation of the natural resources after introduction into the line is related to the use or sale by the pipeline, and is not related to the sale by the taxpayer.

e. Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier. Actual delivery to the purchaser controls, rather than technical or constructive delivery. However, because of the nature and character of the property, the type of carrier, and customs of the trade, the natural resources in the pipeline carrier may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a purchaser in more than one state, or to different purchasers in different states, peculiar problems of attribution arise. In solving such problems consideration must be given to the following principles.

i. Where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state, and the oil was transported to the purchaser by pipeline carrier, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality rather than any specific oil.

ii. In situations involving several deliveries in several different states to one or more purchasers, the general rules should be applied with logic and common sense.

f. Examples

i. Three different taxpayers, A, B, C, all in Texas, each sells to X Refinery, in Louisiana, 10,000 barrels of crude oil, shipped F.O.B., Texas, by public carrier pipeline. (a) If X Refinery received all 30,000 barrels in Louisiana, each taxpayer must attribute his total sale to Louisiana. (b) If X Refinery receives 10,000 barrels in Louisiana, 10,000 barrels in Mississippi, and 10,000 barrels in Alabama, it cannot be said by any taxpayer that all of his sale was received either in Louisiana or in one of the other states. Since each taxpayer contributed one-third of the mass of commingled crude oil, it follows that one-third of each taxpayer's sale was received in Louisiana, and accordingly must be attributed to Louisiana.

ii. Three different taxpayers, A, B, and C, in Texas, sell to three different purchasers, X Refinery in Louisiana, Y Refinery in Mississippi, and Z Refinery in Alabama. If A sells to X Refinery in Louisiana and delivery is by public carrier pipeline, the oil is received in Louisiana and the entire sale is attributed to Louisiana, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline with oil sold by B and C to Y Refinery and Z Refinery.

g. In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the transportation after storage relates to the sale by the taxpayer. Generally, the rules and principles set forth above will control where the storage is of temporary nature, such as that necessitated by lack of transportation, by change from one means of transportation to another, or by natural conditions. In cases where the storage is permanent or semi-permanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage.

E. Loans factor. Loans made by the taxpayer as provided in R.S. 47:287.95(E) is the arithmetical average of the loan balances outstanding at the beginning and end of the taxable period. This factor is to be used only by taxpayers whose income is derived primarily from the business of making loans. If the average at the beginning and end of the year does not fairly represent the average of loans outstanding during the year, the average may be obtained by dividing the sum of the monthly balances by 12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.95.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:105 (February 1988).

R.S. 47:287.441. Accounting periods, methods of accounting, and adjustments

For purposes of determining the period in which to include items of gross income, determining the period in which deductions should be taken, and computing net income under this Part, a corporation shall use the same taxable year and the same method of accounting it is required to use for federal income tax purposes, including its inventory method and statutorily required accounting adjustments, unless otherwise provided in this Part.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.442. Exceptions to taxable year of inclusion; taxable year deductions taken

A. Notwithstanding the provisions of R.S. 47:287.441, if any item of income has been reported in a return and has borne tax in full for a period in which it was not properly reportable, the taxpayer shall not be required to report the same item of income in a subsequent period in which it would otherwise be properly reportable, unless the secretary shall have, prior to the running of prescription with respect to the first period, redetermined the tax liability for that period so as to eliminate the item of gross income improperly reported and shall have refunded or credited any resulting overpayment for that period.

B. Period for which deductions and credits shall be taken.

(1) The taxable year in which to claim the federal income tax deduction allowed by R.S. 47:287.85 shall be determined as follows, regardless of the method of accounting regularly employed by the taxpayer:

(a) The federal income tax deduction may be claimed for the same taxable year in which the federal income tax sought to be deducted is incurred, provided the taxpayer files a federal income tax return for such taxable year or is included with affiliates in a consolidated federal income tax return for such taxable year.

(b)(i) Taxable year for adjustments to taxpayer's federal income tax return. Except as otherwise provided in this Subparagraph, adjustments affecting federal taxable income which are made to the taxpayer's income tax return subsequent to filing, whether made because of a deficiency proposed by the government, a court order, an amended return, or other appropriate instrument or act, showing an overpayment or a deficiency shall be taken into account for purposes of this Part in the period for which the return was filed, unless the prescriptive period for the collection of tax or the refund or credit of overpayments, as the case may be, has expired. If the applicable prescriptive period has expired, the additional tax paid by the taxpayer in the case of an underpayment or the refund or credit received by the taxpayer in the case of an overpayment shall be for the taxable year such tax was paid, such refund was received, or such credit was allowed, as the case may be.

(ii) When a federal refund results from transactions or conditions which arise after the close of the taxable year for which the refund is made, such federal refund shall be taken into account, for purposes of this Part, for the taxable year in which arose the transactions or conditions causing the refund.

(c) Taking federal adjustments into account. A payment of additional federal tax upon income which has borne Louisiana tax shall be taken into account by decreasing taxable income. That portion, if any, of such additional federal tax payment which would be disallowed as a deduction under either R.S. 47:287.81 or R.S. 47:287.83 shall be excluded from such adjustment. Refunds or credits of federal overpayments, including refunds or credits created by the carryback of a federal net operating loss, shall be taken into account by increasing Louisiana net income or decreasing the Louisiana net loss, as the case may be. That portion, if any, of the federal refund or credit of an overpayment which has not previously been charged against or deducted from Louisiana net income shall be excluded from such adjustment.

(d) Adjustments made to the Louisiana return. Adjustments to a return filed pursuant to this Part, whether initiated by the secretary or the taxpayer, shall be taken into account in the taxable year for which the return was filed in accordance with rules, regulations, or forms prescribed by the secretary.

(2) If a deduction is claimed and allowed in any period, the same deduction cannot again be claimed in a subsequent period in which it otherwise would be properly deductible, unless the taxpayer, prior to the running of prescription with respect to the first period, shall have amended his return for that period so as to eliminate the deduction and shall have paid any additional tax which may be due as a result thereof, together with any interest and penalties that may be applicable thereto.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

LAC 61:I.1137. Exceptions to Taxable Year of Inclusion; Taxable Year Deductions Taken

A. Improperly Reported Item of Income. R.S. 47:287.442(A) does not relieve a taxpayer of the responsibility of filing a true and correct return and immediately correcting any errors which are discovered after the return is filed. If an error is discovered, it is the obligation of the taxpayer to file promptly an amended return reflecting the correct tax liability. The purpose of R.S. 47:287.442(A), so far as it deals with improperly reported items of income, is to preclude a taxpayer's being required to pay again on an *item of income which has borne tax in full previously, even though for a period in which it was not properly reportable. An item of income will be deemed to have previously borne tax in full if the item, when multiplied by the lowest tax rate applicable to the taxpayer, results in a tax not less than the amount of tax actually paid on the return. If the item has not previously borne tax in full, R.S. 47:287.442(A) is not applicable to that portion of the item which has not previously borne tax. That portion, which shall be the difference between the item of income and the taxable balance of net income, shall be reported as income during the year it was properly reportable.*

B. Example: The ABC Corporation, by mistake, reported on its 1982 income tax return an item of accrued interest in the amount of $5,000 which was properly reportable in 1983. It paid the Louisiana income tax shown to be due on the return. The company never discovered its error. In 1987, the secretary discovers the error. The return for 1982 shows the following:

Accrued interest	*$5,000*
Income from operations	*20,000*
Total income	*$25,000*
Less total authorized deductions	*$21,000*
Taxable income	*$4,000*
Tax per return	*$160*

Computation to determine if item has borne tax in full:	
Amount improperly reported	*$5,000*
Tax at lowest rate of taxpayer	*$200*
Tax paid	*160*
Amount of tax unpaid	*$40*
Computation of portion of item to be reported in 1983:	
Improperly reported item	*$5,000*
Taxable balance of net income in 1982	*4,000*
Portion of item to be reported	*$1,000*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.442.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988).

R.S. 47:287.443. Effective dates, taxable year, 52-53 week year

In any case in which the effective date or the applicability of any provision of this Part is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, a taxable year consisting of 52-53 weeks which is properly elected under law shall be treated as:

(1) Beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(2) Ending with the last day of the calendar month ending nearest to the last day of such taxable year, as the case may be.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.444. Returns for a period of less than twelve months, special tax computation

A. When a separate return for a period of less than twelve months is required by law, or permitted by the secretary pursuant to this Part, Louisiana taxable income of a corporation shall be computed on the basis of such period.

B. When Louisiana taxable income is computed on the basis of a period of less than twelve months, it shall be placed on an annual basis by multiplying the amount thereof by twelve and dividing by the number of months included in the period for which the separate return is required or permitted to be made. The tax shall be such part of the tax computed on such annual basis as the number of months in such period is of twelve months.

Added by Acts 1992, No. 170 §1. Effective for taxable periods beginning on or after January 1, 1992.

R.S. 47:287.445. Special adjustments for long-term contracts

A. General. Notwithstanding any provision to the contrary in this Chapter, any corporation that uses the percentage of completion method prescribed in 26 U.S.C.A. §460 shall upon completion of the contract, or, with respect to any amount properly taken into account after completion of the contract, when such amount is so properly taken into account, pay or shall be entitled to receive interest computed under the look-back method of Subsection B.

B. Look-back method. The interest computed under the look-back method of this Subsection shall be determined as follows:

(1) First, allocating income under the contract among taxable years in accordance with the provisions of 26 U.S.C.A. §460(b)(2)(A).

(2) Second, determine solely for purposes of computing such interest, the overpayment or underpayment of Louisiana corporate income tax for each taxable year referred to in Paragraph (1), which would result solely from the application of Paragraph (1), and

(3) Then, applying the rate of interest established by R.S. 47:1624 to the overpayment or underpayment determined under Paragraph (2).

C. S corporations. With respect to a corporation which for a taxable year is classified as an S corporation, the principles of I.R.C. Section 460(b)(4)(A) shall apply with respect to its excludible percentage of Louisiana net income attributable to any long-term contract, there shall be no exceptions for S corporations which are closely held pass-through entities and "highest rate" shall mean the highest rate of tax specified in R.S. 47:296.

Added by Acts 1992, No. 588 §1. Effective for taxable periods beginning on or after January 1, 1992.

R.S. 47:287.480. Special adjustments by the secretary

Notwithstanding any other provisions of this Part to the contrary, the secretary is authorized to require the use of inventories and to allocate income and deductions among taxpayers and require such returns as follows:

(1) Inventories. Whenever in the opinion of the secretary the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer on such basis as the secretary may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(2) Allocation between related businesses. In any case of two or more organizations, trades, or businesses, whether or not incorporated, whether or not organized in the United States, and whether or not affiliated, owned or controlled directly or indirectly by the same interests, the secretary may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses.

(3) Consolidated returns.

(a) Consolidated or combined returns are not allowed under this Part except as required by the secretary pursuant to this Paragraph.

(b) For purposes of this Section, whenever a corporation which is required to file an income tax return, is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations, or whose income is regulated through contract or other arrangement, the secretary may require such consolidated statements as in his opinion are necessary, if any, in order to determine the taxable income received by any one of the affiliated or related corporations.

(c)(i) Whenever two corporations which are each required to file an income tax return are affiliated corporations as defined in Section 1504 of the Internal Revenue Code, as amended, and

(aa) If one corporation transfers all or substantially all of its Louisiana assets to the other corporation, and

(bb) If the corporations involved in the transfer file their income tax returns in accordance with the separate accounting method as set forth in R.S. 47:287.94, then notwithstanding any other provision of law to the contrary, such transaction may, at the election of the secretary or the taxpayers, be treated as if the transaction was a reorganization as described in Section 368(a)(1)(F) of the Internal Revenue Code, as amended.

(ii) If a transaction qualifies under Subparagraph (3)(c)(i) and if an election is made to treat the transaction as a Section 368(a)(1)(F) reorganization, then in determining the tax attributes to be carried over to the transferee, the transferee shall succeed only to those items associated with the transferred assets.

(4) The foregoing Paragraphs are operative whether or not a federal income tax return for the taxable year is actually filed by the taxpayer and whether or not such adjustments have been made at federal law.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1987, No. 137, §1.

R.S. 47:287.501. Exemption from tax on corporations

A. General rule. An organization described in I.R.C. Sections 401(a) or 501 shall be exempt from income taxation under this Part to the extent such organization is exempt from income taxation at federal law, unless the contrary is expressly provided.

B. Additional exemptions.

(1) Mutual savings banks, national banking corporations and banking corporations organized under the laws of the state of Louisiana who pay a tax for their shareholders or whose shareholders pay a tax on their shares of stock under other laws of this state and building and loan associations shall be exempt from taxation under this Part.

(2) Any corporation, community chest, fund, or foundation which annually or more frequently contributes all of its current net earnings, less a reasonable reserve not to exceed one thousand dollars for anticipated expenses and future contributions, to organizations which are organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, shall itself be deemed organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention cruelty to children or animals and shall be exempt from taxation under this Part; provided that said corporation, community chest, fund, or foundation is not engaged in the active conduct of trade or business, no part of its net earnings inures to the benefit of any private shareholder or individual and no substantial part of its activities is carrying on propaganda or otherwise attempting to influence legislation.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

LAC 61:I.1140. Exemption from Tax on Corporations

A. An organization claiming exemption under R.S. 47:287.501 must submit a copy of the Internal Revenue Service ruling establishing its exempt status. Once an organization establishes with the department its right to an exemption, it need not file any further reports until such time its right to an exemption changes. An organization that has furnished information to the department establishing its right to exemption under the prior law need not submit additional information until such time its exempt status with the Internal Revenue Service changes. A corporation is either entirely exempt or it is wholly taxable. A partial exemption is not permitted.

B. Mutual savings banks, national banking corporations, building and loan associations, and savings and loan associations are exempt from the tax imposed by this Chapter regardless of where organized.

C. Banking corporations organized under the laws of the state of Louisiana which are required by other laws of this state to pay a tax for their shareholders, or whose shareholders are required to pay a tax on their shares of stock, are exempt. Banking corporations, other than those described above, organized under the laws of a state other than the state of Louisiana are not exempt from the corporation income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.501.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988).

R.S. 47:287.521. Farmers' cooperatives; all cooperatives

A. Farmers' cooperatives.

An organization described under federal law as a farmer's cooperative shall be exempt from income taxation under this Part to the extent such organization is exempt from income tax at federal law.

B. All cooperatives.

(1) Any cooperative taxable under federal law shall be taxed under this Part on its Louisiana taxable income.

(2) For purposes of this Subsection:

(a) "Net income" means the taxable income of a cooperative determined in accordance with federal law applicable to cooperatives and their patrons.

(b) "Gross income" and "deductions from gross income" have the same meanings herein as in federal law pertaining to cooperatives and their patrons.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.526. Shipowners' protection and indemnity associations

There shall not be included in gross income the receipts of shipowners' mutual protection and indemnity associations which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder; but such corporations shall be subject to the tax imposed by this Part on their Louisiana taxable income from interest, dividends, and rents earned within or derived from sources within this state, for a taxable year, the same as any nonexempt corporation.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.527. Political organizations

A. A political organization as defined under federal law shall be subject to taxation under this Part as provided in this Section.

B. A political organization shall be taxed under this Part on its Louisiana taxable income.

C. For purposes of this Section:

(1) “Net income” means political organization taxable income determined in accordance with federal law applicable to political organizations.

(2) “Gross income” and “deductions from gross income” have the same meaning herein as in federal law pertaining to political organizations.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.528. Homeowners’ associations

A. A homeowner’s association as defined under federal law shall be subject to taxation under this Part as provided in this Section.

B. A homeowner’s association shall be taxed under this Part on its Louisiana taxable income.

C. For purpose of this Section:

(1) “Net income” means a homeowner’s association taxable income determined in accordance with federal law applicable to homeowners’ associations.

(2) “Gross income” and “deductions from gross income” have the same meaning herein as in federal law pertaining to homeowners’ association.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.601. Notice of regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this Part, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the secretary may from time to time prescribe. Whenever in the judgment of the secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records as the secretary deems sufficient to show whether or not such person is liable for tax under this Part.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

LAC 61:I.1147. Notice of Regulation, Requiring Records, Statements and Special Returns

A. Every corporation subject to the provisions of Part II.A of Chapter 1 shall, for the purpose of enabling the secretary to determine the correct amount of income subject to tax, keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income and the deductions, credits, and other information required to be shown in any return. Such books or records required by this Section shall be available at all times for inspection by the secretary, and shall be retained so long as the contents thereof may be material in the administration of the income tax law. The secretary may at any time require the taxpayer to submit statements of net worth as of the beginning and end of the taxable year.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:287.601.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988).

R.S. 47:287.611. General requirement of return, statement, or list

Any person made liable for the tax imposed by this Part shall make a return or statement according to the forms and regulations prescribed by the secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.612. Corporation returns

Every corporation subject to taxation under this Part shall make a return stating specifically the items of its gross income and the deductions and credits allowed under this Part. The return shall be verified or shall contain a written declaration by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act that it is made under the penalties imposed for false swearing. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

LAC 61:I.1148. Corporation Returns

A. General Rules. Every corporation deriving income from Louisiana sources shall file a return on forms secured from the secretary, unless expressly exempt from the tax. The first return and the last return of a corporation are returns for a full year and not for a fractional part of a year. A corporation does not go out of existence by virtue of being managed by a receiver or trustee who continues to operate it.

B. Liquidation. Upon liquidation or dissolution of a corporation there shall be attached to the final return a statement showing:

1. an outline of the plan under which the corporation was dissolved;

2. the date the dissolution was formally commenced;

3. the date the dissolution was completed;

4. the name and address of each shareholder at dissolution and the number and par value of the shares of stock held by each;

5. a description of assets conveyed to each shareholder, creditor, or other person, showing book value, fair market value, and location, as well as the name and address of each such person;

6. the consideration paid by each person for the assets received; and

7. whether the plan is intended to qualify under one of the sections of the Internal Revenue Code relating to nonrecognition in whole or in part of gain by a shareholder, and, if so, the section involved.

C. Receivers. Receivers, trustees in dissolution, trustees in bankruptcy, and assignees, operating the property or business of corporations, must file returns for such corporations. If a receiver has full custody of and control over the business or property of a corporation, he shall be deemed to be operating such business or property within the meaning of R.S. 47:287.612 whether he is engaged in carrying on the business for which the corporation was organized or only in marshaling, selling, and disposing of its assets for purposes of liquidation. However, a receiver in charge of only part of the property of a corporation, as, for example, a receiver in mortgage foreclosure proceedings involving merely a small portion of its property, need not file a return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.612.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988).

R.S. 47:287.613. Alternative forms and instructions

In addition to the returns authorized and required in this Part the secretary is authorized to prescribe such alternative forms and instructions as he deems practicable for the purpose of simplifying compliance. Such forms and instructions may contain arithmetical short-cuts and abbreviated formulae which do not precisely track the computational scheme of this Part, provided that the use of such forms remains optional.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.614. Time and place for filing returns; information concerning federal return; extension of time to file

A. Returns made on the basis of the calendar year shall be made and filed with the secretary at Baton Rouge, Louisiana, on or before the fifteenth day of April following the close of the calendar year. Returns made on the basis of a fiscal year shall be made and filed on or before the fifteenth day of the fourth month following the close of the fiscal year with the secretary at Baton Rouge, Louisiana.

B. A taxpayer shall disclose on its Louisiana income tax return the amount of taxable income reported on its federal income tax return for the same taxable year and, when requested by the secretary, shall furnish a photocopy of its federal income tax return, statement, or report for the same taxable year.

C. Any corporation whose federal income tax return is adjusted by the Internal Revenue Service must furnish a statement to the secretary disclosing the nature and amount of such adjustments within sixty days of the taxpayer's receipt of such adjustments from the Internal Revenue Service.

D.(1) The secretary may grant a reasonable extension of time for filing returns, not to exceed seven months from the date the Louisiana income tax return is due or the extended due date of the federal income tax return, whichever is later.

(2) The secretary may accept a photocopy or duplicate original of the taxpayer's:

(a) Federal application for an extension of time to file, or

(b) Application for an automatic extension of time to file a federal return.

(3) The secretary may otherwise provide for the automatic extension of time to file a corporation return not to exceed seven months.

E. Should the day required for filing returns fall on Saturday, Sunday, or a legal holiday, the return shall be made and filed on the next business day. This Subsection is applicable to the filing dates required by Subsection A and filing dates extended pursuant to Subsection D.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1987, No. 136, §1, eff. June 18, 1987.

R.S. 47:287.621. Failure to file; penalty

The intentional failure to file a return with the secretary in accordance with the requirements of this Part and within the time periods specified in R.S. 47:287.614 shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months, unless approval for a delay in filing is authorized by the secretary of the Department of Revenue and Taxation in writing and in addition the penalties set forth in R.S. 47:1602 shall be invoked. The penalties provided for in this Section shall not be applicable if said return is filed within ninety days of the final date for filing as provided in R.S. 47:287.614.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.623. Period covered by returns or other documents

When not otherwise provided for by this Part, the secretary may prescribe the period for which, or the date as of which, any return, statement, or other document required by this Part shall be made.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.625. Computations on returns or other documents

A. Amounts shown on Department of Revenue and Taxation forms. The secretary is authorized to provide, with respect to any amount required to be shown on a form prescribed for any return, statement, or other document, that if such amount of such item is other than a whole-dollar amount, either:

(1) The fractional part of a dollar shall be disregarded; or

(2) The fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case

the amount, determined without regard to the fractional part of a dollar, shall be increased by one dollar.

B. Election not to use whole dollar amounts. Any person making a return, statement, or other document shall be allowed to make such return, statement, or other document without regard to Subsection A.

C. Inapplicability to computation of amount. The provisions of Subsection A and B shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.627. Identifying number; information

A. Inclusion of identifying numbers in returns. Any corporation required under the authority of this Part to make a return, statement, or other document shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such corporation.

B. Requirement of information. For purposes of this Section, the secretary is authorized to require such information as may be necessary to assign an identifying number to any corporation.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.641. Due date of tax

The tax imposed by this Part shall be due in each case on the day next following the last day of each taxable year. The filing of returns and payment of taxes shall be as provided in this Part.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.651. Payment of tax

A. Time of payment. The total amount of tax on a calendar year return imposed by this Part shall be paid on the fifteenth day of April following the close of the calendar year, or, if a calendar year return is filed before said due date, then the tax shall be paid when the return is filed; and, if the return is on the basis of a fiscal year, then the total amount of tax shall be paid on the fifteenth day of the fourth month following the close of the fiscal year, or, if a fiscal year return is filed before said due date, then the tax shall be paid when the return is filed. The full amount of tax disclosed by the return as filed shall constitute an assessment at that time and shall be recorded as an assessment in the records of the secretary.

B. Voluntary advance payment. A tax imposed by this Part or any installment thereof may be paid at the election of the taxpayer prior to the date prescribed for its payment.

C. Receipts. The secretary, upon any payment of any tax imposed by this Part, shall upon request give to the person making such payment a full written or printed receipt therefor.

D. Form of payment. All payments of taxes under this Part shall be made payable to the secretary of revenue and taxation; and the amount may be paid by check, bank draft, post office money order, or express money order.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.654. Installment payments of estimated income tax by corporations

A. Corporations required to pay estimated income tax. Every corporation subject to taxation under this Part shall make payments of estimated tax, as defined in Subsection C, during its taxable year, as provided in Subsection B, if its estimated tax for such taxable year can reasonably be expected to be one thousand dollars or more.

B. Payments in installments. Any corporation required under Subsection A to make payments of estimated tax, as defined in Subsection C, shall make such payments in installments as follows:

If the requirements of Subsection A are first met:	The following percentages of the estimated tax shall be paid on the 15th day of the–			
	4th month	6th month	9th month	12th month
(1) Before the 1st day of the 4th month of the taxable year	25	25	25	25
(2) After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year		33 1/3	33 1/3	33 1/3
(3) After the last day of the 5th month and before they; 1st day of the 9th month of the taxable year			50	50
(4) After the last day of the 8th month and before the 1st day of of the 12th month of the taxable year				100

C. Estimated tax defined. The term "estimated tax" means the amount which a taxpayer estimates to be the tax imposed by this Part for the current period, less the amount which it estimates to be the sum of any credits allowable against the tax.

D. Recomputation of estimated tax. If, after paying any installment of estimated tax, the taxpayer makes a new estimate, the amount of each remaining installment, if any, shall be the amount which would have been payable if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased, as the case may be, by the amount computed by dividing:

(1) The difference between: (a) the amount of estimated tax required to be paid before the date on which the new estimate is made, and (b) the amount of estimated tax which would have been required to be paid before such date if the new estimate had been made when the first estimate was made, by

(2) The number of installments remaining to be paid on or after the date on which the new estimate is made.

E. Application to short taxable year. The application of this Section to taxable years of less than twelve months shall be as
prescribed by the secretary.

F. Installments paid in advance. At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment.

G. Payments of estimated income tax. Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by this Part for the taxable year.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.655. Failure by corporation to pay estimated income tax

A. Addition to the tax. In case of any underpayment of estimated tax by a corporation, except as provided in Subsection D, there shall be added to the tax under this Part for the taxable year an amount determined at the rate of twelve percent per annum upon the amount of the underpayment, determined under Subsection B, for the period of the underpayment as determined under Subsection C.

B. Amount of underpayment. For purposes of Subsection A, the amount of the underpayment shall be the excess of:

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to eighty percent of the tax shown on the return for the taxable year, or if no return was filed, eighty percent of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for payment.

C. Period of underpayment. The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) The 15th day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this Paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under Subsection B(1) for such installment date.

D. Exception. Notwithstanding the provisions of the preceding Subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date, if the estimated tax were whichever of the following is the lesser:

(1) The tax shown on the return of the corporation for the preceding year was for a taxable year of twelve months.

(2) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of

the acts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

(3)(a) An amount equal to eighty percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) for the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,

(ii) for the first three months or for the first six months of the taxable year, in the case of the installment required to be paid in the sixth month of the taxable year,

(iii) for the first six months or the first eight months of the taxable year in the case of the installment required to be paid in the ninth month, and

(iv) for the first nine months or for the first eleven months of the taxable year, in the case of the installment to be paid in the twelfth month of the taxable year.

(b) For purposes of this Paragraph, the taxable income shall be placed on an annualized basis by

(i) multiplying by twelve the taxable income referred to in Subparagraph (a), and

(ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in Subparagraph (a).

E. Definition of tax. In general. For purposes of Subsections B and D, the term "tax" means the tax imposed by this Part less the sum of any credits allowable against the tax.

F. Short taxable year. The application of this Section to taxable years of less than twelve months shall be as prescribed by the secretary.

G. Excessive adjustment under R.S. 47:287.656.

(1) Addition to tax. If the amount of an adjustment under R.S. 47:287.656 made before the fifteenth day of the fourth month following the close of the taxable year is excessive there shall be added to the tax under this Part for the taxable year an amount determined at the rate of twelve percent per annum upon the excessive amount from the date on which the credit is allowed or the refund is paid to such fifteenth day.

(2) Excessive amount. For purposes of Paragraph (1), the excessive amount shall be equal to the lesser of the amount of the adjustment or the amount by which:

(a) The income tax liability, as defined in R.S. 47:287.656(C), for the taxable year as shown on the return for the taxable year, exceeds

(b) The estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.656. Adjustment of overpayment of estimated income tax by corporation

A. Application of adjustment.

(1) Time for filing. A corporation may, after the close of the taxable year and on or before the fifteenth day of the fourth month thereafter, and before the day on which it files a return for such taxable year, file an application for an adjustment of an overpayment by it of estimated income tax for such taxable year. An application under this Subsection shall not constitute a claim for credit or refund.

(2) Form of application. An application under this Subsection shall be verified in the manner prescribed in the case of a return of the taxpayer and shall be filed in the manner and form prescribed by the secretary of Revenue and Taxation. The application shall set forth:

(a) The estimated income tax paid by the corporation during the taxable year.

(b) The amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year.

(c) The amount of the adjustment.

(d) Such other information for purposes of carrying out the provisions of this Section as may be required by such regulations.

B. Allowance of adjustment.

(1) Limited examination of application. Within a period of forty-five days from the date on which an application for an adjustment is filed under Subsection A, the secretary shall make, to the extent he deems practicable in such period, a limited examination of the application to discover omissions and errors therein and shall determine the amount of the adjustment upon the basis of the application and the examination, except that the secretary may disallow, with-

out further action, any application which he finds contains material omissions or errors which he deems cannot be corrected within such forty-five days.

(2) Adjustment credited or refunded. The secretary, within the forty-five day period referred to in Paragraph (1), may credit the amount of the adjustment against any liability in respect of any tax administered by the secretary on the part of the corporation and shall refund the remainder to the corporation.

(3) Limitation. No application under this Section shall be allowed unless the amount of the adjustment equals or exceeds (a) ten percent of the amount estimated by the corporation on its application as its income tax liability for the taxable year, and (b) five hundred dollars.

(4) Effect of adjustment. For purposes of this Part, other than R.S. 47:287.655, any adjustment under this Section shall be treated as a reduction in the estimated income tax paid made on the day the credit is allowed or the refund is paid.

C. Definitions. For purposes of this Section and R.S. 47:287.655, relating to excessive adjustment:

(1) The term "income tax liability" means the tax imposed by this Part less the sum of any credits allowable against the tax.

(2) The amount of an adjustment under this Section is equal to the excess of:

(a) The estimated income tax paid by the corporation during the taxable year, over

(b) The amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.657. Refunds and credits of overpayment of estimated income tax by corporations

A. An overpayment of estimated income tax shall bear no interest if credit is given therefor. Amounts actually refunded to the taxpayer as overpayments shall bear interest at the rate established pursuant to Civil Code Article 2924(B)(3) per year computed from ninety days after the filing date of the return showing the overpayment or from the due date of such return, whichever is later.

B. The secretary may net any overpayments of estimated corporate income tax against the corporation's franchise taxes for the purpose of determining the interest due under the provisions of R.S. 47:1601.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1988, 1st Ex.Sess., No. 4, §1, eff. March 28, 1988.

R.S. 47:287.659. Refunds and credits; general rules

Except as otherwise provided in this Part, all matters relating to the refunding or crediting of income taxes shall be governed by the provisions of Part V of Chapter 18 of this Subtitle.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.660. Overpayment of installment

If the taxpayer has paid as an installment of tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any, and any excess shall be credited or refunded as provided in Part V of Chapter 18 of this Subtitle.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.662. Overpayment of income taxes applied to corporation franchise taxes for interest computation purposes

The Secretary may net any overpayment of income tax by a corporation against the corporation's franchise taxes for the purpose of determining the interest due under R.S. 47:1601.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.663. Overpayments arising from allowance of deductions for bad debts or worthless stock

In the case of an overassessment which arises from the allowance of a deduction for a bad debt or worthless stock which has not been claimed and allowed on a return of the taxpayer for another year, the period of limitation prescribed in R.S. 47:1623 shall be extended for an additional period of two years, and the limitation on the amount of credit or refund provided in R.S. 47:1623 shall be suspended.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.664. Credits arising from refunds by utilities

Whenever a utility refunds to its customers, pursuant to an order of a court or regulatory agency as a result of the denial of a proposed rate increase, an amount or amounts which, if taken as a deduction from gross income in the year paid or accrued, would result in a net loss, then in lieu of such deduction the utility may elect to take a credit against its Louisiana income tax in the amount of the income tax increase which was the sole result of the inclusion of the amount or amounts refunded in gross income in the year or years received irrespective of whether or not the period of limitation provided in R.S. 47:1623 has expired for the year in which the amount refunded was included in gross income. If this credit exceeds the income tax that would be due the state of Louisiana in the year of the refund, computed without the credit, then the excess of this credit may be carried over the following two taxable years.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.681. Administration

Except as specifically provided to the contrary in this Part, all matters pertaining to the administration of this Part shall be governed by the provisions of Chapter 18 of this Subtitle.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.682. Collection from transferee or fiduciary; procedure

A. The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax, including interest, additional amounts, and additions to the tax provided by law, imposed upon the taxpayer by this Part, shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of the collection directly from the taxpayer.

B. In the absence of notice to the secretary under R.S. 47:287.683(B), the existence of a fiduciary relationship, notice of liability enforceable under this Section in respect of a tax imposed by this Part, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purpose of this Part, even if such person is deceased or is under legal disability, or in the case of a corporation, has terminated its existence.

C. As used in this Section, the term “transferee” includes donee, heir, legatee, devisee, distributee, shareholder, or former shareholder of a dissolved corporation, successor of a corporation, a party to a reorganization defined in I.R.C. Section 368, and all other classes of distributees, including the transferee of a transferee.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.683. Notice of fiduciary relationship

A. Fiduciary of taxpayer. Upon notice to the secretary that any person is acting in a fiduciary capacity, such fiduciary shall assume powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this Part until notice is given that the fiduciary capacity has terminated.

B. Fiduciary of transferee. Upon notice to the secretary that any person is acting in a fiduciary capacity for a person subject to the liability specified in R.S. 47:287.682, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such Section, until notice is given that the fiduciary capacity has terminated.

C. Manner of notice. Notice under R.S. 47:287.683(A) or (B) shall be given in accordance with regulations prescribed by the secretary.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

LAC 61:I.1168. Notice of Fiduciary Relationship

A. Notice. As soon as the secretary receives notice that a person is acting in a fiduciary capacity, such fiduciary must, except as otherwise specifically provided, assume the powers, rights, duties, and privileges of the taxpayer with respect to the income tax imposed by Part II.A. of Chapter 1. If the person is acting as a fiduciary for a transferee or other person subject to the liability specified in R.S. 47:287.682, such fiduciary is required to assume the powers, rights, duties, and privileges of the transferee or other person under that section. The amount of the tax or liability is ordinarily not collectible from the personal estate of the fiduciary, but is collectible from the estate of the taxpayer or from the estate of the transferee or other person subject to the liability specified in R.S. 47:287.682. [See however R.S. 47:1673]. The "notice to the secretary" provided for in R.S. 47:287.683 shall be a written notice signed by the fiduciary and filed with the secretary. The notice must state the name and address of the person for whom the fiduciary is acting, and the nature of the liability of such person; that is, whether it is a liability for tax, and if so, the year or years involved, or a liability at law or in equity of a transferee of property of a taxpayer, or a liability of a fiduciary in respect of the payment of any tax from the estate of the taxpayer. Any such written notice which has previously been filed with the secretary shall be considered as sufficient notice. Unless there is already on file with the secretary satisfactory evidence of the authority of the fiduciary to act for such person in a fiduciary capacity, such evidence must be filed with and made a part of the notice. If the fiduciary capacity exists by order of court, a certified copy of the order may be regarded as such satisfactory evidence. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the secretary written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. The notice of termination should state the name and address of the person, if any, who has been substituted as fiduciary.

B. Effect of Failure to Give Notice. If the notice of the fiduciary capacity described in Subsection A above is not filed with the secretary before the sending of notice of assessment by registered mail to the last known address of the taxpayer, or the last known address of the transferee or other person subject to liability, no notice of the deficiency will be sent to the fiduciary. In such a case the sending of the notice to the last known address of the taxpayer, transferee, or other person, as the case may be, will be a sufficient compliance with the requirements of the income tax law, even though such taxpayer, transferee, or other person is deceased, or is under a legal disability, or in the case of a corporation, has terminated its existence. Under such circumstances if no petition is filed with the Board of Tax Appeals within 60 days after the mailing of the notice to the taxpayer, transferee, or other person, the assessment becomes final upon the expiration of such 60-day period and demand for payment will be made.

C. Definition. The term fiduciary means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

D. Limitation. This regulation shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of the income tax law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.683.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:109 (February 1988).

R.S. 47:287.701. Definitions, use of terms and purpose

A. "Federal law" means the Internal Revenue Code of 1986, as amended, (Title 26 United States Code) and applicable U.S. Treasury Regulations.

B. Federal law terms. Except as otherwise provided or clearly appearing from the context, any term used in this Part shall have the same meaning as when used in comparable context at federal law.

C. "Allocable income or loss" or "gross allocable income or loss" means the general class of gross income designated as allocable income by R.S. 47:287.92.

D. "Apportionable income or loss" or "gross apportionable income or loss" means the general class of gross income designated as apportionable income by R.S. 47:287.92.

E. "Louisiana gross allocable income or loss" means those items of, or that portion of, allocable income or loss allocated to Louisiana pursuant to the provisions of R.S. 47:287.93(A).

F. "Net allocable income or loss" means net allocable income or loss earned within or derived from sources within Louisiana and is the mathematical remainder when subtracting from Louisiana gross allocable income or loss:

(1) Allowable deductions within the meaning of R.S. 47:287.63 which are directly attributable to Louisiana gross allocable income or loss, and

(2) A ratable portion of such allowable deductions which are not directly attributable to any item or class of gross income.

G. Total net apportionable income or loss" means the remainder when subtracting from gross apportionable income or loss:

(1) Allowable deductions within the meaning of R.S. 47:287.63 which are directly attributable to gross apportionable income or loss, and

(2) A ratable portion of such allowable deductions which are not directly attributable to any item or class of gross income.

H. "Net apportionable income or loss" means net apportionable income or loss earned within or derived from sources within Louisiana as computed pursuant to R.S. 47:287.94(B) or (D), as the case may be.

I. Renumbered Internal Revenue Code provisions. If a provision of the Internal Revenue Code of 1986, ("I.R.C.") is specifically mentioned by number in this Part, and if after the effective date of the legislation that established such reference the Internal Revenue Code provision is by law renumbered without any other change whatever being made to it, then the provisions of this Part containing such reference shall be construed as though the renumbering of the Internal Revenue Code had not occurred.

J. "Subpart", "Section", "Subsection", "Paragraph", and "Subparagraph". When used in this Part the word "Subpart" or "Section" means a Subpart or Section of this Part unless some other statute is specifically mentioned; "Subsection" means a Subsection of this Section in which the term occurs unless some other Section is expressly mentioned; "Paragraph" means a Paragraph of the Subsection in which the term occurs unless another Subsection is expressly mentioned; and "Subparagraph" means a Subparagraph of the Paragraph in which the term occurs unless another Paragraph is expressly mentioned.

K. "Other similar services" includes but is not limited to the drilling of oil and gas wells.

L. Legislative findings.

(1) The legislature hereby finds and declares that the adoption by this state, for its corporation net income tax purposes, of certain provisions of the laws of the United States relating to definitions, the allowance of deductions, and the determination of taxable income for federal tax purposes will:

(a) Simplify preparation of Louisiana Corporation Income Tax returns by taxpayers.

(b) Improve enforcement of the Louisiana Corporation Income Tax through better use of federal information.

(c) Aid interpretation of the corporation income tax law through increased use of federal judicial and administrative determinations and precedents, where applicable.

(2) The legislature does therefore declare that this Part be construed so as to accomplish the foregoing purposes.

(3) For convenience, the sections in this Part are arranged, insofar as practicable, in the same general sequence and pattern as similar sections of the Internal Revenue Code of 1986. No special inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular Section or provision or portion of this Part, nor shall the descriptive matter or headings relating to any Part, Section, Subsection, or Paragraph be given any legal effect.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986

R.S. 47:287.732. Subchapter S Corporations

(Text of Section as added by Acts 1986, 1st Ex. Sess., No. 16, §1, eff. until Jan. 1, 1991.)

A corporation classified under the Internal Revenue Code as a Subchapter S corporation shall be taxed and required to comply with this Part the same as any other corporation. The provisions of this Part shall apply as if the Subchapter S corporation had been required to file an income tax return with the Internal Revenue Service as a Subchapter C corporation for the current and all prior taxable years, in accordance with federal law.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

(For text of section amended by Acts 1989, No. 622, §1, eff. Jan. 1, 1991, see post.)

R.S. 47:287.732. S Corporations

(Text of section amended by Acts 1989, No. 622, §1, eff. Jan. 1, 1991)

A. Taxation of S corporation. A corporation classified under Subchapter S of the Internal Revenue Code as an S corporation shall be taxed and required to comply with this Part the same as any other corporation. The provisions of this Part shall apply as if the S corporation had been required to file an income tax return with the Internal Revenue Service as a C corporation for the current and all prior taxable years, in accordance with federal law.

B. S corporation exclusion. This Subsection provides an exclusion to corporations classified as S corporations under federal law for the taxable year, as follows:

(1) In computing Louisiana taxable income pursuant to this Part, an S corporation may exclude such percentage of its Louisiana net income for the taxable year as is provided in R.S. 47:287.732(B)(2).

(2) The excludable percentage of Louisiana net income is determined by multiplying Louisiana net income for a taxable year by a ratio, the numerator of which is the number of issued and outstanding shares of capital stock of the S corporation which are owned by Louisiana resident individuals on the last day of the corporation's taxable year, and the denominator of which is the total number of issued and outstanding shares of capital stock of the corporation on the last day of the corporation's taxable year, provided that no share shall be allowed to be counted in the numerator unless its owner has for the taxable year of inclusion filed a correct and complete Louisiana individual income tax return as a resident.

(3) For purposes of Paragraph (2) of this Subsection:

(a) "Taxable year of inclusion" means the taxable year of the S corporation shareholder which includes the last day of the S corporation's taxable year for which the exclusion is claimed.

(b) The term "resident individual" includes resident estates and trusts to the extent that such are allowed to be S corporation shareholders pursuant to federal law.

(4) In the application of Paragraph (2), the term "Louisiana resident individual" shall be construed to include a nonresident individual shareholder who has for the taxable year filed a correct and complete Louisiana individual income tax return, which includes his share of the S corporation's income, and has paid the tax shown to be due thereon.

(5) Should an S corporation incur a Louisiana net loss, as described in R.S. 47:287.91, a percentage of such loss shall be excluded from carry-back or carry-over treatment notwithstanding the provisions of R.S. 47:287.86. The applicable percentage of the Louisiana net loss to be excluded shall be computed using the same ratio provided in R.S. 47:287.732(B)(2).

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1989, No. 622, §1, eff. Jan. 1, 1991.

(For text of section as added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. until Jan. 1, 1991, see ante.)

R.S. 47:287.733. Corporations filing consolidated federal returns

A. Except as otherwise provided in Subsection B of this Section, when a corporation is included with affiliates in a consolidated federal income tax return in accordance with federal law, the terms and provisions of this Part shall apply as if the corporation had been required to file an income tax return with the Internal Revenue Service on a separate corporation basis for the current and all prior taxable years, in accordance with federal law. Nothing in this Section shall be construed to allow a deduction for federal income tax on a separate corporation basis.

B.(1) Notwithstanding the provisions of Subsection A, any gain recognized by the distributing corporation pursuant to Section 311(b) of the Internal Revenue Code, [FN1] but deferred for federal income tax purposes pursuant to the regulations under Section 1502 of the Internal Revenue Code, [FN2] relating to deferred intercompany transactions, shall also be deferred for purposes of this Part and shall be restored to income of the distributing corporation in the year it would be restored to a member of the affiliated group pursuant to the regulations under Section 1502 of the Internal Revenue Code. Except, such deferred income shall be restored to income of the distributing corporation and taxed if the distributing corporation is merged with another corporation, reorganized, or ceases to be liable for corporation income tax for any reason whatsoever.

(2) In such case, for the purpose of determining gain or loss but for no other purposes, the adjusted basis of the distributee corporation in the property distributed to it by the distributing corporation shall be the distributing corporation's basis increased by the gain which would have been recognized but which is deferred pursuant to Paragraph B(1).

(3) Notwithstanding any other provision of this Section for purposes of determining a deduction for depreciation or amortization, the basis of any property distributed pursuant to Paragraph B(2) shall be the same to the distributee corporation as it was to the distributing corporation.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1996, No. 42, 1. eff. for taxable periods beginning after December 31, 1996.

R.S. 47:287.734. Domestic International Sales Corporations (DISC's) and Foreign Sales Corporations (FSC's)

A. The federal law classification Domestic International Sales Corporation (DISC) is not cognizable at law in this state. For the purposes of this Part, a DISC under federal law shall be taxed and required to comply with the law the same as any other corporation. A corporation which owns stock in, makes sales to, or otherwise uses the services of a corporation classified as a DISC under federal law may be required by the secretary to include a proportionate share of DISC income and deductions on its own return to clearly reflect its income for the taxable year.

B. The federal law classification Foreign Sales Corporation (FSC) is not cognizable at law in this state. For the purposes of this Part an FSC under federal law shall be taxed and required to comply with the law the same as any other corporation. A corporation which owns stock in, makes sales to, or otherwise uses the services of a corporation classified as an FSC under federal law may be required by the secretary to include a proportionate share of the FSC's income and deductions on its own return to clearly reflect its income for the taxable year.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.736. Real Estate Investment Trusts (REITs)

The tax imposed by this Part upon corporations shall be imposed upon real estate investment trusts as defined in R.S. 12:491 et seq., and shall be computed only upon that part of the net income of the trust which is subject to federal income tax as provided in I.R.C. Sections 857 and 858.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.738. Other inclusions and exclusions from gross income

A. Inclusion of payments to non-U.S. companies.

Notwithstanding any federal law to the contrary, gross income as defined in R.S. 47:287.61 of this Part shall include interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remuneration, emoluments, and other fixed or determinable annual or periodical gains, profits, and income taxed pursuant to I.R.C. Section 881 relative to amounts received from sources within the United States by corporations not created or organized in the United States or under the laws of the United States or any state.

B. Inclusion of target company gains.

(1) For the purposes of this Part, if a purchasing corporation makes an election under I.R.C. Section 338, or is treated under Subsection (e) of I.R.C. Section 338 as having made such an election, then, in the case of any qualified stock purchase, the target corporation:

(a) Shall be treated as having sold all of its assets at the close of the acquisition date at fair market value in a single transaction and

(b) Shall be treated as a new corporation which purchased all of the assets referred to in Subparagraph (a) as of the beginning of the day after the acquisition date.

(2) Any gain or loss recognized under Paragraph (B)(1) shall be taken into account in determining gross income under R.S. 47:287.71.

(3) The secretary may prescribe reasonable and needful methods of accounting, computation, and basis determination for the administration of this Subsection, including the allocation and apportionment of any gain within and without Louisiana.

(4) The secretary may provide that the gain determined under this Section may be reduced by the gain on the sale of target corporation stock determined to have borne Louisiana income tax.

C. Interest on obligations or securities issued by the state of Louisiana or its political or municipal subdivisions is exempt and therefore excluded from gross income.

D. 1934 Basis Adjustment.

(1) The adjusted basis for computing gain on the sale of property acquired before January 1, 1934 shall be its ad-

justed basis under federal law or its fair market value on January 1, 1934, whichever is higher.

(2) If the basis determined in Paragraph (D)(1) exceeds the property's adjusted basis under federal law, the difference between the two bases may be excluded from gross income to the extent of the gain included in gross income.

E. Gain or loss upon disposition of installment obligations.

(1) If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and

(a) In the case of satisfaction at other than face value or a sale or exchange, the amount realized, or

(b) In case of a distribution, transmission, or disposition otherwise than by sale or exchange, the fair market value of the obligation at the time of such distribution, transmission, or disposition. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

(2) In the case of a distribution in liquidation, the secretary may permit the distributee to report the gain in the year received.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.741. Special rule for leases

Special federal rules for leases or finance leases shall be ignored in the determination of gross income, allowable deductions, net income, and Louisiana net income under this Part. For purposes of this Section, "special federal rules for leases or finance leases" means Section 168(f)(8) of the Internal Revenue Code of 1954, as amended by the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984, and such provisions, portions, or principles thereof as are retained in federal law by the transitional rules of the Tax Reform Act of 1986.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.743. Deductions from gross income; charges in case of oil and gas wells

A. (1) Option with respect to intangible drilling and development costs incurred by an operator (one who holds a working or operating interest in any tract or parcel of land either as a fee owner or under a lease or any other form of contract granting working or operating rights) in the development of oil and gas properties: All expenditures made by an operator for wages, fuel, repairs, hauling, supplies, etc., incident to and necessary for the drilling of wells and the preparation of wells for the production of oil or gas, may, at the option of the operator, be deducted from gross income as an expense or charged to capital account. Such expenditures have for convenience been termed intangible drilling and development costs. They include the cost to operators of any drilling or development work, excluding amounts payable only out of production or the gross proceeds from production and amounts properly allocable to cost of depreciable property, done for them by contractors under any form of contract, including turnkey contracts. Examples of items to which this option applies are all amounts paid for labor, fuel, repairs, hauling, and supplies, or any of them, which are used:

(a) In the drilling, shooting, and cleaning of wells.

(b) In such clearing of ground, draining, road making, surveying, and geological works as are necessary in preparation for the drilling of wells.

(c) In the construction of such derricks, tanks, pipelines, and other physical structures as are necessary for the drilling of wells and the preparation of wells for the production of oil or gas.

(2) In general, this option applies only to expenditures for those drilling and development items which in themselves do not have a salvage value. For the purpose of this option, labor, fuel, repairs, hauling, supplies, etc., are not considered as having a salvage value, even though used in connection with the installation of physical property which has a salvage value. Included in this option are all costs of drilling and development undertaken, directly or through a contract, by an operator of an oil and gas property whether incurred by his prior or subsequent to the formal grant or assignment to him of operating rights (a leasehold interest, or other form of operating rights, or working interest); except that in any case where any drilling or development project is undertaken for the grant or assignment of a fraction of the operating rights, only that part of the costs thereof which is attributable to such fractional interest is within

this option. In the excepted cases, costs of the project undertaken, including depreciable equipment furnished, to the extent allocable to fractions of the operating rights held by others, must be capitalized as the depletable capital cost of the fractional interest thus acquired.

B.(1) Capital items. The option with respect to intangible drilling and development costs does not apply to expenditures by which the taxpayer acquires tangible property ordinarily considered as having a salvage value. Examples of such items are the costs of the actual materials in those structures which are constructed in the wells and on the property, and the cost of drilling tools, pipe, casing, tubing, tanks, engines, boilers, machines, etc. The option does not apply to any expenditure for wages, fuel, repairs, hauling, supplies, etc., in connection with equipment, facilities, or structures not incident to or necessary for the drilling of wells, such as structures for storing or treating oil or gas. These are capital items and are returnable through depreciation.

(2) Expense items. Expenditures which must be charged off as expense, regardless of the option provided by this Section, are those for labor, fuel, repairs, hauling, supplies, etc., in connection with the operation of the wells and of other facilities on the property for the production of oil or gas.

C. If an election to expense intangible drilling and development costs is not made, the cost may be recovered in the same manner as provided under federal law.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.745. Deductions from gross income; depletion

A. In computing net income in the case of oil and gas wells there shall be allowed as a deduction cost depletion as defined under federal law or percentage depletion as provided for in Subsection B, whichever is greater.

B. In the case of oil and gas wells, the percentage depletion provided for in Subsection A shall be twenty-two percent of gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed fifty percent of the net income of the taxpayer, computed without allowance for depletion, from the property. In determining net income from the property, federal income taxes shall be considered an expense.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.746. Adjustments to income and deductions

Income and deductions reported under federal law may be increased or decreased to take into account the differences in reporting under prior Louisiana law or due to modifications, such as depletion and intangible drilling and development costs, under this Part. Such increase or decrease shall be as prescribed by the secretary.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.747. Situs of stock cancelled or redeemed in liquidation

In cases where property located in Louisiana is received by a shareholder in the liquidation of a corporation, the stock cancelled or redeemed in the liquidation shall, for purposes of determining taxable gain under this Part, be deemed to have its taxable situs in this state to the extent that the property of the corporation distributed in liquidation is located in Louisiana. If only a portion of the property distributed in liquidation is located in Louisiana, only a corresponding portion of the gain realized by a shareholder shall be considered to be derived from Louisiana sources. Nothing in this Section shall be construed to mean that gain or loss shall be recognized upon the transfer of property in a merger of corporations where the basis of the property in the hands of the merging corporation is carried forward as the basis in the hands of the continuing corporation.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

LAC 61:I.1189. Situs of Stock Canceled or Redeemed in Liquidation

A. General Rule. R.S. 47:287.747 provides that the situs of stock canceled or redeemed in the liquidation of a corporation, whether domestic or foreign, shall be in Louisiana in the same ratio that property located in Louisiana, and received by a shareholder, bears to the total property received in the liquidation. Property as used in R.S. 47:287.747 means all of the assets of the liquidating cor-

poration without regard to liabilities. For the purpose of determining the situs of the stock canceled or redeemed in liquidation, the fair market value of the property distributed in liquidation shall be used. The location of the property of the corporation shall be determined in accordance with the provisions of R.S. 47:287.93.

B. Example: X, shareholder, owns 10 percent of the shares of ABC, Inc., a foreign corporation. The basis of X's shares is $1,000. On July 1, 1986, ABC Inc., liquidates and exchanges the following property for its outstanding stock, which it cancels.

	Total Assets (Fair Market Value)	*Louisiana Assets (Fair Market Value)*
Cash	*$10,000*	*$2,000*
Accounts receivable	*50,000*	*8,000*
Buildings	*60,000*	*30,000*
Land	*60,000*	*10,000*
Stocks	*20,000*	*0*
	$200,000	*$50,000*

Since one-fourth of the assets distributed in liquidation are located in Louisiana, one-fourth of X's stock has its situs in Louisiana.
Gain is computed as follows:

Fair market value of property received	*$20,000*
Basis of property received	*1,000*
Gain	*$19,000*
Louisiana taxable gain (1/4 of $19,000)	*$4,750*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.747.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:109 (February 1988).

R.S. 47:287.748. Corporation tax credit; re-entrant jobs credit

A. The intent of this Section is solely to encourage the employment in full-time jobs in the state of Louisiana of re-entrants who have been convicted of a felony and who have successfully completed the Intensive Incarceration Program as provided for in R.S. 15:574.4. Any taxpayer who employs an eligible re-entrant during the taxable year in the state of Louisiana shall be allowed a credit against the tax liability due under the corporate income tax as determined pursuant to Subsection B of this Section.

B.(1) The credit shall be one hundred fifty dollars per eligible re-entrant employed, as defined in Subsection C hereof, but shall not exceed fifty percent of corporate income tax.

(2) Only one credit shall be permitted for any one individual employee during his employment by the taxpayer and shall be in lieu of any credit available under R.S. 47:287.749.

(3)(a) The amount of the credit allowed under Subsection B(1) for the taxable year shall be an amount equal to the sum of:

(i) A carry-over of prior unused credits arising from taxable years beginning on or after January 1, 1987, carried to such taxable year, plus

(ii) The amount of the credit determined under Subsection A for the taxable year.

(b) If the sum of the amount of credits as determined under the provisions of Subsection B(3)(a)(i) and (ii) of this Section for the current taxable year exceeds the limitation imposed by Subsection B(1), the excess shall be treated as a carry-over credit and may be carried over for a maximum of five consecutive years following the taxable year in which the credit originated. Such carry-over credits are to be applied in reduction of the tax in the order of the taxable years in which the credits originated, beginning with the credit for the earliest taxable year.

C. Eligible re-entrant" is defined as a person:

(1) Residing and domiciled in this state; who has been convicted of a felony and who has successfully completed the Intensive Incarceration Program as provided for in R.S. 15:574.4.

(2) Who has been employed by the taxpayer in a full-time position in this state, performing such duties at least thirty hours per week for at least six consecutive calendar months.

(3) Who, since his release from custody and prior to this current employment by the taxpayer, has not been employed in a full-time position for six months or more.

Added by Acts 1987, No. 758, §1.

R.S. 47:287.749. Jobs credit

A. The intent of this Section is solely to reward the generation of new full-time and part-time jobs in the state of Louisiana. Any taxpayer who establishes or expands a business enterprise in the state of Louisiana shall be allowed a credit against the tax liability due under the corporate income tax as determined pursuant to Subsection B of this Section.

B.(1) The credit shall be a portion of the state corporate income tax, but shall not exceed fifty percent of such tax. Such portion shall be an amount determined as follows:

(a) One hundred dollars per eligible new employee per taxable year.

(b) Two hundred dollars per eligible new economically disadvantaged employee per taxable year.

(c) Two hundred twenty-five dollars per new employee who is a resident of a neighborhood with an unemployment rate of ten percent or more per taxable year.

(2) Only one of the above credits shall be permitted for any one individual employee.

(3)(a) The amount of the credit allowed under Subsection B(1) for the taxable year shall be an amount equal to the sum of:

(i) a carry-over of prior unused credits arising from taxable years beginning on or after January 1, 1980, carried to such taxable year, plus

(ii) the amount of the credit determined under Subsection A for the taxable year.

(b) If the sum of the amount of credits as determined under the provisions of Subsection B(3)(a)(i) and (ii) of this Section for the current taxable year exceeds the limitation imposed by Subsection B(1), the excess shall be treated as a carry-over credit and may be carried over for a maximum of five consecutive years following the taxable year in which the credit originated. Such carry-over credits are to be applied in reduction of the tax in the order of the taxable years in which the credits originated, beginning with the credit for the earliest taxable year.

C. Eligible employees are defined as follows:

(1) A "new employee" means a person residing and domiciled in this state, hired by the taxpayer to fill a position for a job in this state which previously did not exist in the business enterprise during the taxable year for which the credit allowed by this Section is claimed. In no case shall the new employees allowed for purpose of the credit exceed the total increase in employment. A person shall be deemed to be employed if such person performs duties in connection with the operation of the business enterprise on:

(a) a regular, full-time basis;

(b) a part-time basis, provided such person is customarily performing such duties at least twenty hours per week for at least six months during the taxable year.

(2) A "new economically disadvantaged employee" means a new employee who is either:

(a) a member of a family which receives public assistance; or

(b) a member of a family whose income during the previous six months, on an annualized basis, was such that:

(i) the family would have qualified for public assistance, if it has applied for such assistance; or

(ii) it does not exceed the poverty level; or

(iii) it does not exceed seventy percent of the lower living standard income level.

(c) a foster child on whose behalf state or local government payments are made; or

(d) where such status presents significant barriers to employment:

(i) a client of a sheltered workshop;

(ii) a handicapped individual;

(iii) a person residing in an institution or facility providing twenty-four hour support, such as a prison, a hospital, or community care facility; or

(iv) a regular outpatient of a mental hospital rehabilitation facility or similar institution.

(3) A "new employee who is a resident of a neighborhood with an unemployment rate of ten percent or more" means a new employee whose neighborhood status shall be determined by rules and regulations promulgated by the Louisiana Department of Labor. Any new employee, who is a resident of an enterprise zone established pursuant to the provisions of the Louisiana Enterprise Zone Act, shall be deemed to be a new employee who is a resident of a neighborhood with an unemployment rate of ten percent or more for purposes of this Section.

Amended by Acts 1992, No. 447, §4, eff. June 20, 1992.

D. The tax credit allowed by this Section shall be in lieu of or an alternative to the tax exemption allowed pursuant to Article VII, Section 21(F) of the Constitution of Louisiana, or any ad valorem property tax exemption available to business or industry and any tax exemption granted pursuant to the provisions of the Louisiana Enterprise Zone Act.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.750. Sale of partnership interest

The gain on the sale of a partnership interest is deemed to be a Louisiana gain to the extent that the partnership assets are located in Louisiana at the time of the sale.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986

R.S. 47:287.751. Reconciliation of transitional differences

A. The secretary is authorized to provide methods for transition and allocation between the requirements of prior law and the requirements of this Part in order that timing differences and other differences in tax accounting such as the adjusted basis of property may be reconciled.

B. Differences between prior law and this Part respecting basis or other provisions such as those which require or allow a taxpayer to do the following:

(1) To report gross income under this Part in a period later than under prior law or earlier than under prior law.

(2) To deduct expenses under this Part one or more periods after such expenses are allowable under prior law or one or more periods before such expenses are allowable under prior law.

(3) To report an item of income more than once.

(4) To deduct an item of cost more than once, may be allocated by the secretary between taxable years, or disallowed, or required to be reported, as the case may be, when the secretary determines such allocations or methods are necessary to clearly reflect income.

C. For purposes of this Section, the term "require" includes lawful elections made by the taxpayer.

D. The secretary is authorized to promulgate rules and regulations to carryout and enforce the purposes of this Section.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47:287.752. Tax credit for employment of first time drug offenders

A. There shall be a credit against the tax liability due under this Chapter, as provided in this Section, for each taxpayer who provides full-time employment to an individual who has been convicted of a first time drug offense and who is less than twenty-five years of age at the time of initial employment.

B. (1) The credit shall be two hundred dollars per taxable year per eligible employee.

(a) Only one credit is allowed per taxable year per employee.

(b) The credit may be received for a maximum of two years per employee.

(2) The credit shall be available upon certification by the employee's probation officer that the employee has successfully completed a court-ordered drug treatment/rehabilitation program and has worked one hundred eighty days full time for the employer seeking the credit.

(3)(a) The form for applying for the credit shall be determined by the Department of Revenue and Taxation and such form shall contain a sworn statement executed by both employer and employee certifying the employee's active full-time work status at the time the credit is taken.

(b) The secretary of the Department of Revenue and Taxation shall promulgate such rules and regulations as may be deemed necessary to carry out the purposes of this Section.

C. As used in this Section, the following terms shall have the following meanings:

(1) "Drug offense" means a violation under R.S. 40:961 et seq., the Uniform Controlled Dangerous Substances Law.

(2) "Full-time employment" means working a minimum of thirty hours per week.

(3) "Eligible employee" and "employee" mean an individual convicted of a first time drug offense who is less than twenty-five years of age at the time of initial employment.

Added by Acts 1994, 3rd Ex.Sess., No. 104, §1.

R.S. 47:287.753. Neighborhood assistance tax credit

A. The following words and phrases used in this Section, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Business firm" means any business entity authorized to do business in the state of Louisiana and subject to the state corporation income tax imposed by the provisions of Title 47 of the Louisiana Revised Statutes of 1950.

(2) "Community services" means any type of counseling and advice, emergency assistance, or medical care furnished to individuals or groups in the state of Louisiana.

(3) "Crime prevention" means any activity which aids in the reduction of crime in the state of Louisiana.

(4) "Education" means any type of scholastic instruction or scholarship assistance to an individual who resides in the state of Louisiana that enables him to prepare himself for better opportunities.

(5) "Job training" means any type of instruction to an individual who resides in the state of Louisiana that enables him to acquire vocational skills so that he can become employable or be able to seek a higher grade of employment.

(6) "Neighborhood assistance" means furnishing financial assistance, labor, material, or technical advice to aid in the physical improvement or rehabilitation of any part or all of a neighborhood area.

(7) "Neighborhood organization" means any organization which performs community services in the state of Louisiana and which is:

(a) Determined by the Internal Revenue Service to be exempt from income taxation under the provisions of the Internal Revenue Code.

(b) Incorporated in the state of Louisiana as a nonprofit corporation under the provisions of R.S. 12:201 et seq.

(c) Designated as a community development corporation by the United States government under the provisions of Title VII of the Economic Opportunity Act of 1964.

(8) "Neighborhood" means a specific geographic area, urban, inter-urban, suburban, or rural as certified by the Division of Community Development of the Department of Consumer Affairs regulation and licensing, which is experiencing problems endangering its existence as a viable and stable neighborhood.

B. Any business firm engaged in the activities of providing neighborhood assistance, job training, education for individuals, community services, or crime prevention in the state of Louisiana shall receive a tax credit as provided in Subsection C, if the commissioner of administration or his successor annually approves the proposal of the business firm. No proposal shall be approved unless endorsed by the agency of local government within the area in which the business firm is engaging in such activities, which has adopted an overall community or neighborhood development plan, as being consistent with such plan. The proposal shall set forth the program to be conducted, the neighborhood area to be served, why the program is needed, the estimated amount to be invested in the program, and the plans for implementing the program. If, in the opinion of the commissioner of administration or his successor, a business firm's investment can more consistently be made through contributions to a neighborhood organization as defined in Subsection A(7), tax credits may be allowed as provided in Subsection C. The commissioner of administration or his successor is hereby authorized to promulgate rules and regulations for establishing criteria for evaluating such proposals by business firms for approval or disapproval and for establishing priorities for approval or disapproval of such proposals by business firms with the assistance and approval of the secretary of the Department of Revenue and Taxation. The total amount of tax credit granted for programs approved by the commissioner of administration or his successor for each fiscal year shall not exceed one percent of the total amount of state corporation income tax as collected in the prior fiscal year.

C. The division of administration or its successor shall grant a tax credit against the state corporation income tax as provided in this Section. A tax credit of up to seventy percent of the actual amount contributed may be allowed for investment in programs approved by the commissioner of administration or his successor. Such credit for any corporation shall not exceed two hundred fifty thousand dollars annually. No tax credit shall be granted to any bank, bank and trust company, insurance company, trust company, national bank, savings association, or building and loan association for activities that are a part of its normal course of business. Any tax credit not used in the period the investment was made may be carried over for the next five succeeding taxable periods until the full credit has been allowed.

D. The decision of the commissioner of administration or his successor to approve or disapprove a proposal pursuant to this Section shall be in writing, and if he approves the proposal, he shall state the maximum credit allowable to the business firm. A copy of the decision of the commissioner of administration or his successor shall be transmitted to the governor and to the secretary of the Department of Revenue and Taxation.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1988, No. 625, §4.

R.S. 47:287.755. Tax credit for contributions to educational institutions

A. The intent of this Section is to provide an incentive to corporations, persons, estates, and trusts to contribute, donate, or sell below cost tangible movable property to public educational institutions for purposes of research, research training, or direct education of students in the state. Any corporation, person, estate, or trust contributing, donating, or selling below cost tangible movable property to educational institutions as specified herein shall be allowed a credit against the tax liability due under the income tax as determined pursuant to Subsection C of this Section.

B. For purposes of this Section the following words and phrases shall have the follow meanings:

(1) "Corporation" means any business entity authorized to do business in the state of Louisiana and subject to the state corporate income tax.

(2) "Cost". In the case of a donation or sale below cost by a wholesale or retail business, "cost" means the amount actually paid by the wholesaler or retailer to the supplier for the machinery or equipment. In the case of a donation or sale below cost by a manufacturer of machinery or equipment, "cost" means the enhanced value of the materials used to produce the machinery or equipment, which shall be deemed to be the lowest price at which the manufacturer sells the machinery or equipment.

(3) "Educational institution" means any public elementary and secondary, vocational-technical, or higher education facility, private, or parochial institution, community college, special school, museum, or any public library in the state of Louisiana.

(4) "New" means the machinery and equipment is state of the art machinery and equipment which:

(a) Has never been used except for normal testing by the manufacturer to insure that the machinery or equipment is of a proper quality and in good working order.

(b) Has been used by the retailer or wholesaler solely for the purpose of demonstrating the product to customers for sale.

(5) "Persons, estates, and trusts" shall be as defined by R.S. 47:31.

(6) "State of the art machinery and equipment" means machinery and equipment which is of the same type, design, and capability as like machinery and equipment which is currently sold or manufactured by the donor for sale to customers.

(7) "Tangible movable property" means property of a sophisticated and technological nature, including any computer or data processing equipment, either hardware, software, or both, which is capable of being used for purposes of research, research training, or direct education of students.

C. There shall be allowed a credit against the tax liability due under the income tax for donations, contributions, or sales below cost of tangible movable property made to educational institutions in the state of Louisiana. The credit allowed by this Section shall be computed at the rate of forty percent of such property's value, as defined herein, or, in the case of a sale below cost, forty percent of the difference between the price received for the tangible movable property by the taxpayer and the value of the property as defined herein. The credit shall be limited to the total of the tax liability for the taxable year for which it is being claimed and shall be in lieu of the deductions from gross income provided for in R.S. 47:57. The credit shall not be allowed if the taxpayer arbitrarily, capriciously, or unreasonably discriminates against any person because of race, religion, ideas, beliefs, or affiliations.

D.(1) Any donations, contributions, or sales below cost of tangible movable property, to an educational institution shall not qualify for this credit unless approved and accepted by the immediate board of jurisdiction charged with supervision and management of the educational institution. Prior to any donation, contribution, or purchase below cost of such property, the board of jurisdiction over the educational institution shall certify in writing that property to be donated, contributed, or purchased shall be used only in research, research training, or direct education of students.

(2) The value of the credit against any income tax due shall be based upon the donor's or seller's actual cost of new items of such property and not on retail value and upon appraised value of used items of such property. When new property is donated, contributed, or sold as provided herein, the donor or seller shall furnish to the board of jurisdiction an invoice showing the donor's or seller's actual purchase

price. When used property is donated, contributed, or sold below cost, an appraisal shall be obtained by the institution accepting the donation or contribution or purchasing the used property. The institution shall furnish to the donor or seller a certification of such donation, contribution, or sale below cost, which shall include the date and the value of the property donated, contributed, or sold. The sale of used property below cost means the sale of such property below its appraised value. The donor shall attach the certification to the income tax return filed with the Department of Revenue and Taxation.

E.(1) Any corporation, person, estate, or trust contributing, donating, or selling for less than cost any tangible movable property to an educational institution shall enter into an orientation agreement with the educational institution receiving said contribution, donation, or purchase. Such orientation must be provided at no cost to said institution and shall be provided at a location as determined pursuant to said agreement. Orientation shall occur within two weeks after installation of such property.

(2) If requested by the donee or purchaser, any corporation, person, estate, or trust contributing, donating, or selling any tangible movable property to an educational institution shall enter into a minimum three months maintenance or service agreement with the educational institution in order to receive tax credit provided herein.

(3) Any software or courseware donated under the provisions of this Section shall be compatible with the existing hardware of the educational institution.

F. The secretary of the Department of Revenue and Taxation shall promulgate such rules and regulations as may be deemed necessary to carry out the purposes of this Section.

G. Any state educational institution receiving any donation or contribution or purchasing any property below cost under this Section shall report to the Joint Legislative Committee on the Budget, with respect to any tangible movable property donated, contributed, or property purchased below cost, information concerning the type and condition of property, the value of the property, the amount of the tax credit, and any other information which may be requested by the committee.

H. The provisions of this Section shall be effective for taxable periods beginning after December 31, 1985.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

R.S. 47: 287.756. Tax credit for environmental equipment purchases

A. Any business entity authorized to do business in the state of Louisiana and subject to the state corporation income tax imposed by this Part, except a corporation classified under the Internal Revenue Code as a Subchapter S Corporation, shall be allowed a tax credit for the purchase of environmental equipment designed to recover or recycle chlorofluorocarbons used as refrigerants in commercial, home, and automobile air-conditioning systems, refrigeration units, and industrial cooling applications.

B. The tax credit shall be twenty percent of the purchase price of the equipment if paid for in a single taxable year. If the equipment purchased is financed over two or more taxable years, the tax credit in a taxable year shall be twenty percent of that portion of the original purchase price paid in that taxable year.

C. All environmental equipment for which a tax credit is sought shall conform with technical standards set by the secretary of the Department of Environmental Quality. The secretary of the Department of Revenue and Taxation shall utilize those standards in the promulgation of such rules and regulations as may be deemed necessary to carry out the purposes of this Section.

D. The tax credit allowed by this Section shall apply only to equipment purchased between July 1, 1989 and December 31, 1991. The credit for equipment purchased prior to January 1, 1991 shall be claimed on either an amended return for the applicable tax year or in the first taxable year filing following January 1, 1991.

E. The tax credit allowed by this Section shall not exceed the total income tax liability of the corporation.

Added by Acts 1991, No. 312, §1, eff. Jan. 1, 1991.

R.S. 47:287.757. Tax credit for conversion of vehicles to alternative fuel usage

A. The intent of this Section is to provide an incentive to persons or corporations to invest in qualified clean-burning motor vehicle fuel property. Any person or corporation investing in such property as specified herein shall be allowed a credit against the tax liability due under the income tax as determined pursuant to Subsection C of this Section.

B. As used in this Section, the following words and phrases shall have the meaning ascribed to them in this Subsection.

(1) "Alternative fuel" means a fuel which results in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates, or any combination thereof and includes compressed natural gas, liquefied natural gas, liquefied petroleum gas, reformulated gasoline, methanol, ethanol, electricity, and any other fuels which meet or exceed federal clean air standards.

(2) "Qualified clean-burning motor vehicle fuel property" means:

(a) Equipment installed to modify a motor vehicle which is propelled by gasoline so that the vehicle may be propelled by an alternative fuel provided such motor vehicle is registered with the Louisiana Department of Public Safety and Corrections.

(b) A motor vehicle originally equipped to be propelled by an alternative fuel but only to the extent of the portion of such motor vehicle which is attributable to the storage of such fuel, the delivery to the engine of such motor vehicle of such fuel, and the exhaust of gases from combustion of such fuel provided such motor vehicle is registered with the Louisiana Department of Public Safety and Corrections.

(c) Property which is directly and exclusively related to the delivery of an alternative fuel into the fuel tank of a motor vehicle propelled by such fuel, including compression equipment, storage tanks, and dispensing units for such fuel at the point where such fuel is so delivered, provided such property is located in Louisiana.

C. The credit provided for in Subsection A of this Section shall be twenty percent of the cost of the qualified clean-burning motor vehicle fuel property.

D. In cases where no credit has been claimed pursuant to Subsection C of this Section and in which a motor vehicle is purchased by a taxpayer with qualified clean-burning motor vehicle fuel property installed by the manufacturer of such motor vehicle and the taxpayer is unable or elects not to determine the exact basis which is attributable to such property, the taxpayer may claim a credit in an amount not exceeding the lesser of twenty percent of ten percent of the cost of the motor vehicle or one thousand five hundred dollars, provided such motor vehicle is registered with the Louisiana Department of Public Safety and Corrections.

E. If the tax credit allowed pursuant to Subsection A of this Section exceeds the amount of income taxes due or if there are no state income taxes due on the income of the taxpayer, the amount of the credit not used as an offset against the income taxes of a taxable year may be carried forward as a credit against subsequent income tax liability for a period not to exceed three tax years.

F. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit that would have been allowed for a joint return.

Added by Acts 1991, No. 1060, §1. Amended by Acts 1992, No. 169, §1.

R.S. 47:287.758. Tax credit for bone marrow donor expense

A. As used in this Section, the following definitions shall apply:

(1) "Bone marrow donor expense" means the sum of amounts paid or incurred during the tax year by an employer for the following:

(a) Development of an employee bone marrow donation program.

(b) Employee education related to bone marrow donation, including but not limited to the need for donors and an explanation of the procedures used to determine tissue type and donate bone marrow.

(c) Payments to a health care provider for determining the tissue type of an employee who agrees to register or registers as a bone marrow donor.

(d) Wages paid to an employee for time reasonably related to tissue typing and bone marrow donation. However, any wages that are used to obtain any tax credit provided in this Section shall not be deductible as an expense for income tax purposes.

(e) Transportation of an employee to the site of a donation or any other service which is determined by the Department of Health and Hospitals by rule as essential for a successful bone marrow donation.

(2) "Employee" means an individual:

(a) Who is regularly employed by the taxpayer for more than twenty hours per week.

(b) Who is not a temporary or seasonal employee.

(c) Whose wages are subject to withholding under R.S. 47:111 through 120.3.

(3) "Wages" has the meaning given the term for purposes of R.S. 47:111 through 120.3.

B. A credit against the taxes otherwise due under this Part for the tax year is allowed to an employer. The amount of the credit is equal to twenty-five percent of the bone marrow donor expense paid or incurred during the tax year by an employer to provide a program for employees who are potential or who actually become bone marrow donors.

C.(1) Except as provided in Paragraph (2) of this Subsection, the allowance of a credit under this Section shall not affect the computation of taxable income for purposes of this Part.

(2) If in determining the amount of the credit for any tax year an amount allowed as a deduction under Section 170 of the Internal Revenue Code is included in bone marrow donor expense, the amount allowed as a deduction shall be added to federal taxable income.

Added by Acts 1992, No. 206, §2.

R.S. 47:287.785. Rules and regulations

A. The secretary is authorized to promulgate, make, and publish reasonable rules and regulations for the purpose of the proper administration and enforcement of this Part and the collection of revenues hereunder. Such rules and regulations shall not be inconsistent with the provisions of Title 47 or other laws or the Constitution of this state. Rules and regulations adopted and promulgated by the secretary in accordance with law shall have the full force and effect of law.

B. To the extent not otherwise provided in this Part, any election under this Part shall be made at such time and in such manner as the secretary may prescribe by instructions, regulations, directions, or forms.

C. Regulations in force on effective date of Part.

(1) Existing regulations, duly adopted for the administration and interpretation of Chapter 1 of Title 47, relative to the income taxation of corporations, which are in existence and operative on the effective date of this Part shall remain fully effective for taxable years beginning before January 1, 1987.

(2) Carryover regulations. Existing regulations relative to the income taxation of corporations other than insurance companies, which are not inconsistent with this Part and which the secretary deems necessary and useful for the administration of this Part, shall continue to have the full force and effect of law without formal promulgation pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. In connection with the carryover of the regulations, the secretary shall not alter the sense, meaning, or effect of any existing rule or regulation intended carryover effect, but may:

(i) Renumber and rearrange Sections or parts of Sections.

(ii) Transfer Sections or divide Sections so as to give to distinct subject matters a separate Section number, but without changing the meaning.

(iii) Insert or change the wording of headnotes.

(iv) Change reference numbers to agree with renumbered Chapters, Parts, or Sections.

(v) Substitute the proper Section number for the term "the preceding Section" and the like.

(vi) Strike out figures where they are merely a repetition of written words and vice-versa.

(vii) Change capitalization, spacing, and margins for purposes of uniformity.

(viii) Correct manifest typographical and grammatical errors.

(ix) Make any other purely formal or clerical changes in keeping with the purpose of revising or updating the carryover of the regulations.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986.

Corporation Franchise Tax Laws and Regulations

R.S. 47:601. Imposition of tax

A. Every domestic corporation and every foreign corporation, exercising its charter, or qualified to do business or actually doing business in this state, or owning or using any part or all of its capital, plant, or any other property in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this Chapter shall pay an annual tax at the rate of $3.00 for each $1,000.00, or major fraction thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than $10.00 per year in any case. The tax levied herein is due and payable on any one or all of the following alternative incidents:

(1) The qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form. The term “doing business” as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations, as well as, the buying, selling, or procuring of services or property.

(2) The exercising of a corporation’s charter or the continuance of its charter within this state.

(3) The owning or using any part or all of its capital, plant, or other property in this state in a corporate capacity.

B. It is the purpose of this Section to require the payment of this tax to the state of Louisiana by domestic corporations for the right granted by the laws of this state to exist as such an organization, and by both domestic and foreign corporations for the enjoyment, under the protection of the laws of this state, of the powers, rights, privileges, and immunities derived by reason of the corporate form of existence and operation. The tax hereby imposed shall be in addition to all other taxes levied by any other statute.

C.(1) As used herein the term “domestic corporation” shall mean and include all corporations, joint stock companies or associations, or other business organizations organized under the laws of this state which have privileges, powers, rights, or immunities not possessed by individuals or partnerships.

(2) The term “foreign corporation” shall mean and include all such business organizations as hereinbefore described in this Paragraph which are organized under the laws of any other state, territory or district, or foreign country.

D. The increase in the tax imposed by this Section from one dollar and fifty cents to three dollars for each one thousand dollars, or major fraction thereof, of capital stock, surplus, undivided profits, and borrowed capital shall not be applicable to the first three hundred thousand dollars of capital stock, surplus, undivided profits, and borrowed capital of each corporation.

Amended by Acts 1958, No. 437, §2; Acts 1970, No. 325, §1, emerg. eff. July 13, 1970 at 2:15 P.M.; Acts 1984, No. 194, §1 eff. July 1, 1984.

LAC 61:I.301. Imposition of Tax

A. Except as specifically exempted by R.S. 47:608, R.S. 47:601 imposes a corporation franchise tax, in addition to all other taxes levied by any other statute, on all corporations, joint stock companies or associations, or other business organizations organized under the laws of the state of Louisiana which have privileges, powers, rights, or immunities not possessed by individuals or partnerships, all of which are hereinafter designated as domestic corporations, for the right granted by the laws of this state to exist as such an organization and on both domestic and foreign corporations for the enjoyment under the protection of the laws of this state of the powers, rights, privileges, and immunities derived by reason of the corporate form of existence and operation. Liability for the tax is created whenever any such organization qualifies to do business in this state, exercises its charter or continues its charter within this state, owns or uses any part of its capital, plant, or any other property in this state, through the buying, selling, or procuring of services in this state, or actually does business in this state through exercising or enjoying each and every act, power, right, privilege, or immunity as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations.

B. With respect to foreign corporations, R.S. 12:306 generally grants such organizations authority to transact business in this state subject to and limited by any restrictions recited in the certificate of authorization, and in addition thereto provides that they shall enjoy the same, but no greater, rights and privileges as a business or nonprofit corporation organized under the laws of the state of Louisiana to transact the business which such corporation is authorized to contract, and are subject to the same duties, restrictions, penalties, and liabilities (including the payment of taxes) as are imposed on a business or nonprofit corporation organized under the laws of this state. In view of the grant of such rights, privileges, immunities, and the imposition of the same duties, restrictions, penalties, and liabilities on foreign corporations as are imposed on domestic corporations, the exercise of any right, privilege, or *the enjoyment of any immunity within this state by a foreign corporation which might be exercised or enjoyed by a domestic business or nonprofit corporation organized under the laws of this state renders the foreign corporation liable for the same taxes, penalties, and interest, where applicable, which would be imposed on a domestic corporation.*

C. Thus, both domestic and foreign corporations which enjoy or exercise within this state any of the powers, privileges, or immunities granted to business corporations organized under the provisions of R.S. 12:41 are subject to and liable for the payment of the franchise tax imposed by this Section. R.S. 12:41 recites those privileges to be as follows:

1. the power to perform any acts which are necessary or proper to accomplish its purposes as expressed or implied in the articles of incorporation, or which may be incidental thereto and which are not repugnant to law;

2. without limiting the grant of power contained in §301.C.1, every corporation shall have the authority to:

a. have a corporate seal which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced; but failure to affix a seal shall not affect the validity of any instrument;

b. have perpetual existence, unless a limited period of duration is stated in its articles of incorporation;

c. sue and be sued in its corporate name;

d. in any legal manner to acquire, hold, use, and alienate or encumber property of any kind, including its own shares, subject to special provisions and limitations prescribed by law or the articles;

e. in any legal manner to acquire, hold, vote, and use, alienate and encumber, and to deal in and with, shares, memberships, or other interests in, or obligations of, other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals, or governmental entities;

f. make contracts and guarantees, including guarantees of the obligations of other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals, or governmental entities, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by hypothecation of any kind of property;

g. lend money for its corporate purposes and invest and reinvest its funds, and take and hold property or rights of any kind as security for loans or investments;

h. conduct business and exercise its powers in this state and elsewhere as may be permitted by law;

i. elect or appoint officers and agents, define their duties, and fix their compensation; pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive and benefit plans for any or all of its directors, officers, and employees; and establish stock bonus plans, stock option plans, and plans for the offer and sale of any or all of its unissued shares, or of shares purchased or to be purchased, to the employees of the corporation, or to employees of subsidiary corporations, or to trustees on their behalf; such plans:

i. may include the establishment of a special fund or funds for the purchase of such shares, in which such employees, during the period of their employment, or any other period of time, may be privileged to share on such terms as are imposed with respect thereto; and

ii. may provide for the payment of the price of such shares in installments;

j. make and alter bylaws, not inconsistent with the laws of this state or with the articles, for the administration and regulation of the affairs of the corporation;

k. provide indemnity and insurance pursuant to R.S. 12:83;

l. make donations for the public welfare, or for charitable, scientific, educational, or civic purposes; and

m. in time of war or other national emergency, do any lawful business in aid thereof, at the request or direction of any apparently authorized governmental authority.

D. Thus, the mere ownership of property within this state, or an interest in property within this state, including but not limited to mineral interests and oil payments dependent upon production within Louisiana, whether owned directly or by or through a partnership or joint venture or otherwise, renders the corporation subject to franchise tax in Louisiana since a portion of its capital is employed in this state.

E. The tax imposed by this Section shall be at the rate prescribed in R.S. 47:601 for each $1,000, or a major fraction thereof, on the amount of its capital stock, determined as provided in R.S. 47:604, its surplus and undivided profits, determined as provided in R.S. 47:605, and its borrowed capital, determined as provided in R.S. 47:603 on the *amount of such capital stock, surplus, and undivided profits, and borrowed capital as is employed in the exercise of its rights, powers, and immunities within this state determined in compliance with the provisions of R.S. 47:606 and R.S. 47:607.*

F. The accrual, payment, and reporting of franchise taxes imposed by this Section are set forth in R.S. 47:609.

G. In the case of any domestic or foreign corporation subject to the tax herein imposed, the tax shall not be less than the minimum tax provided in R.S. 47:601.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:601.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985).

R.S. 47:602. Determination of taxable capital

A. Taxable capital. Every corporation taxed under this chapter shall determine the amount of its issued and outstanding capital stock, surplus, undivided profits and borrowed capital as the basis for computing the franchise tax levied under this chapter and determining the extent of the use of its franchise in this state.

B. Holding corporation deduction. Any corporation having as a subsidiary a banking corporation as defined below shall be entitled to deduct from its capital stock, surplus, undivided profits and borrowed capital, as defined in this chapter, its investments in and advances to such subsidiary banking corporation to the extent that such investments and advances exceed the difference between the total assets and the capital stock, surplus, undivided profits and borrowed capital of the holding corporation. "Subsidiary banking corporation" is defined to be a banking corporation organized under the laws of the United States of America or of the state of Louisiana the capital stock of which to an extent of at least eighty percent is owned by a holding corporation.

C. Public utility holding corporation deductions. Any corporation registered under the Public Utility Holding Company Act of l935[1] having subsidiary corporations as defined hereinbelow, shall be entitled to deduct from the amount of its Louisiana taxable capital the amount of its investments in and advances to subsidiary corporations allocated to Louisiana as provided herein. The amount of the deduction allowed shall be determined by multiplying the sum of the regulated company's investments in and advances to all of its subsidiary corporations wherever located, by the parent corporation's average ratio as determined pursuant to R.S. 47:606. If the amount of its franchise tax calculated by utilizing the applicable formula provided for in R.S. 47:601 is less than one hundred thousand dollars for any tax year, then the tax for such year shall be one hundred thousand dollars. "Subsidiary corporation" is defined to be a corporation in which at least eighty percent of the voting power of all classes of its stock, not including nonvoting stock which is limited and preferred as to dividends, is owned by a registered public utility holding corporation. Any repeal of the Public Utility Holding Company Act of l935 shall not affect the entitlement to deductions under this Subsection of corporations registered under the provisions of the Public Utility Holding Company Act of 1935 prior to its repeal.
Amended by Acts 1994, No. 40, §1.

D. Holding corporation deductions. (1) Any corporation having one or more subsidiary public water utility corporations as defined herein below shall be entitled to deduct from the amount of its taxable capital the amount of its investments in and advances to the subsidiary public water utility corporation in computing its franchise tax.

(2) "Subsidiary public water utility corporation" is defined to be any public utility corporation organized under the laws of the state of Louisiana, subject to the jurisdiction of the Public Service Commission under R.S. 45:1161 et seq., engaged in operating a waterworks or in furnishing water and related services, and in which at least eighty percent of the voting power of all classes of its stock, not including nonvoting stock which is limited and preferred as to dividends and stock which is otherwise nonvoting during the taxable year, is owned by a holding corporation.

Added by Acts 1990, No. 385, §1.

E. Deduction for members of certain controlled groups.

(1) Any corporation in a controlled group, having as a member of such group a telephone corporation regulated by the Louisiana Public Service Commission, shall be entitled to deduct from its capital stock, surplus, undivided profits, and borrowed capital, as defined in this Chapter, its investment in and advances to any member of the controlled group.

(2) For purposes of this Subsection, "controlled group" is defined to be a group of affiliated corporations at least one of which is regulated by the Louisiana Public Service Commission and holds a certificate of public convenience and

necessity issued by the Louisiana Public Service Commission to provide local exchange telephone service and other members of which are engaged in providing telephone, cellular, microwave, paging, data-transmission, or other telecommunications services and includes subsidiary, brother-sister, or tier corporations engaged in the sale, manufacture, maintenance, financing, or installation of equipment to facilitate the providing of telephone and other related services, and the capital stock of which, to an extent of at least eighty percent, is owned by another member of the controlled group. This Subsection shall not apply to any corporation primarily engaged in activity unrelated to the telecommunications services referred to in the Subsection.

Added by Acts 1994, 3rd Ex. Sess., No. 134, §1, effective July 7, 1994, applicable to any taxable period beginning on or after January 1, 1994.

LAC 61:I.302. Determination of Taxable Capital

A. Taxable Capital. Every corporation subject to the tax imposed by R.S. 47:601 must determine the total of its capital stock, as defined in R.S. 47:604, its surplus and undivided profits, as defined in R.S. 47:605, and its borrowed capital, as defined in R.S. 47:603, which total amount shall be used as the basis for determining the extent to which its franchise and the rights, powers, and immunities granted by Louisiana are exercised within this state. Determination of the taxable amount thereof shall be made in accordance with the provisions of R.S. 47:606 and R.S. 47:607, and the rules and regulations issued thereunder by the secretary of Revenue and Taxation.

B. Holding Corporation Deduction. Any corporation which owns at least 80 percent of the capital stock of a banking corporation organized under the laws of the United States or of the state of Louisiana may deduct from its total taxable base, determined as provided in §302.A and before the allocation of taxable base to Louisiana as provided in R.S. 47:606 and R.S. 47:607, the amount by which its investment in and advances to such banking corporation exceeds the excess of total assets of the holding corporation over total taxable capital of the holding corporation, determined as provided in §302.A.

C. Public Utility Holding Corporation Deductions. Any corporation registered under the Public Utility Holding Company Act of 1935 that owns at least 80 percent of the voting power of all classes of the stock in another corporation (not including nonvoting stock which is limited and preferred as to dividends) may, after having determined its Louisiana taxable capital as provided in R.S. 47:602(A), R.S. 47:606, and R.S. 47:607, deduct therefrom the amount of investment in and advances to such corporation which was allocated to Louisiana under the provisions of R.S. 47:606(B). The only reduction for investment in and advances to subsidiaries allowed by this Subsection is with respect to those subsidiaries in which the registered public utility holding company owns at least 80 percent of all classes of stock described herein; the reduction is not allowable with respect to other subsidiaries in which the holding company owns less than 80 percent of the stock of the subsidiary, notwithstanding the fact that such investments in and advances to the subsidiary may have been attributed to Louisiana under the provisions of R.S. 47:606(B). In no case shall a reduction be allowed with respect to revenues from the subsidiary. Any repeal of the Public Utility Holding Company Act of 1935 shall not affect the entitlement to deductions under this Subsection of corporations registered under the provisions of the Public Utility Holding Company Act of 1935 prior to its repeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:602.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:08 (February 1985).

R.S. 47:603. Borrowed capital

As used in this Chapter, “borrowed capital” means all indebtedness of a corporation, subject to the provisions of this Chapter, maturing more than one year from the date incurred, or which is not paid within one year from the date incurred regardless of maturity date. As to any indebtedness which is extended, renewed, or re-financed, the date such indebtedness was originally incurred or contracted shall be considered for the purpose of this definition the date incurred or contracted. With respect to amounts owed by a taxpayer corporation to an affiliate, all real and actual indebtedness, regardless of age, and which in fact represent capital substantially used to finance or carry on the taxpayer’s business, shall be borrowed capital. An “affiliated corporation” is any corporation which through stock ownership, directorate control, or other means, substantially influences policy of some other corporation or is influenced through the same channels by some other corporation.

The following indebtedness shall be excluded:

(1) Federal, state and local tax accruals or taxes due and not delinquent more than thirty days.

(2) Advances, credits or sums of money voluntarily left on deposit with the taxpayer, or for credit account by customers or other persons with merchants, agents, brokers or factors, to facilitate the transaction of business between such parties, and by such taxpayer segregated and not otherwise used in the conduct of its business.

(3) When deposited with a trustee or other custodian or when segregated into a separate or special account, an amount equivalent to the principal amount of cash or securities actually and in good faith set aside, for the payment of principal or interest on funded indebtedness or other fixed obligations, whether at the date of such segregation matured or maturing within ninety days thereafter or within whatever period such segregation is fixed by prior written commitment, or by court order for the liquidation of such obligation; or for the payment of dividends theretofore lawfully and formally authorized.

(4) After the approval or allowance by the court of a petition for receivership, bankruptcy or reorganization of a corporation under the bankruptcy law, there shall be deducted from borrowed capital that part of the indebtedness of the corporation which could reasonably be paid by cash and temporary investments on hand and not reasonably currently needed for working capital, if such receivership, bankruptcy or reorganization was not pending; and an equivalent amount will be allowed as an offset against cash and temporary investments on hand.

LAC 61:I.303. Borrowed Capital

A. General

1. As used in this Chapter, borrowed capital means all indebtedness of a corporation, subject to the provisions of this Chapter, maturing more than one year from the date incurred, or which is not paid within one year from the date incurred regardless of maturity date.

2. All indebtedness of a corporation is construed to be capital employed by the corporation in the conduct of its business or pursuit of the purpose for which it was organized, and in the absence of a specific exclusion, qualification, or limitation contained in the statute, must be included in the total taxable base. No amount of indebtedness of a corporation may be excluded from borrowed capital except in those cases in which the corporation can demonstrate conclusively that a specific statutory provision permits exclusion of the indebtedness from borrowed capital.

3. In the case of amounts owed by a corporation to a creditor who does not meet the definition of an affiliated corporation contained in R.S. 47:603, all indebtedness of a corporation which has a maturity date of more than one year from the date on which the debt was incurred and all indebtedness which has not been paid within one year from the date the indebtedness was incurred, regardless of the maturity or due date of the indebtedness, shall be included in borrowed capital. Determination of the one-year controlling factor is with respect to the original date that the indebtedness was incurred and is not to be determined by any date the debt is renewed or refinanced. The entire amount of long-term debt not having a maturity date of less than one year, which was not paid within the one-year period, constitutes borrowed capital, even though it may constitute the current liability for payment on the long-term debt.

4. The fact that indebtedness which had a maturity date of more than one year from the date it was incurred, was actually liquidated within one year does not remove the indebtedness from the definition of borrowed capital.

5. For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred, the following shall apply: With respect to any indebtedness which was extended, renewed, or refinanced, the date the indebtedness was originally incurred shall be the date the extended, renewed, or refinanced indebtedness was incurred. All debt extended, renewed, or refinanced shall be included in borrowed capital if the extended maturity date is more than one year from, or if the debt has not been paid within one year from, that date. In instances of debts which are extended, renewed, or refinanced by initiating indebtedness with a creditor different from the original creditor, the indebtedness shall be construed to be new indebtedness and the one-year controlling factor will be measured from the date that the new debt is incurred.

6. For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred, with respect to the amount due on a mortgage on real estate purchased subject to the mortgage, the date the indebtedness was originally incurred shall be the date the property subject to the mortgage was acquired by the corporation.

7. In the case of amounts owed by a corporation to a creditor who meets the definition of an affiliated corporation contained in R.S. 47:603, the age or maturity date of the indebtedness is immaterial. An affiliated corporation is defined to be any corporation which through (a) stock ownership, (b) directorate control, or (c) any other means, substantially influences policy of some other corporation or is influenced through the same channels by some other *corporation. It is not necessary that control exist between the corporations but only that policy be influenced substantially. Any indebtedness between such corporations constitutes borrowed capital to the extent it represents capital substantially used to finance or carry on the business of the debtor corporation, regardless of the age of the indebtedness. For this purpose, all funds, materials, products, or services furnished to a corporation for which indebtedness is incurred, except as provided in this section with respect to normal trading accounts and offsetting indebtedness, are construed to be used by the corporation to finance or carry on the business of the corporation; in the absence of a conclusive showing by the taxpayer to the contrary, all such indebtedness shall be included in borrowed capital.*

a. To illustrate this principle, assume:

i. Corporation A—Parent of B, C, D, and E;

ii. Corporation B—Nonoperating, funds-flow conduit, owning no stock in C, D, or E;

iii. Corporation C—Other Corporation;

iv. Corporation D—Other Corporation;

v. Corporation E—Other Corporation;

vi. any funds furnished by the parent A to either B, C, D, or E constitute either a contribution to capital or an advance which must be included in the taxable base of the receiving corporation.

vii. any funds supplied by D or E to C, whether or not channeled through A or B, would constitute borrowed capital to C, and the indebtedness must be included in the taxable base. In the absence of a formal declaration of a dividend from D or E to A, the funds constitute an advance to A by D or E and borrowed capital to A. In all such financing arrangements, the multiple transfers of funds are held to constitute capital substantially used to carry on each taxpayer's business.

8. The amount that normal trading-account indebtedness bears to capitalization of a debtor determines to what extent said indebtedness constitutes borrowed capital substantially used to finance or carry on the business of the debtor. Due consideration should also be given to the debtor's ability to have incurred a similar amount of indebtedness, equally payable as to terms and periods of time.

9. In the case of equally demandable and payable indebtedness of the same type between two corporations, wherein each is indebted to the other, only the excess of the amount due by any such corporation over the amount of its receivable from the other corporation shall be deemed to be borrowed capital.

10. With respect to any amount due from which debt discount was paid upon inception of the debt, that portion of the unamortized debt discount applicable to the indebtedness which would otherwise constitute borrowed capital shall be eliminated in calculating the amount of the indebtedness to be included in taxable base.

B. Exclusions from Borrowed Capital

1. Federal, State and Local Taxes. R.S. 47:603 provides that an amount equivalent to certain indebtedness shall not be included in borrowed capital. With respect to accruals of federal, state, and local taxes, the only amounts which may be excluded are the tax accruals determined to be due to the taxing authority or taxes due and not delinquent for more than 30 days. In the case of reserves for taxes, only so much of the reserve as represents the additional liability due at the taxpayer's year-end for taxes incurred during the accrual period may be excluded. Any amount of the reserve balance in excess of the amount additionally due for the accrual period shall be included in the taxable base, since the excess does not constitute a reserve for a definitely fixed liability. This additional amount due is determined by subtracting the taxpayer's tax deposits during the year from the total liability for the period. All reserves for anticipated future liabilities due to accounting and tax timing differences shall be included in the taxable base. Any taxes which are due and are delinquent more than 30 days must be included in borrowed capital. For purposes of determining whether taxes are delinquent, extensions of time granted by the taxing authority for the filing of the tax return or for payment of the tax shall be considered as establishing the date from which delinquency is measured.

2. Voluntary Deposits

a. The liability of a taxpayer to a depositor created as the result of advances, credits, or sums of money having been voluntarily left on deposit shall not constitute borrowed capital if:

i. said moneys have been voluntarily left on deposit to facilitate the transaction of business between the parties; and

ii. said moneys have been segregated by the taxpayer and are not otherwise used in the conduct of its business.

b. Neither the relationship of the depositor to the taxpayer nor the length of time the deposits remain for the intended purpose has an effect on the amount of such liability which shall be excluded from borrowed capital.

3. Deposits with Trustees

a. The principal amount of cash or securities deposited with a trustee or other custodian or segregated into a separate or special account may be excluded from the indebtedness which would otherwise constitute borrowed capital if such segregation is fixed by a prior written commitment or court order for the payment of principal or interest on funded indebtedness or other fixed obligations. In the absence of a prior written commitment or court order fixing segregation of the funds or securities, no reduction of borrowed capital shall be made with respect to such deposits or segregated amounts.

b. Whenever a liability for the payment of dividends theretofore lawfully and formally authorized would constitute borrowed capital as defined in this Section, an amount equivalent to the amount of cash or securities deposited with a trustee or other custodian or segregated into a separate or special account for payment of the dividend liability may be excluded from borrowed capital.

4. Receiverships, Bankruptcies and Reorganizations. In the case of a corporation having indebtedness which could have been paid from cash and temporary investments on hand which were not currently needed for working capital and in which case the corporation has secured approval or allowance by the court of the petition for receivership, bankruptcy, or reorganization under the bankruptcy law, after such allowance or approval by the court of the taxpayer's petition, the taxpayer may then reduce the amount which would otherwise constitute borrowed capital by the amount of cash or temporary investment which it could have paid on the indebtedness prior to such approval, to the extent that they are permitted to make such payments under the terms of the receivership, bankruptcy, or reorganization proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:603.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985).

R.S. 47:604. Capital stock

For the purpose of ascertaining the tax imposed in this Chapter, capital stock, whether having par value or not, shall be deemed to have such value as is reflected on the books of the corporation, subject to examination and revision by the collector, but in no event shall such value be less than is shown on the books of the taxpaying corporation.

Where capital stock is issued for assets and the transaction is treated as a tax free exchange under R.S. 47:131, 132, 133, 135, 136, 137, and 138, the collector shall consider the cost of the assets as determined under R.S. 47:605A and the value of any intangibles acquired as the value of the stock issued to acquire such assets. Capital stock shall include full shares, fractional shares, and any script certificates convertible into shares of stock.

Amended by Acts 1950, No. 444, §1; Acts 1962, No. 272, §1.

LAC 61:I.304. Capital Stock

A. For the purpose of determining the amount of capital stock upon which the tax imposed by R.S. 47:601 is based, such stock shall in every instance have such value as is reflected on the books of the corporation, subject to whatever increases to the recorded book values may be found necessary by the secretary of Revenue and Taxation to reflect the true value of the stock. In no case shall the value upon which the tax is based be less than is shown on the books of the corporation.

B. In any case in which capital stock of a corporation has been issued in exchange for assets, the capital stock shall have a value equal to the fair market value of the assets received in exchange for the stock, plus any intangibles received in the exchange, except as provided in the following Subsection.

C. In any such case in which capital stock of a corporation is transferred to one or more persons in exchange for assets, and the only consideration for the exchange was stock or securities of the corporation, and immediately after the exchange such person or persons owned at least 80 percent of the total voting power of all voting stock and at least 80 percent of the total number of shares of all of the stock of the corporation, the value of the stock exchanged for the assets so acquired shall be the same as the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received in the exchange. The only other exception to the rule that capital stock exchanged for assets shall have such value as equals the fair market value of the assets received and any intangibles received is in the case of stock issued in exchange for assets in a reorganization, which transaction was fully exempt from the tax imposed by the Louisiana income tax law, in which case the value of the stock shall have a value equal to the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received.

D. In any case in which an exchange of stock of a corporation for assets resulted in a transaction taxable in part or in full under the Louisiana income tax law, the value of the stock so exchanged shall be equal to the fair market value of all of the assets received in the exchange, including the value of any intangibles received.

E. Capital stock, valued as set forth heretofore, shall include all issued and outstanding stock, including treasury stock, fractional shares, full shares, and any certificates or options convertible into shares.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:604.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985).

R.S. 47:605. Surplus and undivided profits

A. Determination of value. For the purpose of ascertaining the tax imposed in this Chapter, surplus and undivided profits shall be deemed to have such value as is reflected on the books of the corporation, subject to examination and revision by the collector from the information contained in the report filed by the corporation as hereinafter provided and from any other information obtained by the collector; but in no event shall such revision reflect the value of any asset in excess of the cost thereof to the taxpayer at the time of acquisition; in the case of an acquisition which qualifies as a tax free exchange under R.S. 47:131, 132, 133, 135, 136, 137, and 138, cost to the taxpayer at the time of acquisition shall be deemed to be the basis of such property determined under R.S. 47:146, 148, and 152; provided that in no event shall such value be less than is shown on the books of the taxpaying corporation.

In computing surplus and undivided profits there shall be excluded such surplus as may be required by court order to be set aside and segregated in such manner as not to be available for distribution to stockholders or for investment in properties, the earnings from which are distributable to stockholders; provided further that in computing surplus and undivided profits there shall be included all reserves other than those for definitely fixed liabilities, reasonable depreciation (including in reasonable depreciation, at taxpayer's election, amortization of a war, defense or other emergency facility taken by and allowable to a taxpayer for income tax purposes under R.S. 47:65, provided such amortization is recorded on the books of the taxpayer), bad debts and established valuation reserves, such reserves in all cases to be made under rules and regulations to be prescribed by the collector. When, because of regulations of a governmental agency controlling the books of a taxpayer, the taxpayer is unable to record in its books the full amount of depreciation sustained, the taxpayer may apply to the collector of revenue for permission to add to its reserve for depreciation and deduct from its surplus the amount of depreciation sustained but not recorded, and if the collector finds that the amount proposed to be so added represents a reasonable allowance for actual depreciation, he shall grant such permission. The collector also shall allow inclusion in depreciation reserves (but shall not limit the reserve thereto, if otherwise reasonable) depreciation taken by and allowable to a taxpayer under R.S. 47:65 provided such depreciation is recorded on the books of the taxpayer.

B. Treatment of deficit. If the accounts titled surplus and undivided profits reflect a negative figure or deficit, such deficit shall be deductible from capital stock and borrowed capital for the purpose of computing the tax.

C. Reserves and exclusion from surplus by public utilities. For purposes of this Chapter the term "reserves" includes all accounts appearing on the books of a corporation that represent amounts payable or potentially payable to others; however, the term "reserves" shall not include accounts included in "capital stock" as used in R.S. 47:604 and shall not include accounts that represent indebtedness, regardless of maturity date, as "indebtness" is used in R.S. 47:603. In computing the surplus of a public utility regulated by the Louisiana Public Service Commission, the Federal Energy Regulatory Commission or other similar local, state, or federal regulator, there shall be excluded from assets, and a corresponding amount excluded from surplus, accounts that represent assets for which no money has previously been paid and no service or thing of value has been paid, given, or advanced by the public utility other than the regulated service or product. Accounts so excluded shall not include accounts established for the purpose of valuing other asset accounts that do not meet the criteria for exclusion, nor shall excluded accounts represent investments, loans, deposits, goodwill, trade notes, accounts receivable from billings to customers, or accrued unbilled revenue.

Amended by Acts 1950, No. 444 §1; Acts 1956, No. 328, §1; Acts 1962, No. 272, §1, Acts 1992, No. 156, §1, effective for taxable periods beginning on or after January 1, 1993.

LAC 61:I.305. Surplus and Undivided Profits

A. Determination of Value—Assets

1. For the purpose of determining the tax imposed by R.S. 47:601, there are statutory limitations on both the maximum and minimum amounts which shall be included in the taxable base with respect to surplus and undivided profits. The minimum amount which shall be included in the taxable base shall be no less than the amount reflected on the books of the taxpayer. Irrespective of the reason for any book entry which increases the franchise tax base, such as, but not limited to, entries to record asset appreciation, entries to reflect equity accounting for investments in affiliates or subsidiaries, and amounts credited to surplus to record accrual of anticipated future tax refunds created by accounting timing differences, the amount reflected on the books must be included in the tax base.

2. Entries to the books of any corporation to record the decrease in value of any investment through the use of equity accounting will be allowed as a reduction in taxable surplus and its related asset account for property factor purposes. This is only in those cases in which all investments are recorded under the principles of equity accounting, and such reductions in the value of any particular investment below cost thereof to the taxpayer will not be allowed. The exception is in those instances in which the taxpayer can show that such reduction is in the nature of a bona fide valuation adjustment based on the fair value of the investment. In no case will a reduction below zero value be recognized. Corresponding adjustments shall in all instances be made to the value of assets for property factor purposes.

3. In any instance in which an asset is required to be included in the property factor under the provisions of R. S. 47:606 and the regulations issued thereunder, the acquisition of which resulted in the establishment of a contra account, such as, but not limited to, an account to record unrealized gain from an installment sale, all such contra accounts shall be included in the taxable base, except to the extent such contra accounts constitute a reserve permitted to be excluded under the provisions of R.S. 47:605(A) and the regulations issued under §305.A. See §306.A for required adjustments to assets with respect to any contra account or reserve which is not included in the taxable base.

4. The minimum value under the statute is subject to examination and revision by the secretary of Revenue and Taxation. The recorded book value of surplus and undivided profits may be increased, but not in excess of cost, as the result of such examination to the extent found necessary by the secretary to reflect the true value of surplus and undivided profits. The secretary is prohibited from making revisions which would reflect any value below the amount reflected on the books of the taxpayer. A taxpayer may, in his own discretion, reflect values in excess of cost; that option is not extended to the secretary in any examination of recorded cost.

5. In determining cost to which the revisions limitation applies, the fair market value of any asset received in an exchange of properties shall be deemed to constitute the cost of the asset to the taxpayer under the generally recognized concept that no prudent person will exchange an article of value for one of lesser value. In application of that concept, the secretary of Revenue and Taxation shall, except as provided in the following Paragraphs, construe cost of any asset to be fair market value of the asset received in exchange therefor.

6. Exception to the rules stated above will be made only in those instances in which the exchange resulted in a fully tax-free exchange under provisions of the Louisiana income tax law, in which case cost shall be construed to be the income tax basis of the properties received for purposes of calculating depreciation and the determination of gain or loss on any subsequent disposition of the assets. Limitation of the valuation of the cost of any asset to the income tax basis will be considered only in the case of fully tax-free exchanges and will not be considered if the transaction was taxable to any extent under the provisions of the Louisiana income tax law contained in R.S. 47:131, 132, 133, 134, 135, 136, and 138.

B. Determination of Value—Reserves

1. There must be included in the franchise taxable base determined in the manner heretofore described, all reserves other than those for:

a. definitely fixed liabilities;

b. reasonable depreciation (or amortization), but only to the extent recorded on the books of the taxpayer, except as noted in the following paragraphs with respect to taxpayers subject to regulations of governmental agencies controlling the books of such taxpayers;

c. bad debts; and

d. other established valuation reserves.

2. No deduction from surplus and undivided profits shall be made with respect to any reserve for contingencies of any nature, without regard to whether the reserve is par-

tially or fully funded. Reserves for future liability for income taxes shall not be excluded from the tax base. Deferred federal income tax accounts may be netted in determining the amount of reserve to be included in the taxable base. Reserves for fixed liabilities shall be included in the taxable base to the extent that they constitute borrowed capital under the provisions of R.S. 47:603 and the regulations issued thereunder.

3. In addition to the four classifications of reserves which may be excluded from the taxable base, any amount of surplus which has been set aside and segregated pursuant to a court order so as not to be available for distribution to stockholders or for investment in properties which would produce income which would be distributable to stockholders may also be excluded from the taxable base.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:605.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985).

R.S. 47:606. Allocation of taxable capital

A. General allocation formula.

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. For the purposes of this Sub-section net sales and other revenues attributable to Louisiana shall be determined as follows:

(a) Sales attributable to this state shall be all sales where the goods, merchandise or property is received in this state by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. However, direct delivery into this state by the taxpayer to a person or firm designated by a purchaser from within or without the state shall constitute delivery to the purchaser in this state. Revenue derived from a sale of property not made in the regular course of business shall not be considered.

(b) Revenues attributable to this state derived from air transportation shall include all gross receipts derived from passenger journeys and cargo shipments originating in Louisiana.

(c) Revenues attributable to this state derived from transportation of crude petroleum, natural gas, petroleum products or other commodities for others through pipelines shall include all gross revenue derived from operations entirely within this state plus a portion of any revenue from operations partly within and partly without this state, based upon the ratio of the number of units of transportation service performed in Louisiana in connection with such revenue to the total of such units. A unit of transportation service shall be the transporting of any designated quantity of crude petroleum, natural gas, petroleum products or other commodities for any designated distance.

(d) Revenues attributable to this state derived from transportation other than aircraft or pipeline shall include all such income that is derived entirely from sources within this state, and a portion of revenue from transportation partly without and partly within this state, to be prorated subject to rules, and regulations of the collector, which shall give due consideration to the proportion of service performed in Louisiana.

(e) Revenues from services other than those described above shall be attributed within and without Louisiana on the basis of the location at which the services are rendered.

(f) Rents and royalties from immovable or corporeal movable property, shall be attributed to the state where such property is located at the time the revenue is derived.

(g) Interest on customers' notes and accounts shall be attributed to the state in which such customers are located.

(h) Other interest and dividends shall be attributed to the state in which the securities or credits producing such revenue have their situs, which shall be at the business situs of such securities or credits, if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs shall be at the commercial domicile of the corporation.

(i) Royalties or similar revenue from the use of patents, trade marks, copyrights, secret processes and other similar intangible rights shall be attributed to the state or states in which such rights are used.

(j) Revenues from a parent or subsidiary corporation shall be allocated as provided in Sub-section B of this Section.

(k) All other revenues shall be attributed within and without this state on the basis of such ratio or ratios, prescribed by the collector, as may be reasonably applicable to the type of revenues and business involved.

(2) The ratio that the value of all of the taxpayer's property and assets situated or used in Louisiana bears to the value of all of its property and assets wherever situated or used. In determining value, depreciation and depletion reserves must be deducted from the book values of the properties in question. The various classes of property and assets shown below shall be allocated within and without Louisiana on the bases indicated:

(a) Cash shall be allocated to the state in which located.

(b) Cash in banks and temporary cash investments shall be allocated to the state in which they have their business situs, or in the absence of a business situs, to the state in which is located the commercial domicile of the taxpayer.

(c) Trade accounts and trade notes receivable shall be allocated by reference to the transactions from which the receivables arose, on the basis of the location at which delivery was made in the case of sale of merchandise or the location at which the services were performed in case of charges for services rendered.

(d) Investments in and advances to a parent or subsidiary shall be allocated as provided in Sub-section B of this Section.

(e) Notes and accounts other than those notes and accounts described under items (b) through (d) above shall be allocated to the state in which they have their business situs, or in the absence of a business situs, to the state in which is located the commercial domicile of the taxpayer.

(f) Stocks and bonds not included in (b) or (d) above shall be allocated to the state in which they have their business situs or in the absence of a business situs to the state in which is located the commercial domicile of the taxpayer.

(g) Immovable and corporeal movable property shall be allocated within and without Louisiana on the basis of actual location. Corporeal movable property of a class which is not normally located within a particular state the entire taxable year shall be allocated within and without Louisiana by use of a ratio or ratios which shall give due consideration to the usage within and without this state. Mineral leases and royalty interests shall be allocated to the state in which the property covered by the lease or royalty interest is located.

(h) All other assets shall be allocated within or without Louisiana on the basis, prescribed by the collector, as may reasonably be applicable to the assets and the type of business involved.

(3) For corporations engaged in the business of manufacturing, an additional ratio consisting of net sales made to customers in the regular course of business attributable to Louisiana to the total net sales made to customers in the regular course of business. For the purposes of this Paragraph, the taxable capital allocated to Louisiana shall be the arithmetical average of the three ratios provided in Paragraphs (1), (2), and (3) of this Subsection. The term "business of manufacturing" shall only include taxpayers whose net sales are derived primarily from the manufacture, production, and sale of tangible personal property; however, the term "business of manufacturing" shall not include:

(a) Any taxpayer whose income is primarily derived from the production or sale of unrefined oil and gas.

(b) Any taxpayer whose income is primarily derived from the manufacture, distribution, distillation, importation, or sale of alcoholic beverages.

(c) Integrated oil companies that refine, produce, and have marketing operations, whose income in Louisiana is principally derived from production and sale of unrefined oil and gas, and who also engage in significant marketing of refined petroleum products in Louisiana.

B. Allocation of intercompany items. For the purpose of allocation, investments in, advances to, or revenues from a parent or subsidiary corporation shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana for corporation franchise tax purposes by the parent or subsidiary corporation. A subsidiary corporation is any corporation the majority of the capital stock of which is actually, wholly or substantially owned by another corporation and whose management, business policies and operations are, howsoever, actually, wholly or substantially controlled by another corporation; which latter corporation shall be termed the parent corporation.

C. Minimum allocation; assessed value of real and personal property. The portion of capital stock, surplus, undivided profits and borrowed capital allocated for franchise taxation under this Chapter shall in no case be less than the total assessed value of real and personal property in this state of each such domestic or foreign corporation for the calendar year preceding that in which the tax is due.

D. Property located in United States customs-bonded warehouses or foreign trade zones. For purposes of this Section, corporeal movable property (tangible personal property) imported into the United States and located in Louisiana in United States customs-bonded warehouses or foreign trade zones established under the Foreign Trade Zones Act (19 U.S.C.A. 81a et seq.), as amended, shall be considered located outside of Louisiana.

E. **Adjustments to value of property and assets.** Whenever the value of an asset is adjusted or excluded in computing surplus under the provisions of R.S. 47:605, the value shall also be correspondingly adjusted or excluded for the purpose of R.S. 47:606(A)(2).

Amended by Acts 1954, No. 294, §1; Acts 1964, No. 237, §1; Acts 1989, No. 387, §1, eff. June 30, 1989; Acts 1989, No. 394, §1, eff. June 30, 1989, Acts 1992, No. 156, §1. Applicable to taxable periods beginning on or after January 1, 1993. Act 1996, No. 19 eff. for taxable years beginning on or after January 1, 1997.

LAC 61:I.306. Allocation of Taxable Capital

A. General Allocation Formula. Every corporation subject to the tax imposed by this chapter must determine the extent to which its entire franchise taxable base is employed in the exercise of its franchise within this state. The extent of such use of total taxable base in the state is determined by multiplying the total of all issued and outstanding capital stock, surplus and undivided profits, and borrowed capital by the ratio obtained through the arithmetical average of (1) the ratio of net sales made to customers in the regular course of business and other revenues attributable to Louisiana to total net sales made to customers in the regular course of business and total other revenues, and (2) the ratio that the value of all of the taxpayer's property and assets situated or used by the taxpayer in Louisiana bears to all of the taxpayer's property and assets wherever situated or used.

1. Net Sales and Other Revenue. Net sales to be combined with other revenue in determining both the numerator and denominator of the revenue factor for purposes of calculating the portion of the taxpayer's total capital stock, surplus and undivided profits, and borrowed capital to be allocated to Louisiana are only those sales made to customers in the regular course of the taxpayer's business. In transactions in which raw materials, products, or merchandise are transferred to another party at one location in exchange for raw materials, products, or merchandise at another location in agreements requiring the subsequent replacement with similar property on a routine, continuing, or repeated basis, all such transactions shall be carefully analyzed in order to determine whether they constitute sales made to customers which should be included in the sales factor or whether they constitute exchanges which are not sales and should be excluded from the sales factor. Sales of scrap materials and by-products are construed to meet the requirements for inclusion in the sales factor. Sales made other than to customers, such as, but not limited to, sales of stocks, bonds, and other evidence of investment on the open market, regardless of the frequency or volume of those sales, shall not be included in the revenue factor. Similarly, revenues and/or gains on the sale of property other than stock in trade shall not be included in the revenue factor since they generally do not meet the specific requirements that only sales made to customers in the regular course of business of the taxpayer should be included. Whenever a transaction is determined to be a sale which is not to be included as a sale to customers in the regular course of business, the amount does not constitute other revenue so as to qualify for inclusion in either the numerator or the denominator of the allocation ratio.

a. Sales made to customers in the regular course of business attributable to Louisiana are those sales where the goods, merchandise, or property are received in Louisiana by the purchaser. Where goods are delivered into Louisiana by public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. The transportation in question is the initial transportation relating to the sale by the taxpayer.

i. Transportation by Taxpayer or by Public Carrier. Where the goods are delivered by the taxpayer-vendor in his own equipment, it is presumed that such transportation relates to the sale. Where the goods are delivered by a common or contract carrier, whether shipped F.O.B. shipping point and whether the carrier be a pipeline, trucking line, railroad, airline, or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation incident to the sale has ended is deemed to be the place where the goods are received by the purchaser. The attribution of sales to each state is based upon actual delivery rather than technical or constructive delivery.

ii. Transportation by Purchaser

(a). Where the transportation involved is transportation by the purchaser, it is recognized that it is more difficult to determine whether or not the transportation is related to the sale by the taxpayer. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent economic and natural circumstances occurring at the time.

(b). The intent of the parties to the sale must also be considered. The intent and purpose of the purchaser may be determined directly, or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time of the sale.

(c). In order for the transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser, such transportation must be generally the same in nature and scope as that performed by the vendor or by a carrier. There is no difference between a case where a taxpayer in Houston ships F.O.B. Houston to a purchaser in Baton Rouge, by common carrier, and a case where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

iii. Sales to a Pipeline Company. The sale of natural resources to a pipeline company is attributable to the state in which the goods are placed in the pipeline. Such purchasers are engaged in the business of moving or transporting their own property through their own lines. Thus, all transportation of the natural resources after introduction into the line is related to the use or sale by the pipeline, and is not related to the sale by the taxpayer.

iv. Transportation of Natural Resources by a Public Carrier Pipeline

(a). Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier, that is, actual delivery to the purchaser controls, rather than technical or constructive delivery. However, because of the nature and character of the property, the type of carrier, and the customs of the trade, the natural resources in the pipeline carrier may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a purchaser in more than one state, or to different purchasers in different states, peculiar problems of attribution arise. In all cases possible, attribution will be made in accordance with the rules applicable to all public carrier transportation, that is, where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state, and the oil was transported to the purchaser by pipeline carrier, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality, but not any specific oil.

(b). In situations involving several deliveries in several different states to one or more purchasers, the general rules should be applied. To illustrate, consider the incident where three different taxpayers, A, B, and C, all in Texas, each sells to X Refinery, in Louisiana, 10,000 barrels of crude oil, shipped F.O.B. Texas by public carrier pipeline:

(i). if X Refinery receives all 30,000 barrels in Louisiana, each taxpayer must attribute his total sale to Louisiana;

(ii). if X Refinery receives 10,000 barrels in Louisiana, 10,000 barrels in Mississippi, and 10,000 barrels in Alabama, it cannot be said by any taxpayer that all of his sale was received either in Louisiana or in one of the other states. Since each taxpayer contributed one-third of the mass of commingled crude oil, it follows that one-third of each taxpayer's sale was received in Louisiana, and must be attributed to Louisiana accordingly;

(iii).to further illustrate, consider the incident of the three different taxpayers, A, B, and C, in Texas, selling to three different purchasers, X Refinery in Louisiana, Y Refinery in Mississippi, and Z Refinery in A1abama. The same rules governing the problems set forth above are applicable;

(iv). if A sells to X Refinery, in Louisiana, and delivery is by public carrier pipeline, the oil is received in Louisiana and the entire sale is attributed to Louisiana, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline with oil sold by B and C to Y Refinery and Z Refinery;

(v). if A sells to X, B to Y, and C to Z, with X, Y, and Z receiving a portion of their purchases in Louisiana, in Mississippi, and in Alabama, that portion received by X, Y, and Z in Louisiana must be attributed to Louisiana by A, B, and C.

v. Storage of Property After Purchase

(a). In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase and at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the transportation after storage is of a temporary nature.

(b). In cases where the storage is permanent or semipermanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage. However, where the storage is of a temporary nature, such as that necessitated by lack of transportation or by change from one means of transportation to another, or by natural conditions, the place of such storage is of no significance.

b. Revenue from Air Transportation. All revenues derived from the transportation of cargo or passengers by air shall be attributed within and without this state based on the point at which the cargo shipment or passenger journey originates. Other revenues received by a corporation engaged primarily in the business of transportation of passengers and cargo shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the regulations issued under this section for the particular type of revenue received.

c. Revenue from Transportation for Others Through Pipelines

i. Revenues derived from the transportation of crude petroleum, natural gas, petroleum products, or other commodities for others through pipelines shall be attributed to this state on the basis of the ratio of the number of units of transportation performed in Louisiana to the total of such units of transportation. In the case of transportation performed entirely within this state, total revenues from the transportation shall be attributed to Louisiana.

ii. In the case of transportation performed partly within and partly without Louisiana, revenue from such transportation shall be attributed to this state in the following manner.

(a). Crude Petroleum and Liquid Petroleum Products. Revenues from the transportation of crude petroleum and liquid petroleum products shall be attributed to this state upon the ratio which the number of barrels of such liquid transported times the number of miles transported within Louisiana bears to the total number of such barrels transported times the total number of miles transported both within and without Louisiana.

(b). Natural Gas. Revenues from the transportation of natural gas shall be attributed to this state upon the ratio which the number of thousand cubic feet of natural gas transported within this state times the number of miles transported within Louisiana bears to the total number of thousand cubic feet of such gas transported times the total number of miles such gas transported both within and without Louisiana.

(c). Other Commodities

(i). Revenues from the transportation of other commodities shall be attributed to this state upon the ratio which the number of tons of such commodities transported within Louisiana times the number of miles transported within Louisiana bears to the total number of tons of such commodities transported times the total number of miles transported both within and without Louisiana.

(ii). In any case in which the prescribed ratio for the particular commodity does not represent the basis upon which the transportation charges are calculated, the ratio used as the basis for attributing revenues to this state shall be the unit of measurement upon which the charges are based times the number of miles which the commodity is transported within this state to the total of such units times the total number of miles the commodity is transported both within and without Louisiana. Whenever the information is not readily available with which to calculate the required units of transportation, the secretary of Revenue and Taxation may require the use of any method deemed reasonable.

(iii). Other revenues received by a corporation engaged primarily in the business of transporting commodities for others through pipelines shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the regulations issued under this Section for the particular kind or type of revenue received.

d. Revenue Derived from Transportation Other Than by Aircraft or Pipeline. Revenue attributable to Louisiana from transportation other than by aircraft or pipeline shall include all such revenues derived from such transportation entirely within Louisiana and shall also include a pro rata portion of revenue from transportation performed partly within and partly without Louisiana, such pro rata portion to be based on the number of units of transportation service performed in Louisiana to the total of such units. The revenue to be attributed will be calculated separately for each of the various types of transportation service. A unit of transportation service for each of the various types shall consist of the following:

i. in the case of the transportation of passengers, the transportation of one passenger a distance of one mile;

ii. in the case of transportation of liquid commodities, the transportation of one barrel of the commodity a distance of one mile;

iii. in the case of transportation of property other than liquids, the transportation of one ton of property a distance of one mile;

iv. in the case of the transportation of a liquid commodity or other property when barrels or tons are not the common basis for the transportation charges, the quantity used as the basis for calculating total transportation charges for a distance of one mile shall be used. In the determination of miles within Louisiana, one-half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

v. In the case where another method would more accurately reflect revenue from transportation attributable to the service performed in Louisiana, or when the information is not readily available with which to calculate the required units of transportation, the secretary of Revenue and Taxation may require the use of any alternate method deemed reasonable.

vi. Other revenues received by a corporation engaged primarily in the business of transportation other than by aircraft or pipeline shall be attributed to Louisiana in accordance with the processes and formulas provided elsewhere in the regulations issued under this section for the particular type of revenue received.

e. Revenue from Services Other Than from Transportation

i. Revenue derived from services other than from transportation shall be attributed to the state in which the services are rendered. In the case of services in which property is not a material revenue-producing factor, the services shall be presumed to have been performed in the state in which the personnel engaged in rendering the services are located. In the case of services in which personnel and property are material revenue-producing factors, such revenue shall be attributed within and without this state on the basis of the arithmetical average of the following two ratios:

(a). the ratio that salaries and wages paid to personnel performing such services within Louisiana bear to total salaries and wages for personnel performing such services both within and without Louisiana; and

(b). the ratio that the value of property used in Louisiana in performing the services (whether owned by the taxpayer or not) bears to the total value of all property used in performing the services both within and without Louisiana.

ii. In any case in which it can be shown that charges for services constitute a pure recovery of the cost of performing the services and do not include a reasonable rate of profit, amounts received in reimbursement of such costs shall not be construed to be revenues received and shall be omitted from both the numerator and denominator of the attribution ratio.

f. Rents and Royalties from Immovable or Corporeal Movable Property

i. Rents and royalties from immovable or corporeal movable property shall be attributed to the state where the property is located at the time the revenue is derived, which is construed to be the place at which the property is used resulting in the rental payment. Rents, royalties, and other income from mineral leases, royalty interests, oil payments, and other mineral interests shall be allocated to the state in which the property subject to such interest is located.

ii. In the case of movable property which is used in more than one state or when the lessor has no knowledge of where the property is located at all times, application of the general rule for attributing the revenue from rental of the property may be sufficiently difficult so as to require use of a formula or formulas to determine the place of use for which the rents were paid. The specific formula to be used must be determined by reference to the basis on which rents are charged, the basis of which is usually set forth in the rental agreement. In those cases in which time of possession in the hands of the lessee is the only consideration in calculating rental charges, time used by the lessee in each state will be used as the basis for attributing the revenue to each state. Where miles traveled is the basis for the rental charge, revenue shall be attributed on that basis; where ton miles or traffic density in combination with miles traveled is the basis for the rental charges, revenue will be attributed to each state on that basis. In the case of drilling equipment where rentals are based on the number of feet drilled, income will be attributed to each state based on the ratio of the number of feet drilled within that state to the total number of feet drilled in all states by the rented equipment during the taxable period covered by the rental agreement.

g. Interest on Customers' Notes and Accounts

i. Interest on customers' notes and accounts can generally be associated directly with the specific credit instrument or account upon which the interest is paid and shall be attributed to the state at which the goods were received by the purchaser or services rendered. For purposes of this Section, interest is construed to include all charges made for the extension of credit, such as finance charges and carrying charges.

ii. When the records of the taxpayer are not sufficiently detailed so as to enable direct attribution of the revenue, interest, as defined herein, shall be attributed to each state on the basis of a formula or formulas which give due consideration to credit sales in the various states, outstanding customer accounts and notes receivable, and variances in the rates of interest charged or permitted to be charged in each of the states where the taxpayer makes credit sales.

h. Other Interest and Dividends

i. Interest, other than on customers' notes and accounts, and dividends shall be attributed to the state in which the securities producing such revenue have their situs, which shall be at the business situs of such securities if they have been so used in connection with the taxpayer's business as *to acquire a business situs, or, in the absence of such a business situs, shall be at the commercial domicile of the taxpayer.*

ii. Used in connection with the taxpayer's business is construed to mean use of a continuing nature in the regular course of business and does not include the mere holding of the instrument at a location or the use of the property as security for credit. Business situs must be established on the basis of facts, indicating precisely the use to which the securities have been put and the manner in which the taxpayer conducts its business.

iii. Commercial Domicile is in that state where management decisions are implemented which is presumed to be the state where the taxpayer conducts its principal business and thereby benefits from public facilities and protection provided by that state. Commercial domicile cannot be assigned to a state where the taxpayer has no substantial operation or facility, other than the location of one or more management level employees. The location of board of directors' meetings is not presumed to create commercial domicile at the location.

iv. Interest and dividends from a parent or subsidiary corporation shall be attributed as provided in R.S. 47:606(B) and the regulations issued thereunder.

i. Royalties or Similar Revenue from the Use of Patents, Trademarks, Secret Processes, and Other Similar Intangible Rights

i. Royalties or similar revenue received for the use of patents, trademarks, secret processes, and other similar intangible rights shall be attributed to the state or states in which such rights are used by the licensee from whom the income is received.

ii. In those cases where the rights are used by the licensee in more than one state, royalties and similar revenue will be attributed to the states on the basis of a ratio which gives due consideration to the proportion of use of the right by the licensee within each of the states. When the royalty is based on a measurable unit of production, sales, or other measurable unit, the attribution ratio shall be based on such units within each state to the total of such units for which the royalties were received. When the royalty or similar revenue is not based on measurable units, the attribution ratio will be based on the relative amounts of income produced by the licensee in each state or on such other ratio as will clearly reflect the proportion of use of the rights by the licensee in each state.

j. Revenue from a Parent or Subsidiary Corporation. Revenue from a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606(B) and the regulations issued thereunder.

k. All Other Revenues

i. All revenues which are not specifically described in §306.A.l.a-j shall be attributed within and without Louisiana on the basis of such ratio or ratios as may be reasonably applicable to the type of revenue and business involved.

ii. In the case of revenue from construction, repairs, and similar services, generally, all of the work will be performed at a specific geographical location and the total revenue, including all billings by the taxpayer without regard to the method of reporting gain for purpose of the income tax statutes, shall be attributed to the place where the work is performed. In the case of contracts wherein a material part or parts of the work may have been performed in another state, such as the design, engineering, manufacture, fabrication, or preassembly of component parts, total revenue from the specific elements will be attributed to the place at which that segment of the work was performed on the basis of segregated charges contained in the performance contract. In the absence of segregated charges in the contract, revenues shall be allocated on the basis of a formula or formulas which give due consideration to such factors as direct cost, time devoted to the separate elements, and relative profitability of the specific function. Such ratios may be based on estimates of costs compiled during calculation of bid amounts for purposes of securing the contract in the absence of sufficient contract segregation of the charges between functions or sufficient records necessary to determine direct cost.

iii. For purposes of this Chapter, revenues from partnerships shall be attributed within and without Louisiana based on the percentage of the partnership's capital employed in Louisiana, determined by the arithmetical average of the following two ratios:

(a). The ratio that the partnership's net sales and other revenue in Louisiana bear to the partnership's total net sales and other revenue everywhere as described in R.S. 47:606(A)(1) and subparts thereunder; and

(b). The ratio that the partnership's Louisiana property bears to the partnership's total property everywhere as described in R.S. 47:606(A)(2) and subparts thereunder.

iv. For the purposes of this Chapter, the term partnership includes a syndicate, group, pool, joint venture, or other unincorporated organizations through or by means of which any business, financial operation, or venture is carried on.

2. Property and Assets. For the purpose of calculating the ratio of the value of property situated or used by a cor-

poration in Louisiana to the value of all property wherever situated, both tangible and intangible property must be considered. The minimum value to be included in both the numerator and denominator is the value recorded on the books of the taxpayer. Both the cost recorded on the books of the corporation and the reserves applicable thereto are subject to examination and revision by the secretary of Revenue and Taxation when such revision is found to be necessary in order to reflect properly the extent to which capital of the corporation is employed in the exercise of its charter; in no event, however, shall the revision by the secretary to any asset value or applicable reserve result in a net valuation which exceeds actual cost of the asset to the taxpayer. Specific rules as contained in the governing statute prescribe the state to which any asset will be allocated. Those rules are as follows:

a. Cash on Hand. Cash on hand shall be allocated to the state in which the cash is physically located.

b. Cash in Banks and Temporary Investments. Cash in banks and temporary cash investments shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, cash in banks and temporary cash investments shall be allocated to the state in which the commercial domicile of the taxpayer is located.

c. Trade Accounts and Trade Notes Receivable. Trade accounts and trade notes receivable are construed to mean only those accounts and notes receivable resulting from the sale of merchandise or the performance of services for customers in the regular course of business of the taxpayer. Such accounts and notes shall be allocated to the location at which the merchandise was delivered or at which the services were performed resulting in the receivable. In the absence of sufficient recorded detail upon which to base the allocation of specific accounts and notes receivable to the various states, such accounts and notes may, by agreement between the secretary of Revenue and Taxation and the corporation, be allocated to the separate states based upon the ratio of credit sales within any particular state to the total of all credit sales.

d. Investments In and Advances To a Parent or Subsidiary. Investments in and advances to a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606(B) and the regulations issued thereunder.

e. Notes and Accounts Other Than Temporary Cash Investments, Trade Notes and Accounts, and Advances To a Parent or Subsidiary. Notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary, shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary shall be allocated to the state in which the commercial domicile of the taxpayer is located. See §306.A.1.h relative to business situs and commercial domicile.

f. Stocks and Bonds Other Than Temporary Cash Investments and Investments In or Advances To a Parent or Subsidiary Corporation. Stocks and bonds other than temporary cash investments and investments in or advances to a parent of subsidiary corporation shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, stocks and bonds other than temporary cash investments and advances to a parent or subsidiary corporation shall be allocated to the state in which the commercial domicile of the corporation is located. See §306.A.1.h relative to business situs and commercial domicile.

g. Immovable and Corporeal Movable Property. Immovable property and corporeal movable property which is used entirely within a particular state shall be allocated to the state in which the property is located. Movable property which is not limited in use to any particular state shall be allocated among the states in which used on the basis of a ratio which gives due consideration to the extent of use in each of the states. For the purpose of determining the amount to be included in the numerator of the property ratio with respect to corporeal movable property used both within and without Louisiana, the following rules shall apply:

i. the value of diesel locomotives shall be allocated to Louisiana on the basis of the ratio of diesel locomotive miles traveled in Louisiana to total diesel locomotive miles;

ii. the value of other locomotives shall be allocated to Louisiana on the basis of the ratio of other locomotive miles traveled in Louisiana to total other locomotive miles;

iii. the value of freight train cars shall be allocated to Louisiana on the basis of the ratio of freight car miles traveled in Louisiana to total freight car miles;

iv. the value of railroad passenger cars shall be allocated to Louisiana on the basis of the ratio of passenger car miles traveled in Louisiana to total passenger car miles;

v. the value of passenger buses shall be allocated to Louisiana on the basis of the ratio of passenger bus miles traveled in Louisiana to total passenger bus miles;

vi. the value of diesel trucks shall be allocated to Louisiana on the basis of the ratio of diesel truck miles traveled in Louisiana to total diesel truck miles;

vii. the value of other trucks shall be allocated to Louisiana on the basis of the ratio of other truck miles traveled in Louisiana to total other truck miles;

viii. the value of trailers shall be allocated to Louisiana on the basis of the ratio of trailer miles traveled in Louisiana to total trailer miles;

ix. the value of towboats shall be allocated to Louisiana on the basis of the ratio of towboat miles traveled in Louisiana to total towboat miles. In the determination of Louisiana towboat miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

x. the value of tugs shall be allocated to Louisiana on the basis of the ratio of tug miles traveled in Louisiana to total tug miles. In the determination of Louisiana tug miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xi. the value of barges shall be allocated to Louisiana on the basis of the ratio of barge miles traveled in Louisiana to total barge miles. In the determination of Louisiana barge miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xii. the value of work and miscellaneous equipment shall be allocated to Louisiana in the following manner:

(a). in the case of a railroad, on the basis of the ratio of track miles in Louisiana to total track miles;

(b). in the case of truck and bus transportation, on the basis of the ratio of route miles operated in Louisiana to total route miles; and

(c). in the case of inland waterway transportation, on the basis of the ratio of bank miles in Louisiana to total bank miles. In the determination of bank mileage of navigable streams bordering on both Louisiana and another state, one-half of such mileage shall be considered Louisiana miles.

xiii. the value of other floating equipment shall be allocated to Louisiana on the basis of the ratio of operating equipment miles within Louisiana to total operating equipment miles for the particular equipment to be allocated. In the determination of Louisiana operating equipment miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xiv. the value of flight equipment shall be allocated to Louisiana on the basis of the ratio of ton miles flown within Louisiana to total ton miles. For the purpose of determining Louisiana ton miles, a passenger and his luggage shall be assigned a weight factor of two hundred pounds;

xv. the value of inventories of merchandise in transit shall be allocated to the state in which their delivery destination is located in the absence of conclusive evidence to the contrary;

xvi. all other corporeal movable property shall be allocated to Louisiana on the basis of such ratio or ratios as will reasonably reflect the extent of their use within this state. In any case where the information necessary to determine the prescribed ratio is not readily available from the taxpayer's records, the secretary of Revenue and Taxation may require the allocation of the value of the property on the basis of any method deemed reasonable.

h. All Other Assets. All other assets shall be allocated within or without Louisiana on such basis as may be reasonably applicable to the particular asset and the type of business involved. Investments in or advances to a partnership shall be attributed within and without Louisiana based on the percentage of the partnership's capital employed in Louisiana, determined by the arithmetical average of the following two ratios:

i. the ratio that the partnership's net sales and other revenue in Louisiana bear to the partnership's total net sales and other revenue everywhere as described in R.S. 47:606(A)(1) and subparts thereunder; and

ii. the ratio that the partnership's Louisiana property bears to the partnership's total property everywhere as described in R.S. 47:606(A)(2) and subparts thereunder. See §306.A.1.k for the definition of a partnership.

B. Allocation of Intercompany Items

1. Without regard to the legal or commercial domicile of a corporation subject to the tax imposed by this Chapter, and without regard to the business situs of investments in or advances to a subsidiary or parent corporation by a corporation subject to the tax imposed by this Chapter, all such investments in, advances to, and revenue from such parent or subsidiary shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana by the parent or subsidiary corporation for franchise tax purposes. The corporation franchise tax ratio of the parent or subsidiary shall be the measure of the extent to which the investment in, advances to, and revenues from the parent or *subsidiary are attributable to Louisiana for purposes of determining the revenue and property ratios to be used in allocating the total taxable base of any corporation subject to the tax imposed by this Chapter to Louisiana.*

2. A subsidiary corporation is any corporation the majority of the capital stock of which is actually, wholly, or substantially owned by another corporation and whose management, business policies, and operations are, howsoever, actually, wholly, or substantially controlled by another corporation. Such latter corporation shall be termed the parent corporation.

3. In general, the ownership, either directly or indirectly, of more than 50 percent of the voting stock of any corporation constitutes control of that corporation's management, business policies, and operations for purposes of application of this subsection, whether such control is documented by formal directives from the owner of such stock or not.

4. Other criteria which will be construed to constitute control of the management, business policies, and operations of a corporation are:

a. the filing of a consolidated income tax return in which operations of the corporation are included with operations of the corporation owning more than 50 percent of its stock for purposes of determining its federal income tax liability, foreign tax credits, investment credits, other credits against its tax, and the minimum tax on preferential items of income; or

b. the requirement or policy that the purchase of a majority of the merchandise, equipment, supplies, or services required for operations be made from the corporation owning more than 50 percent of its stock, its designee, or from another corporation in which the owning corporation owns more than 50 percent of the stock; or

c. the requirement or policy that a majority of sales of merchandise, products, or service be made to the corporation owning more than 50 percent of its stock, its designee, or to another corporation in which the owning corporation owns more than 50 percent of the stock; or

d. the participation in a retirement, profit-sharing, or stock option plan administered by or participating in the profits or purchase of stock of the corporation owning more than 50 percent of its stock; or

e. the filing of reports with the Securities and Exchange Commission or other regulatory bodies in which its operations, assets, liabilities, and other financial information are reflected as a part of similar information of the corporation owning more than 50 percent of its stock; or

f. the presence on its Board of Directors of a majority of members who are directors, officers, or employees of the corporation owning more than 50 percent of its stock.

5. In the case of a corporation which owns more than 50 percent of a corporation, the burden of proving that control of the management, business policies, and operations of the latter does not exist shall rest with the taxpayer.

6. For purposes of this Subsection, accounts receivable which may be considered to be advances resulting from normal trading between the companies in the regular course of business and the sales of merchandise, products, or services in such transactions shall not be included in advances to or revenue from a parent or subsidiary under this provision, but shall be allocated and attributed as provided in R.S. 47:606(A) and the regulations issued thereunder.

C. Minimum Allocation; Assessed Value of Real and Personal Property. The minimum amount of issued and outstanding capital stock, surplus and undivided profits, and borrowed capital upon which the tax imposed by this Chapter is calculated shall be the total assessed value of all real and personal property of a corporation in this state. Total assessed value is construed to be the value, after any and all exemptions, upon which the ad valorem tax is based. The assessed value to be used as the basis for the minimum tax calculation is the value upon which the ad valorem tax was calculated for the calendar year preceding the year in which the corporation franchise tax is due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:606.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985).

R.S. 47:607. Railroad corporations

A. Incorporated in more than one state. Any railroad corporation incorporated under and by virtue of the laws of more than one state, shall compute its tax in the same manner as a foreign corporation.

B. Domestic railroad corporations with foreign subsidiaries. Any railroad corporation organized only under the laws of Louisiana and which, in whole or in part, operates, does business or owns property and assets outside of the state, either directly, or indirectly through one or more foreign subsidiary corporations, the capital stock, and funded debt of which to the extent of at least eighty per centum (80%) each is owned by the railroad corporation organized only under the laws of Louisiana, shall compute its tax as follows:

For the purpose of such computation the total of the property and assets of the corporation organized only under the laws of Louisiana, both within and without the state, shall include the property and assets of its foreign subsidiary or subsidiaries; the total volume of business done by the corporation, both within and without the state, shall include the volume of business done by its foreign subsidiary or subsidiaries; there shall be included in the report of the corporation a comparative consolidated balance sheet of the corporation and its foreign subsidiary or subsidiaries, as of the beginning and close of its last calendar year or fiscal year; and the entire issued and outstanding capital stock, surplus and undivided profits of the corporation shall be deemed to be the entire issued and outstanding capital stock, surplus and undivided profits, determined as herein provided, of the corporation and its foreign subsidiary or subsidiaries on the basis of their consolidated accounts.

R.S. 47:608. Exemptions

The provisions of this Chapter do not apply to corporations organized for the following purposes:

(1)(a) Labor corporations and corporations organized by labor unions or labor organizations for the purpose of holding title to property, collecting income therefrom, and turning the entire amount thereof less expenses over to such labor union or labor organization for its use in accordance with law, no part of the net earnings of which inures to the benefit of any private stockholder;

(b) Family agricultural and family horticultural corporations organized under the laws of and domiciled in the state of Louisiana, provided, however, that family agricultural and family horticultural corporations shall be exempt only if seventy-five percent of the beneficial ownership of the corporation is held by, or for the benefit of, members, or the spouses of members, of a family, and at least eighty percent of its gross revenues are derived from the production, harvesting, and preparation for market of raw agricultural products produced by such corporation. Member of a family shall include only brothers and sisters, spouses, ancestors, and lineal descendants. In determining whether any of these relationships exist, full effect shall be given to a legal adoption.

(c) Agricultural and horticultural corporations organized under the laws of and domiciled in the state of Louisiana, other than family corporations exempt under the provisions of Subparagraph (l)(b) of this Section, which derive at least eighty percent of their gross income from the production, harvesting, and preparation for market of raw agricultural or horticultural products produced by such corporations, provided that such exemption shall apply only to corporations whose gross income does not exceed five hundred thousand dollars per year.

(2) Mutual savings banks, national banking corporations and banking corporations organized under the laws of the state of Louisiana who pay a tax for their shareholders or whose shareholders pay a tax on their shares of stock under other laws of this state, and building and loan associations;

(3) Fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to members of such society, order or association or their dependents;

(4) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(5) Corporations and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

(6) Business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(7) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

(8) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;

(9) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations, but only if eighty-five per cent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses;

(l0) Insurance corporations paying a premium tax under Title 22 of the Louisiana Revised Statutes of l950;

(11) Farmers', fruitgrowers', or like associations organized and operated on a cooperative basis for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the product furnished by them, or for the purpose of purchasing supplies and equipment for the use of members or other persons and turning over such supplies and equipment to them at actual costs, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal interest rate per annum on the value of the consideration for which the stock was issued, and if substantially all of such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed fifteen per cent of the value of all its purchases.

(12) Corporations organized by an association exempt under the provisions of Paragraph (ll) of this Section or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal interest rate per annum on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate directly or indirectly, in the profits of the corporation, upon dissolution, or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose;

(13) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to organizations which are organized and operated exclusively for religious, charitable, scientific, literary, and educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder;

(14) Voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and if eighty-five per cent or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(l5) Teachers' retirement fund associations of a purely local character, if no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and if the income consists solely of amounts received from public taxation, amounts received from assessments upon the teaching salaries of members, and income in respect of investments.

Amended by Acts 1950, No. 295, §1; Acts 1958, No. 437, §2; Acts 1979, No. 609, §1, Acts 1981, No. 121, §2; Acts 1985, No. 103, §1; Acts 1987, No. 101, §1, eff. June 18, 1987.

LAC 61:I.308. Exemptions

A. General

1. Corporations organized for the purposes described in §308.B.1-15 of this Section are fully exempt from the payment of Louisiana Corporation Franchise Tax. Only those corporations which meet the prescribed standards of organization, ownership, control, sources of income, and disposition of funds are exempt from the tax, whether or not they may enjoy exemption from any other tax, federal, state, or local, or whether or not they may be specifically exempted from all taxes under the laws of the state in which they were organized, chartered, or domiciled.

2. A corporation is not exempt from the corporation franchise tax merely because it is a nonprofit organization. In each case, an organization other than those described in

§308.B.1.a.ii and iii as limited by §308.B.1.c.i and ii, must file a verified application for exemption with the secretary of Revenue and Taxation which shall include an affidavit showing, in addition to such other information as the secretary may deem necessary from any particular applicant, the following:

a. character of the organization;

b. purpose for which organized;

c. its actual activities;

d. ownership of stock in the corporation;

e. the source of its income;

f. the disposition of its income;

g. whether or not any of its income is credited to surplus, and if so, the intended future use of the retained amounts;

h. whether any of its income may inure to the benefit of any shareholder or individual;

i. a copy of the charter or articles of incorporation,

j. bylaws of the organization;

k. the latest statement of the assets, liabilities, receipts, and disbursements;

l. any other facts relating to its operations which affect its right to exemption from the tax; and

m. a copy of the ruling or determination letter issued by the federal Internal Revenue Service.

3. The required application for exemption may be filed by an organization before it has started operations or at any time it can describe its operations in sufficient detail to permit a conclusion that it will be clearly exempt under the particular requirements of the Section for which the exemption is sought.

4. Once the secretary has issued a ruling or determination letter that an organization, except those described in §308.B.1.a.ii and iii, as limited by §308.B.1.c.i and ii, meets the exemption requirements, there is no mandatory provision that it make a return or any further showing that it meets the specified requirements unless it changes the character of its organization or operations. The secretary reserves the right to review any exemption granted, and may require the filing of whatever information deemed necessary to permit proper evaluation of the exempt status.

5. No exemption will be granted to a corporation, other than those described in §308.B.1.a.ii and iii, as limited by §308.B.1.c.i and ii, organized and operated for the purpose of carrying on a trade or business for profit, even though its entire income may be contributed or distributed to another organization or organizations which are themselves exempt from the tax.

6. An application for exemption filed by a corporation under either the Louisiana income tax law or the Louisiana corporation franchise tax law may be accepted by the secretary as fulfilling the application requirements under both laws. Taxpayers are cautioned, however, that approval of exemption under either law does not grant exemption under the other law in the absence of a statement contained in the ruling to that effect.

7. A corporation is either entirely exempt from the corporation franchise tax law or it is wholly taxable. There is no statutory provision under which partial exemption may be granted.

B. Exempt Corporations

1. Labor, Agricultural or Horticultural Organizations

a. Labor, agricultural, or horticultural organizations which are exempt under this provision are those corporations which have:

i. no net income inuring to the benefit of any stockholder or member and are educational or instructive in character, and have as their objects the betterment of conditions of those engaged in such pursuits, or improvements of the grade of their respective occupations; or

ii. at least 75 percent of the beneficial ownership held by or for the benefit of members, or the spouses of members of a family, and at least 80 percent of total gross income is from the production, harvesting, and preparation for market of products produced by the corporation; or

iii. at least 80 percent of total gross income of the corporation derived from the production, harvesting, and preparation for market of products produced by the corporation, but only if total gross income of such corporation did not exceed $500,000 for the previous year.

b. For purposes of this Subsection, agricultural includes the art or science of cultivating land, harvesting crops or aquatic resources, excluding minerals, or raising livestock, poultry, fish, and crawfish. Thus, the following types of organizations (but not limited thereto) which meet the requirements of §308.B.1.a.i, will be deemed to be exempt from the tax:

i. an organization engaged in the promotion of artificial insemination of livestock;

ii. a nonprofit organization of growers and producers formed principally to negotiate with processors for the price to be paid to members for their produce;

iii. a nonprofit organization of persons engaged in raising fish (or crawfish) as a cash crop on farms that were formed to encourage better and more economical methods of fish farming and to promote the interest of its members; or

iv. parish fairs and like organizations formed to encourage the development of better agricultural and horticultural products through a system of awards, and whose income is used exclusively to meet the necessary expenses of upkeep and operations.

c. corporations engaged in growing agricultural or horticultural products for profit are not exempt from the tax, except as provided in §308.B.1.a.ii and iii, subject to the following limitations:

i. any corporation engaged in the production, harvesting, and preparation for market of raw agricultural products or horticultural products produced by it and that has at least 80 percent of its gross income from such pursuits is exempt from corporation franchise tax, but only if 75 percent or more of the beneficial ownership in such corporation is held by or for the benefit of a single family. For purposes of this Paragraph, a single family shall consist of brothers, sisters, spouses, ancestors, and lineal descendants, including those legally adopted;

ii. any corporation engaged in the production, harvesting, and preparation for market of raw agricultural or horticultural products produced by such corporation is exempt from corporation franchise tax, but only if:

(a). at least 80 percent of its income is from such activity; and

(b). total gross income of the corporation for the previous year did not exceed $500,000.

2. Mutual Savings Banks, National Banking Corporations and Banking Corporations Organized Under the Laws of Louisiana, and Building and Loan Associations

a. Mutual savings banks, national banking corporations, and building and loan associations are exempt from the tax imposed by this Chapter regardless of where organized.

b. Banking corporations organized under the laws of the state of Louisiana which are required by other laws of this state to pay a tax for their shareholders, or whose shareholders are required to pay a tax on their shares of stock, are exempt.

c. Banking corporations, other than those described in §308.B.2.a and b above, organized under the laws of a state other than the state of Louisiana are not exempt from the tax.

3. Fraternal Beneficiary Societies, Orders or Associations Operating Under the Lodge System. Fraternal beneficiary societies, orders, or associations are exempt from tax only if operated under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system. Operating under the lodge system means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization, and largely self-governing, called lodges, chapters, or the like. In order to be exempt, it is necessary that the organization have an established system for the payment of life, sick, accident, or other benefits to its members or their dependents.

4. Cemetery Companies

a. Cemetery companies are exempt from the corporation franchise tax if:

i. they are owned and operated exclusively for the benefit of their lot owners who hold such lots for bona fide burial purposes and not for the purpose of resale, or they are not operated for profit;

ii. they are not permitted by their charter to engage in any business not necessarily incident to burial purposes; and

iii. no part of their net earnings inures to the benefit of any private shareholder or individual.

b. For purposes of this Paragraph, a nonprofit corporation engaged in the operation of a crematory, which otherwise meets the exemption qualifications set forth herein, will be deemed to be an exempt cemetery company.

c. Such companies may issue preferred stock entitling the holders to dividends at a fixed rate not exceeding 8 percent per annum on the value of the consideration for which the stock was issued, but only if the articles of incorporation require that the preferred stock shall be retired at par as soon as sufficient funds available therefor are realized from sales, and that all funds not required for the payment of dividends or for retirement of the preferred stock shall be used for the care and improvement of the cemetery property.

5. Community Chests, Funds or Foundations

a. Organizational and Operational Tests

i. In order to be exempt as an organization described in R.S. 47:608(5), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

ii. The term exempt purpose or purposes as used in this Section means any purpose or purposes specified in R.S. 47:608(5), as defined and elaborated in Subparagraph d of this Section (see §308.B.5.d).

b. Organizational Test

i. In General

(a). An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this Section as its articles) as defined in §308.B.5.b.ii:

(i). limit the purposes of such organization to one or more exempt purposes; and

(ii). do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(b). In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in R.S. 47:608(5). Therefore, an organization which, by the terms of its articles, is formed for literary and scientific purposes, within the meaning of R.S. 47:608(5) shall, if it otherwise meets the requirements in this Paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely to receive contributions and pay them over to organizations which are described in R.S. 47:608(5) and exempt from taxation under R.S. 47:608(5) are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for charitable purposes, such articles ordinarily shall be sufficient for purposes of the organizational test (see §308.B.5.b.v) for rules relating to construction of terms.

(c). An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in R.S. 47:608(5). Thus, an organization that is empowered by its articles to engage in a manufacturing business, or to engage in the operation of a social club does not meet the organizational test regardless of the fact that its articles may state that such organization is created for charitable purposes within the meaning of R.S. 47:608(5).

(d). In no case shall an organization be considered to be organized exclusively for one or more exempt purposes if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in R.S. 47:608(5). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

(e). An organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption.

ii. Articles of Organization. For purposes of this section, the term articles of organization or articles includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

iii. Authorization of Legislative or Political Activities

(a). An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it:

(i). to devote more than an insubstantial part of its activities attempting to influence legislation by propaganda,

(ii). to directly or indirectly participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office, or

(iii).to have objectives and to engage in activities which characterize it as an action organization as defined in §308.B.5.c.iii;

(b). The terms used in §308.B.5.b.iii.(a).(i)-(iii) shall have the meanings provided in §308.B.5.c.

iv. Distribution of Assets on Dissolution. An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal government, or to a state or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as the court decides will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles of incorporation or the law of the state in which it was created provided that its assets would, upon dissolution, be distributed to its members or shareholders.

v. Construction of Terms. The law of the state in which an organization is created shall be controlling in interpreting the terms of its articles. However, any organization which contends that such terms have, under state law, a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the state attorney general, or other evidence of applicable state law.

vi. Applicability of the Organization Test. A determination by the secretary that an organization as described in R.S. 47:608(5) and exempt under R.S. 47:608(5) will not be granted the exemption unless such organization meets the organizational test prescribed by this Subparagraph. If an organization has been determined by the secretary to be exempt as an organization described in R.S. 47:608(5) and such determination has not been revoked, the fact that such organization does not meet the organizational test prescribed by this Subparagraph shall not be basis for revoking such determination. Accordingly, an organization which has been determined to be exempt, and which does not seek a new determination of exemption, is not required to amend its articles of organization to conform to the rules of this Subparagraph.

c. Operational Test

i. Primary Activities. An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in R.S. 47:608(5). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

ii. Distribution of Earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

iii. Action Organizations

(a). An organization is not operated exclusively for one or more exempt purposes if it is an action organization as defined in §308.B.5.c.iii.(b), (c), or (d).

(b). An organization is an action organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization:

(i). contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(ii). advocates the adoption or rejection of legislation. The term legislation, as used in this Clause, includes action by the Congress, by any state legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(c). An organization is an action organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term candidate for public office means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, state, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(d). An organization is an action organization if it has the following two characteristics:

(i). its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and

(ii). it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such character-

istics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

(e). An action organization, described in §308.B.5.c.iii.(b) or (d), though it cannot qualify under R.S. 47:608(5), may nevertheless qualify as a social welfare organization under R.S. 47:608(7) if it meets the requirements set out in R.S. 47:608(7).

d. Exempt Purposes

i. In General

(a). An organization may be exempt as an organization described in R. S. 47:608(5) if it is organized and operated exclusively for one or more of the following purposes:

(i). religious;

(ii). charitable;

(iii).scientific;

(iv). literary;

(v). educational; or

(vi). prevention of cruelty to children or animals.

(b). An organization is not organized or operated exclusively for one or more of the purposes specified in §308.B.5.d.i.(a) unless it serves a public rather than a private interest. Thus, to meet the requirement of this Subclause, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

(c). Since each of the purposes specified in §308.B.5.d.i.(a) is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes.

(d). If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is educational, an exemption will not be denied if, in fact, it is charitable.

ii. Charitable Defined

(a). The term charitable as used in R.S. 47:608(5) in its generally accepted legal sense is not to be construed as limited by the separate enumeration in R.S. 47:608(5) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. Such term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or work; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes; or

(i). to lessen neighborhood tension,

(ii). to eliminate prejudice and discrimination,

(iii).to defend human and civil rights secured by law, or

(iv). to combat community deterioration and juvenile delinquency.

(b). The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes.

(c). The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinions on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under R.S. 47:608(5) so long as it is not an action organization of any one of the types described in §308.B.5.c.iii.

iii. Educational Defined

(a). In General. The term educational, as used in R.S. 47:608(5), relates to:

(i). the instruction or training of the individual for the purpose of improving or developing his capabilities, or

(ii). the instruction of the public on subjects useful to the individual and beneficial to the community.

(b). An organization may be educational even though it advocates a particular position or viewpoint, so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(c). Examples of Educational Organizations. The following are examples of organizations which, if they otherwise meet the requirements of this Subsection, are educational:

(i). Example. An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

(ii). Example. An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

(iii).Example. An organization which presents a course of instruction by means of correspondence or through the use of television or radio.

(iv). Example. Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

iv. Scientific Defined

(a). Since an organization may meet the requirements of R.S. 47:608(5) only if it serves a public rather than a private interest, a scientific organization must be organized and operated in the public interest (§308.B.5.d.i.(b). Therefore, the term scientific, as used in R.S. 47:608(5) includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with scientific, and the nature of particular research depends upon the purpose which it serves. For research to be scientific within the meaning of R.S. 47:608(5), it must be carried on in furtherance of a scientific purpose. The determination as to whether research is scientific does not depend on such research being classified as fundamental or basic, as contrasted with applied or practical.

(b). Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products, or the designing or construction of equipment, buildings, etc.

(c). Scientific research will be regarded as carried on in the public interest:

(i). if the results of such research (including any patents, copyrights, processes, or formulas resulting from such research) are made available to the public on a nondiscriminatory basis;

(ii). if such research is performed for the United States, or any of its agencies or instrumentalities, or for a state or political Subdivision thereof; or

(iii).if such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:

[a]. scientific research carried on for the purpose of aiding in the scientific education of college or university students;

[b]. scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public;

[c]. scientific research carried on for the purpose of discovering a cure for a disease; or

[d]. scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in §308.B.5.d.iv.(c) will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formulas resulting from such research.

(d). An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under R.S. 47:608(5) as a scientific organization, if:

(i). such organization will perform research only for persons who are (directly or indirectly) its creators and who are not described in R.S. 47:608(5), or

(ii). such organization retains (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulas resulting from its research and does not make such patents, copyrights, processes, or formulas available to the public. For purposes of this Subclause, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copyright, process, or formula, it shall be considered as made available to the public if the

granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or formula can be used to benefit the public. In such a case, however, the research from which the patent, copyright, process, or formula resulted will be regarded as carried on in the public interest [within the meaning of §308.B.5.d.iv.(c).(iii)] if it is carried on for a person described in §308.B.5.d.iv.(c).(ii) or if it is scientific research described in §308.B.5.d.iv.(c).(iii).

(e). The fact that any organization (including a college, university, or hospital) carries on research which is not in furtherance of an exempt purpose described in R.S. 47:608(5) will not preclude such organization from meeting the requirements of R.S. 47:608(5) so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such research (see §308.B.5.e relating to organizations carrying on a trade or business).

e. Organizations Carrying on Trade or Business. In general, an organization may meet the requirements of R.S. 47:608(5) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under R.S. 47:608(5), even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

6. Business Leagues, Chambers of Commerce, Real Estate Boards, and Boards of Trade. A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self sustaining, is not a business league. An association engaged in furnishing information to prospective investors to enable them to make sound investments is not a business league since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of R.S. 47:608(6) and is not exempt from the tax.

7. Civic Leagues and Local Associations of Employees

a. Civic leagues or organizations may be exempt, provided they are not organized or operated for profit, and are operated exclusively for the promotion of social welfare. An organization is operated exclusively for social welfare only if it is primarily engaged in promoting in some manner the common good and general welfare of people in the community. An organization embraced within this provision is one which is operated primarily for the purpose of bringing about civic betterment and social improvements. A social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of charitable set forth in §308.B.5.d.ii and is not an action organization as set forth in §308.B.5.c.iii.

b. The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office, nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit. See R.S. 47:608(6) and the regulations issued thereunder, relating to business leagues and similar organizations. A social welfare organization may qualify under this section even though it is an action organization described in §308.B if it otherwise qualifies under this Section.

c. Local associations of employees described in R.S. 47:608(7) are expressly entitled to exemption. As conditions to exemption, it is required that:

i. membership of such an association be limited to the employees of a designated person or persons in a particular municipality;

ii. the net earnings of the association be devoted exclusively to charitable, educational, or recreational purposes;

iii. its activities are confined to a particular community, place, or district. If the activities are limited only by the borders of a state, it cannot be considered to be local in character; and *iv. no substantial part of the activities of the association is carrying on propaganda or otherwise attempting to influence legislation.*

8. Social Clubs

a. The exemption provided by R.S. 47:608(8) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inures to the benefit of any private shareholder. In general, the exemption extends to social and recreational clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

b. A club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate or other products, is not organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, and is not exempt. Solicitation by advertisement or otherwise for public patronage to its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. However, an incidental sale of property will not deprive a club of its exemption.

9. Local Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual Cooperative or Telephone Companies, and Like Organizations

a. In order to be exempt under the provision of R.S. 47:608(9), an organization of the type specified must receive at least 85 percent of its income from amounts collected from members for the sole purpose of meeting losses and expenses. If an organization issues policies for stipulated cash premiums, or if it requires advance deposits to cover the cost of insurance and maintains investments from which more than 15 percent of its income is derived, it is not entitled to an exemption. Although it may make advance assessments for the sole purpose of meeting future losses and expenses, an organization may be entitled to the exemption provided that the balance of such assessments remaining on hand at the end of the year is retained to meet losses and expenses or is returned to members.

b. The phrase of a purely local character applies only to benevolent life insurance associations and organizations exempt on the ground that they are organizations similar to a benevolent life insurance association, and not to the other organizations specified in R. S. 47:608(9). An organization of a purely local character is one whose business activities are confined to a particular community, place, or district, irrespective of political subdivisions. If the activities of an organization are limited only by the borders of a state, it cannot be considered to be purely local in character.

10. Insurance Corporations. Insurance companies which pay or which are required to pay a premium tax under the provisions of Title 22 of the Louisiana Revised Statutes of 1950 are exempt from the corporation franchise tax.

11. Farmers' and Fruit Growers' Cooperatives

a. Farmers' cooperative marketing associations engaged in the marketing of farm products for farmers, fruit growers, livestock growers, dairymen, etc. and turning back to the producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of either the quantity or the value of the products furnished by them, are exempt from the corporation franchise tax. Nonmember patrons must be treated the same as members insofar as the distribution of patronage dividends is concerned. Thus, if products are marketed for nonmember producers, the proceeds of the sales, less necessary operating expenses, must be returned to the patron from the sale of whose goods such proceeds result, whether or not such patrons are members of the association. In order to establish compliance with the statutory requirement that the proceeds of sales, less necessary operating expenses, be turned back to all producers on the basis of either the quantity or the value of the products furnished by them, it is necessary for such an association to keep permanent records of the business done with both members and nonmembers. While patronage dividends must be paid to all producers on the same basis, the requirement is complied with if an association, instead of paying patronage dividends to nonmembers in cash, keeps permanent records from which the proportionate share of the patronage dividends due to nonmember producers can be determined, and such shares are made applicable toward the purchase price of a share of stock or of a membership in the association.

b. An association which has capital stock will not for such reason be denied exemption:

(i). if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation on the value of the consideration for which the stock was issued; and

(ii). if substantially all of such stock (with the exception noted below) is owned by producers who market their products or purchase their supplies and equipment through the association. Any ownership of stock by others than such actual producers must be satisfactorily explained in the association's application for exemption. The association will be required to show that the ownership of its capital

stock has been restricted as far as possible to such actual producers. If by statutory requirement all officers of an association must be shareholders, the ownership of a share of stock by a nonproducer to qualify him as an officer will not destroy the association's exemption. Likewise, if a shareholder for any reason ceases to be a producer and the association—because of a constitutional restriction or prohibition or other reason beyond the control of the association—is unable to purchase or retire the stock of such nonproducer, the fact that under such circumstances a small amount of the outstanding capital stock is owned by shareholders who are no longer producers will not destroy the exemption. The restriction placed on the ownership of capital stock of an exempt cooperative association shall not apply to nonvoting preferred stock, provided the owners of such stock are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends.

c. The accumulation and maintenance of a reserve required by state statute, or the accumulation and maintenance of a reasonable reserve or surplus for any necessary purpose, such as to provide for the erection of buildings and facilities required in business or for the purchase and installation of machinery and equipment or to retire indebtedness incurred for such purposes, will not destroy the exemption. An association will not be denied exemption because it markets the products of nonmembers, provided the value of the products marketed for nonmembers does not exceed the value of the products marketed for members. Anyone who shares in the profits of a farmers' cooperative marketing association and is entitled to participate in the management of the association must be regarded as a member of such association.

d. Cooperative associations engaged in the purchasing of supplies and equipment for farmers, fruit growers, livestock growers, dairymen, etc., and turning over such supplies and equipment to them at actual cost, plus the necessary operating expenses, are exempt. The term supplies and equipment includes groceries and all other goods and merchandise used by farmers in the operation and maintenance of a farm or farmer's household. The provisions relating to a reserve or surplus and to capital stock shall apply to associations coming under this Paragraph. An association which purchases supplies and equipment for nonmembers will not for such reason be denied exemption, provided the value of the purchases for nonmembers does not exceed the value of the purchases made for members, and provided the value of the purchases made for nonmembers who are not producers does not exceed 15 percent of the value of all its purchases.

e. In order to be exempt under R.S. 47:608(11), an association must establish that it has no income for its own account other than that reflected in a reserve or surplus authorized therein. An association engaged both in marketing farm products and in purchasing supplies and equipment is exempt only if it meets the prescribed requirements for each of its functions.

f. To be exempt, an association must not only be organized but actually operated in the manner of and for the purposes specified in R.S. 47:608(11).

g. Cooperative organizations engaged in activities dissimilar from those of farmers, fruitgrowers, and the like, are not exempt.

12. Corporations Organized to Finance Crop Operations. A corporation organized by a farmers' cooperative marketing or purchasing association, or the members thereof, for the purpose of financing the ordinary crop operations of such members or other producers is exempt, provided the marketing or purchasing association is exempt under the provisions of R. S. 47:608(11) and the financing corporation is operated in conjunction with the marketing or purchasing association. The provisions of R.S. 47:608(11) relating to a reserve or surplus and to capital stock also apply to corporations coming under this Paragraph.

13. Corporations Organized for the Exclusive Purpose of Holding Title to Property

a. Corporations organized for the exclusive purpose of holding title to property are exempt from the corporation franchise tax, but only if:

i. the entire amount of income from the property, less expenses, is turned over to organizations which are organized and operated exclusively for:

(a). religious purposes;

(b). charitable purposes;

(c). scientific purposes;

(d). literary purposes; or

(e). educational purposes; and

ii. no part of the net earnings inures to the benefit of any private shareholder or any organization organized and operated for a purpose other than those enumerated under §308.B.13.a.i.(a), whether or not the benefiting organization is exempt under other provisions of R.S. 47:608.

b. Corporations whose articles of incorporation or bylaws permit activities other than the holding of title to property, collecting the income therefrom, paying the necessary expenses of operating the property, and turning over the *entire amount of its income, after expenses, to the specified types of organizations are not exempt.*

14. Voluntary Employees' Beneficiary Associations

a. In general, the exemption provided by R.S. 47:608(14) applies if all of the following requirements are met:

i. the organization is an association of employees;

ii. membership of the employees in the association is voluntary;

iii. the organization is operated only for the purpose of providing for the payment of life, sick, accident, or other benefits to its members or their dependents;

iv. no part of the net earnings of the organization inures, other than by payment of the benefits described in §308.B.14.a.iii, to the benefit of any private shareholder or individual; and

v. at least 85 percent of the income of the organization consists of amounts collected from members for the sole purpose of such payments of benefits and meeting expenses.

b. Explanation of requirements necessary to constitute an organization described in R.S. 47:608(14) [LAC 61.I.308.B.14.b.ii]. For purposes of §308.B.14.b:

i. Association of Employees

(a). In general, an organization described in R.S. 47:608(14) must be composed of individuals who are entitled to participate in the association by reason of their status as employees who are members of a common working unit. The members of a common working unit include, for example, the employees of a single employer, one industry, or the members of one labor union. Although membership in such an association need not be offered to all the employees of a common working unit, membership must be offered to all of the employees of one or more classes of the common working unit and such class or classes must be selected on the basis of criteria which do not limit membership to shareholders, highly compensated employees, or other like individuals. The criteria for defining a class may be restricted by conditions reasonably related to employment, such as a limitation based on a reasonable minimum period of service, a limitation based on a maximum compensation, or a requirement that a member be employed on a full-time basis. The criteria for defining a class may also be restricted by conditions relating to the type and amount of benefits offered, such as a requirement that members need a reasonable minimum health standard in order to be eligible for life, sick, or accident benefits, or a requirement which excludes, or has the effect of excluding, employees who are members of another organization offering similar benefits to the extent such employees are eligible for such benefits. Whether a group of employees constitutes an acceptable class is a question to be determined with regard to all the facts and circumstances, taking into account the guidelines set forth in this Clause. Furthermore, exemption will not be barred merely because the membership of the association includes some individuals who are not employees (within the meaning of §308.B.14.b.i.(b)) or who are not members of the common working unit, provided that these individuals constitute no more than 10 percent of the total membership of the association.

(b). Meaning of Employee

(i). The term employee has reference to the legal and bona fide relationship of employer and employee.

(ii). The term employee also includes:

[a]. an individual who would otherwise qualify for membership under §308.B.14.b.i.(b).(i), but for the fact that he is retired or on leave of absence;

[b]. an individual who would otherwise qualify under §308.B.14.b.i.(b).(i), but subsequent to the time he qualifies for membership he becomes temporarily unemployed. The term temporary unemployment means involuntary or seasonal unemployment, which can reasonably be expected to be of limited duration. An individual will still qualify as an employee under §308.B.14.b.i.(b).(i), during a period of temporary unemployment, he performs services as an independent contractor or for another employer; or

[c]. an individual who qualifies as an employee under the state or federal unemployment compensation law covering his employment, whether or not such an individual could qualify as an employee under the usual common law rules applicable in determining the employer-employee relationship.

ii. Explanation of Voluntary Association. An association is not a voluntary association if the employer unilaterally imposes membership in the association on the employee as a condition of his employment and the employee incurs a detriment (for example, in the form of deductions from his pay) because of his membership in the association. An employer will not be deemed to have unilaterally imposed membership on the employee if such employer requires membership as the result of a collective bargaining agreement which validly requires membership in the association.

iii. Life, Sick, Accident, or Other Benefits *(a). In general, a voluntary employee's beneficiary association must provide solely (and not merely primarily) for the payment of life, sick, accident, or other benefits to its members or their dependents. Such benefits may take the form of cash or non-cash benefits.*

(i). Life Benefits. The term life benefits includes life insurance benefits, or similar benefits payable on the death of the member, made available to members for current protection only. Thus, term life insurance is an acceptable benefit. However, life insurance protection made available under an endowment insurance plan or a plan providing cash surrender values to the member is not included. Life benefits may be payable to any designated beneficiary of a member.

(ii). Sick and Accident Benefits. A sick and accident benefit is, in general, an amount furnished in the event of illness or personal injury to or on behalf of members or their dependents. For example, a sick and accident benefit includes an amount provided under a plan to reimburse a member for amounts he expends because of illness or injury, or for premiums which he pays to a medical benefit program such as Medicare. Sick and accident benefits may also be furnished in noncash form, such as benefits in the nature of clinical care, services by visiting nurses, and transportation furnished for medical care.

(iii).Other Benefits. The term other benefits includes only benefits furnished to members or their dependents which are similar to life, sick and accident benefits. A benefit is similar to a life, sick or accident benefit if it is intended to safeguard or improve the health of the employee or to protect against a contingency which interrupts earning power. Thus, paying vacation benefits, subsidizing recreational activities such as athletic leagues, and providing vacation facilities are considered other benefits since such benefits protect against physical or mental fatigue and accidents or illness which may result therefrom. Severance payments or supplemental unemployment compensation benefits paid because of a reduction in force or temporary layoff are other benefits since they protect the employee in the event of interruption of earning power. However, severance payments at a time of mandatory or voluntary retirement and benefits of the type provided by pension, annuity, profit-sharing, or stock bonus plans are not other benefits since their purpose is not to protect in the event of an interruption of earning power. Furthermore, the term other benefits does not include the furnishing of automobile or fire insurance or the furnishing of scholarships to the members' dependents.

iv. Inurement to the Benefit of Any Private Shareholder or Individual. No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual other than through the payment of benefits described in §308.B.14.b.iii. The disposition of property to, or the performance of services for, any person for less than its cost (including the indirect costs) to the association, other than for the purpose of providing such a benefit, will constitute inurement. Further, the payment to any member of disproportionate benefits will not be considered a benefit within the meaning of §308.B.14.b.iii even though the benefit is of the type described in §308.B.14.b.iii. For example, the payment to highly compensated personnel of benefits which are disproportionate in relation to benefits received by other members of the association will constitute inurement. However, the payment to similarly situated employees of benefits which differ in kind or amount will not constitute inurement if such benefits are paid pursuant to objective and reasonable standards. For example, two employees who are similarly situated while employed receive unemployment benefits which differ in kind and amount. These unemployment benefits will not constitute inurement if the reason for the larger payment to the one employee is to provide training for that employee to qualify for reemployment and the other employee has already received such training. Furthermore, the rebate of excess insurance premiums based on experience to the payor of the premium, or a distribution to member-employees upon the dissolution of the association, will not constitute inurement. However, the return of contributions to an employer upon the dissolution of the association will constitute inurement.

v. Meaning of the term income. The requirement of R.S. 47:608(14) that 85 percent of the income of a voluntary employees' beneficiary association consist of amounts collected from members and amounts contributed by the employer for the sole purpose of making payment of the benefits described in §308.B.14.b.iii (including meeting the expenses of the association) assures that not more than a limited amount (15 percent) of an association's income is from sources such as investments, selling goods, and performing services, which are foreign to what must be the principal source of the association's income, i.e., the employees. Therefore, the term income as used in R.S. 47:608(14) means the gross receipts of the organization for the taxable year, including income from tax-exempt investments (but exclusive of gifts and donations) and computed without regard to losses and expenses paid or incurred for the taxable year. The term income does not include the return to the association of an amount previously expended. Thus, for example, rebates of insurance premiums paid in excess of actual insurance costs do not constitute income for this purpose. In order to be an amount collected from a member, it must be collected as a payment, such as dues, qualifying the member to receive an allowable benefit, or as a payment for an allowable benefit actually received. For example, if the association furnishes medical care in a hospital operated by it for its members, an amount received from the member as payment of a portion of the hospital costs is an amount collected from such a member. How-

ever, an amount paid by an employee as interest on a loan made by the association is not an amount collected from a member since the interest is not an amount collected as payment for an allowable benefit received. For the same reason, gross receipts collected by the association as a result of employee purchases of work clothing from an association-owned store, or employee purchases of food from an association-owned vending machine, are not amounts collected from members. Amounts collected from members or amounts contributed to the association by the employer of the members are not considered gifts or donations.

vi. Record-Keeping Requirements

(a). In addition to such other records which may be required, every organization described in R.S. 47:608(14) must maintain records indicating the amount of benefits paid by such organization to each member. If the organization is financed, in whole or in part, by amounts collected from members, the organization must maintain records indicating the amount of each member's contribution.

(b). A supplemental unemployment compensation benefit plan may also qualify for exemption under the provisions of R.S. 47:608(14).

15. Teachers' Retirement Fund Associations. Teachers' retirement fund associations are exempt from the corporation franchise tax only if:

a. they are of a purely local character whose activities are confined to a particular community, place, or district, irrespective of political subdivisions, but if the activities are limited only by the borders of a state, it cannot be considered to be purely local in character;

b. its income consists solely of amounts received from public taxation, assessments upon the teaching salaries of members, and income from investments; and

c. no part of its net earnings inures (other than through the payment of retirement benefits) to the benefit of any private shareholder or individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:608.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February, 1985).

R.S. 47:609. Due date, payment and reporting of tax

A. The tax levied by this Chapter is for the annual accounting period, fiscal, or calendar year, regularly used by the taxpayer in keeping its books, with no proration for a portion of the year in the case of dissolution of domestic corporations, or withdrawal from the state by foreign corporations, or where a corporation otherwise ceases to become taxable under this Chapter. The tax is due on the first day of each calendar or fiscal year and annually thereafter, and is computed on the basis of the previous calendar or fiscal year closing. The tax is payable to the secretary on or before the fifteenth day of the third month following the month in which the tax is due. However, if the day on which the tax is payable falls on a Saturday, Sunday, or legal holiday the tax shall be payable on the next business day. With its payment the taxpayer shall deliver to the secretary a full, accurate, and complete report and statement signed by a duly authorized official of the corporation, containing such information as the secretary may require.

B. If permission is granted to change the corporate accounting period as provided in R.S. 47:613, the corporation shall file a return for the period from the end of the twelve-month period for which the tax had become due to the first fiscal closing of the new accounting period. The tax to be paid in this case shall be based on the preceding fiscal closing and shall be computed by multiplying the ratio that the number of months from the closing date under the prior accounting period to the closing of the new accounting period bears to twelve, times the tax as computed on the yearly basis. Subsequent returns will be filed on the basis of the new accounting period in accordance with the provisions of this Section.

Amended by Acts 1991, No. 368, §1, eff. July 6, 1991.

LAC 61:I.309. Accrual, Payment and Reporting of Tax

Note: Act 59 of 1986 revised the date the tax is payable to the fifteenth day of the third month following the month in which the tax accrues. The following regulation was promulgated prior to the enactment of Act 59 and does not reflect the change in the statute.

A. The corporation franchise tax imposed by this Chapter accrues on the first day of each calendar or fiscal year in which a corporation is subject to the tax, and is based on its entire issued and outstanding capital stock, surplus *and undivided profits, and borrowed capital determined as of the close of the previous calendar or fiscal year. There is no proration of the tax for a portion of the year in the case of dissolution of a domestic corporation, withdrawal from the state by a foreign corporation, or where a corporation otherwise ceases to be subject to the tax. The tax is payable to the secretary of Revenue and Taxation on or before the fifteenth day of the fourth month following the month in which the tax accrues; in the case of a calendar year taxpayer, the tax accrues on January 1 and is payable to the secretary on or before May 15. For purposes of this section, fiscal or calendar year shall be determined by reference to the annual accounting period regularly used by the corporation in keeping its books.*

B. Payment of the tax shall be accompanied by a full, accurate, and complete report prepared on forms furnished by the secretary of Revenue and Taxation, which shall be signed by a duly authorized official of the corporation.

C. Whenever the secretary has granted permission to a corporation to change its accounting period under the provisions of R.S. 47:613, the tax to be paid for the period from the end of the last period for which the tax had already accrued until the end of the new accounting period shall be determined by multiplying the ratio that the number of such months bears to 12, times the tax computed for an annual period based on the previous period's closing. All subsequent returns shall be prepared on the basis of the new accounting period.

D. In the case of a mere change in the name or change in the state of incorporation, the tax shall be determined and paid as if the change had not occurred.

E. For provisions relating to newly taxable corporations, see R.S. 47:611.

F. For provisions relating to requests for extensions of time within which to file the report required by this Chapter, see R.S. 47:612.

G. In the case of mergers which have an effective time and date of 12 midnight of the last day of the merged corporation's accounting period which coincides with the last day of the surviving corporation's accounting period, the surviving corporation shall include the assets of the merged corporation with its assets in computing the ratios of property and assets for the purpose of determining the amount of tax due for the year following the date of the merger.

H. If the surviving corporation was not previously subject to the tax, it shall pay the minimum tax for the accounting period within which such merger date occurs as required of newly taxable corporations under the provisions of R.S. 47:611.

AUTHORITY NOTE: Promulgated in accordance with 47:609.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985).

R.S. 47:611. Newly taxable corporation

Every corporation shall pay only the minimum tax of ten dollars in the first accounting period or fraction thereof in which it becomes subject to the tax levied herein. The tax is first due immediately on the corporation's becoming taxable under this Chapter and is payable on or before the fifteenth day of the third month after the month in which the tax is due. After the first closing of the corporate books, the tax is payable as provided in R.S. 47:609.

Amended by Acts 1991, No. 368, §1, eff. July 6, 1991.

LAC 61:I.311. Newly Taxable Corporations

Note: Act 59 of 1986 revised the date the tax is payable to the fifteenth day of the third month following the month in which the tax accrues. The following regulation was promulgated prior to the enactment of Act 59 and does not reflect the change in the statute.

A. Every corporation shall pay only the minimum tax in the first accounting period or fraction thereof in which it becomes subject to the tax. It is immaterial whether the corporation became liable for the tax on the first day or the last day of the accounting period regularly used by the taxpayer in keeping its books; the minimum tax is due for that accounting period. The tax accrues immediately upon the corporation's becoming subject thereto.

B. The tax for all accounting periods subsequent to the period in which the corporation became subject to the tax accrues on the first day of the period and is based on the previous period's closing.

C. In all instances, the tax is payable on or before the fifteenth day of the fourth month following the month in which the tax accrues.

AUTHORITY NOTE: Promulgated in accordance with 47:611.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985).

R.S. 47:612. Extension of time for filing return and paying tax

The secretary may grant an extension of time for filing returns as provided for in R.S. 47:103(D) or R.S. 47:287.614(D).

Amended by Acts 1958, No. 437, §2; Acts 1985, No. 104, §1; Acts 1987, No. 136, §1, eff. June 18, 1987.

LAC 61:I.312. Extension of Time for Filing Return and Paying the Tax

A. When such application for an extension of time within which to file the report required by this Chapter has been filed, the secretary of Revenue and Taxation may grant such extension for a period not to exceed six months from the due date of the report prescribed by R.S. 47:609 and R.S. 47:611. In any case in which the taxpayer has filed a request for an automatic extension of time within which to file its federal income tax return with the U.S. Internal Revenue Service, a copy of the automatic extension request attached to the report required by this Chapter will be accepted by the secretary as an application filed under this Section, and an extension equal to that granted by the federal government will be granted by Louisiana.

B. The granting of an extension of time within which to file the report required by this Chapter does not automatically grant an extension of time within which the tax shall be paid, and the secretary may require payment of the estimated amount of tax due as a condition to granting the report filing extension.

C. Whenever an extension has been granted with respect to payment of the tax, interest accrues thereon for the period from the payment date prescribed by R.S. 47:609 to the date on which the tax is paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:612.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985).

R.S. 47:613. Fiscal year defined; accounting period not to be changed

"Fiscal year" as used in this Chapter, means an accounting period of twelve months ending on the last day of any month other than December. However, no fiscal year will be recognized, unless, before its close, it was definitely established as an accounting period by taxpayer and the books of such taxpayer were kept in accordance therewith. No accounting period shall be changed without the approval of the collector of revenue.

LAC 61:I.313. Fiscal Year; Accounting Period

A. Fiscal year means an accounting period of 12 months ending on the last day of any month other than December. In the case of a taxpayer that, in keeping its books, regularly uses a 52- to 53-week period permitted under R.S. 47:91(F), the secretary of Revenue and Taxation may permit the use of such accounting period for purposes of this Chapter, provided that in any case in which the effective date or the applicability of any provisions of this Chapter is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, such 52- or 53-week accounting period shall be treated:

1. as beginning with the first day of the calendar month beginning nearest to the first day of such taxable period; or

2. as ending with the last day of the calendar month ending nearest to the last day of such taxable period, as the case may be.

B. However, no fiscal year will be recognized unless, before its close, it was definitely established as an accounting period and the books of the taxpayer were kept accordingly.

C. Once an accounting period has been established, no change from that period shall be made without the approval of the secretary of Revenue and Taxation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:613.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985).

R.S. 47:614. Cost of collection

The cost required by the collector in the collection of the tax imposed in this Chapter shall be withheld and paid out of the first sums realized on the collection of the tax or any penalties and interest applicable thereto, and for these purposes, the expenses of the collector shall not exceed one hundred thousand dollars ($100,000.00) per annum.

R.S. 47:615. Disposition of collections

All moneys collected from the tax, interest, and penalties provided for in this Chapter, less expenses withheld as provided in R.S. 47:614, shall be remitted to the treasurer on or before the tenth day of the month following the month in which collections are made. The treasurer shall allocate and distribute the collections as follows:

(1) The first four hundred thousand dollars of the annual collections shall be remitted directly to the Board of Administrators of the Charity Hospital of Louisiana at New Orleans. This money shall be used by the hospital for the payment of principal and interest and any required reserves therefor that may be due by the board of administrators of the hospital to the Federal Emergency Administration of Public Works or to any board, body or agency succeeding to its powers and duties or to any other federal agency, or any other purchaser or holder, on account of any bonds or other obligations issued and sold thereto or contracts entered into therewith, by the board of administrators for the objects and purposes prescribed in Section 1 of Act 166 of 1934, and subject to the provisions of Section 7 of Act 166 of 1934, as amended by Act 72 of 1936; provided, that any balance of the sum of four hundred thousand dollars after paying these bonds and the interest thereon as the same shall become due and establishing and maintaining any required reserve fund therefor, may be used by the hospital and pledged to the payment of bonds or other obligations referred to hereinafter in paragraph (2) of this Section.

(2) The second four hundred thousand dollars of the annual collections shall be remitted directly to the Board of Administrators of the Charity Hospital of Louisiana at New Orleans. This money shall be used by the hospital for the payment of principal and interest and any required reserves therefor that may be due by the board of administrators of the hospital to the Federal Emergency Administration of Public Works or to any board, body or agency succeeding to its powers and duties or to any other federal agency, or any other purchaser or holder, on account of any bonds or other obligations issued and sold thereto or contracts entered into therewith by the board of administrators of the hospital, for the objects and purposes prescribed in Act 4 of 1938, and subject to the provisions of section 7 of that act.

(3) In addition to the amounts authorized to be remitted annually to the Charity Hospital of Louisiana at New Orleans under the provision of Subsections (1) and (2) of this Section, the additional amount of two hundred thousand dollars of the annual collections shall be remitted directly to the Board of Administrators of the Charity Hospital of Louisiana at New Orleans. This money shall be used by the hospital, first, for the payment of outstanding bonds issued pursuant to Act 166 of the Regular Session of 1934, as amended by Act 72 of the Regular Session of 1936 and Act 4 of the Regular Session of 1938, and, second, for the payment of the principal of and interest on the bonds authorized to be issued by Act 97 of 1966 for the purposes set forth in said Act 97 of 1966 and subject to the provisions of said Act.

(4) Forty thousand dollars thereof annually to the Governor of Louisiana, to be used by him for the preservation of law and order, in the enforcement of state law, in apprehending fugitives from justice, in paying rewards for the apprehension of criminals, and in paying the costs of investigations lawfully ordered, promoting the general welfare, and publicizing the state of Louisiana.

(5) After making payment of the sums above specified there shall be remitted of the annual collection to the board of supervisors of the Louisiana State University and Agricultural and Mechanical College the following sums in the following order:

(a) The sum of three hundred fifty thousand dollars to be used to construct, furnish and equip additional buildings and to demolish, replace, remodel or enlarge any existing buildings deemed necessary or advisable by said board on the campus of the university at Baton Rouge, on the campus of the North East Center at Monroe, or on the grounds of the medical school at New Orleans.

(b) The sum of one million two hundred seventeen thousand dollars to be used by the board of supervisors of the Louisiana State University and Agricultural and Mechanical College for its endowment, maintenance and support;

for constructing, furnishing and enlarging any buildings, and for repairing, remodeling or enlarging existing buildings.

(6) The remainder of the annual collections, after paying the sums specified in this Section and in R.S. 47:614 in the order set out, shall be credited to the general fund of the state and disbursed by the State Treasurer as directed by law.

Amended by Acts 1950, No. 286, §1; Acts 1966, No. 96, §1.

R.S. 47:616. Franchise taxes by local governments prohibited

Parishes, cities and towns shall not levy a franchise tax on the corporations taxed under this Chapter.

R.S. 47:617. Refunds and credits

A. An overpayment shall bear no interest if credit is given therefore. Amounts actually refunded as overpayments shall bear interest at the rate established pursuant to Civil Code Article 2924(B)(3) per year computed from ninety days after the filing date of the return showing the overpayment or from the due date of such return, whichever is later.

B. The secretary may net any overpayments against the corporation income taxes for the purpose of determining the interest due under the provisions of R.S. 47:1601.

C. No refund of franchise tax shall be paid by the secretary until any claim of offset filed by the office of employment security of the Department of Labor against the taxpayer under R.S. 23:1733 has been satisfied.

LAC 61:I.317. Refunds and Credits

A. In the case of an overpayment of corporation franchise tax for any accounting period, the amount of the overpayment may be either refunded to the taxpayer or credited to the taxpayer's account in satisfaction of existing or future liabilities. Any amount actually refunded shall bear interest at the rate of 15 percent per annum computed from 90 days after the filing date of the final return upon which the overpayment was made, or from ninety days after the due date of the return, whichever is the later, to the date on which the refund was made.

B. Amounts of overpayments which are credited to taxpayer's accounts shall bear no interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:617.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985).

Miscellaneous Provisions

R.S. 47:6004. Employer credit

A.(1) It is the intention of this Section to encourage the employment of previously unemployed Louisiana residents and recipients of Aid to Families with Dependent Children (AFDC) payments participating in Project Independence, the Louisiana Job Opportunities and Basic Skills (JOBS) Program by providing an incentive to potential employers in the form of a credit against the state income and corporation franchise tax for the employment of each previously unemployed person and participant of Project Independence in a newly created full-time job. Therefore, a credit against the state income tax and corporation franchise tax is hereby granted for each new full-time job created by an employer after the employer has created a number of new full-time jobs which are in excess of five percent of the base as defined herein, which job employs a previously unemployed person. The "base" shall be the average full-time number of jobs reported by the employer to the office of employment security for the previous taxable period.

(2) The credit shall be seven hundred fifty dollars and shall be allowed against the income tax for the taxable period during which the new employee has completed one year of full-time service with the taxpayer and/or against the corporation franchise tax for the taxable period following the taxable period during which the new employee has completed one year of full-time service with the taxpayer. Only one tax credit shall be allowed for:

(a) Each previously unemployed person and only if such person was unemployed for at least an eight-week consecutive period prior to his employment.

(b) Each participant of Project Independence provided that the employer has not entered into a contract with the office of family support of the Department of Social Services to reimburse the employer for providing training and additional supervision through the On-the-Job Training (OJT) Program to that employee.

(3) The credit shall only be allowed for employment of Louisiana residents who have resided in Louisiana for at least six months prior to such employment. To qualify for said credit, the employer shall obtain a notarized statement that he is in compliance with the provisions of this Section and shall furnish such statement to the secretary.

B.(1) The amount of the credit allowed for the taxable period shall be an amount equal to the sum of:

(a) A carryover of prior unused credits arising from taxable periods beginning on or after January 1, 1990, carried to such taxable period, plus

(b) The amount of the credit determined under Subsection A for the taxable period.

(2) If the sum of the amount of credits as determined under the provisions of Subsection B of this Section for the current taxable period exceeds the amount of taxes for which the credit is claimed, the excess shall be treated as a carryover credit and may be carried over for a maximum of five consecutive periods following the taxable period in which the credit originated. Such carryover credits are to be applied in reduction of the tax in the order of the taxable periods in which the credit originated, beginning with the credit for the earliest taxable period. The credit shall be in lieu of R.S. 47:287.748, 287.749, and 287.753, and R.S. 51:1787.

Amended by Acts 1990, No. 289, §1, eff. July 5, 1990; Acts 1991, No. 369, §1, eff. Jan. 1, 1992; Acts 1992, No. 786, §1.

Application

Section 2 of Acts 1991, No. 369 of which amended this section, provides:

Section 2. The provisions of this Act shall become effective for taxable periods beginning on or after January 1, 1992.

R.S. 47:6005. Qualified recycling equipment

A. Definitions

For the purposes of this Section:

(1) "Post-consumer waste material" means any product generated by a business or consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, marketing, and disposition and which does not include secondary waste material, hazardous waste, or demolition waste.

(2) "Qualified recycling equipment" means new machinery or new apparatus used exclusively to process post-consumer waste material, recovered material, or both and manufacturing machinery used exclusively to produce finished products, the composition of which is at least fifty percent post-consumer waste material, recovered material, or both. For the purposes of this Section, "qualified recycling equipment" does not include vehicles and does not include structures, machinery, equipment, or devices used to store or incinerate waste material.

(3) "Recovered material" means material as defined in R.S. 30:2412(7) and which would otherwise be processed or disposed of as nonhazardous solid waste.

(4) "Secondary waste material" means waste material generated after the completion of a manufacturing process.

B. In order to qualify for the tax credit provided for in this Section, the taxpayer shall apply for certification from the secretary of the Department of Environmental Quality that the equipment purchased is qualified recycling equipment as defined herein. Included with the application for certification shall be a statement acknowledging that the taxpayer shall use a good faith effort to utilize post-consumer waste material or recovered material generated within the state or destined to be landfilled within the state. The certification shall specify the date of purchase, the description of the equipment, and the cost. The certification shall also state that the equipment has not previously qualified for a credit pursuant to this Section either for the owner or for a previous owner. Prior to certification, the secretary of the Department of Environmental Quality shall determine that any recovered material proposed to be recycled is a nonhazardous solid waste under applicable state and federal law or regulation. Upon certification, the secretary of the Department of Environmental Quality shall submit a copy thereof to the taxpayer and the secretary of the Department of Revenue and Taxation.

C.(1) A taxpayer who purchases qualified recycling equipment as defined in this Section and certified by the secretary of the Department of Environmental Quality to be used exclusively in this state shall be entitled to a credit against any income and corporation franchise taxes imposed by the state in an amount equal to twenty percent of the cost of the recycling equipment less the amount of any other tax credits received for the purchase of such equipment. In order to qualify for the credit, such purchases must be made on or after September 1, 1991, and on or before December 31, 1998.

(2) When filing a tax return that includes a claim for a credit pursuant to this Section, the taxpayer shall include a copy of the certification and a statement that the recycling equipment is in use in the applicable taxable period and is used exclusively in Louisiana. The taxpayer shall include with the statement an estimate of the amount of post-consumer waste material or recovered material utilized. If the qualified recycling equipment is sold or exchanged before the entire credit is claimed, the portion of the credit otherwise allowable shall be allowed in the period of sale or exchange and any unused credit shall be canceled for all future periods. Any credit shall be valid in the taxable period in which the certification is approved.

D. The amount of the credit claimed in the taxable period for which certification of equipment is received, and the amount of credit claimed therefor in each taxable period thereafter, shall not exceed twenty percent of the amount of the total credit allowable. In no case shall the credit claimed exceed fifty percent of the tax liability which would be otherwise due for that taxable period. Any unused credit for a taxable year in which a credit is allowed may be carried forward to subsequent years until the credit is exhausted.

E. The secretary of the Department of Environmental Quality, in consultation with the secretary of the Department of Revenue and Taxation, shall promulgate rules and regulations establishing technical specifications and certification requirements for the qualification of recycling equipment for the credit established pursuant to this Section.

F. In addition to the information required in R.S. 47:1517, the annual tax exemption budget shall include information setting forth the number of certifications that were approved during the preceding fiscal year, the cost of each type of recycling equipment which has been certified as qualifying for the credit, the total amount of post-consumer waste material or recovered material utilized, and other applicable information in addition to the information required by R.S. 47:1517.

Added by Acts 1991, No. 359, §1; Acts 1991, No. 1052, §1, eff. July 29, 1991. Amended by Acts 1996, No. 26, §1.

Application

Section 2 of Acts 1991, No. 359 provides which amended this section, provides:

Section 2. This Act shall become effective for taxable periods beginning on or after January 1, 1991.

R.S. 47:6006. Tax credits for local inventory taxes paid

A. There shall be allowed a credit against the corporate and personal income taxes and the corporation franchise tax for ad valorem taxes paid to political subdivisions on inventory held by manufacturers, distributors, and retailers. No credit shall be allowed for ad valorem taxes collected under the provisions of R.S. 47:1961.2 and paid to political subdivisions by those retailers who have collected the taxes from persons to whom the inventory has been sold.

B. Credit for taxes paid by corporations shall be applied to state corporate income and corporation franchise taxes. Credit for taxes paid by unincorporated persons shall be applied to state personal income taxes. The taxpayer shall be entitled to a refund for any allowable credit which exceeds the aggregate tax liability of the taxpayer for the taxes imposed by Chapter 1 and Chapter 5 of Subtitle II of this Title. [FN1] The secretary shall make such refund to the taxpayer in the amount to which he is entitled from the current collections of the taxes collected pursuant to Chapter 1 and Chapter 5 of such Subtitle II.

C. The term "manufacturer" as used herein means a person engaged in the business of working raw materials into wares suitable for use or which gives new shapes, qualities, or combinations to matter which already has gone through some artificial process. The term "distributor" as used herein means a person engaged in the sale of products for resale or further processing for resale. The term "retailer" as used herein means a person engaged in the sale of products to the ultimate consumer.

D. The credit provided in this Section shall be allowed as follows:

(1) For inventory taxes paid to political subdivisions on or after July 1, 1992, and before June 30, 1993, the credit shall be twenty percent of such taxes paid.

(2) For inventory taxes paid to political subdivisions on or after July 1, 1993, and before June 30, 1994, the credit shall be forty percent of such taxes paid.

(3) For inventory taxes paid to political subdivisions on or after July 1, 1994, and before June 30, 1995, the credit shall be sixty percent of such taxes paid.

(4) For inventory taxes paid to political subdivisions on or after July 1, 1995, and before June 30, 1996, the credit shall be eighty percent of such taxes paid.

(5) For inventory taxes paid to political subdivisions on or after July 1, 1996, the credit shall be one hundred percent of such taxes paid.

Added by Acts 1991, No. 153, §1. Amended by Acts 1994, No. 28, §1.

R.S. 47:6006.1. Tax credits for taxes paid with respect to vessels in Outer Continental Shelf Lands Act Waters

A. There shall be allowed a credit against the Louisiana corporate and personal income taxes and the Louisiana corporation franchise tax for ad valorem taxes paid without protest to political subdivisions on vessels in Outer Continental Shelf Lands Act Waters as certified to the assessor pursuant to R.S. 47:1956(B) within the calendar year immediately preceding the taxable year of assessment of such vessel. For purposes of this Section, ad valorem taxes shall be deemed to be paid to political subdivisions when they are paid without protest either in money or by applying credits established pursuant to R.S. 47:2108.1.

B. Notwithstanding anything to the contrary in either Chapter 1 or Chapter 5 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, as amended, the following rules shall apply with respect to the application of the credit established in Subsection A of this Section:

(1) The credit for taxes paid by or on behalf of a corporation shall be applied against Louisiana corporate income and corporation franchise taxes of such corporation. However, any such credit allowable to any member of an affiliated group of corporations, as defined in Section 1504 of the Internal Revenue Code of 1954, as amended, shall be applied against Louisiana corporate income and corporation franchise taxes of such member and any other member of such affiliated group of corporations until the entire amount of the credit has been applied against such Louisiana corporate income taxes or corporation franchise taxes.

(2) The credit for taxes paid by an individual shall be applied against Louisiana personal income taxes.

(3) The credit for taxes paid by or on behalf of a corporation classified under Subchapter S of the Internal Revenue Code of 1954, as amended, as an S corporation shall be applied first against any Louisiana corporate income and corporation franchise taxes due by such S corporation, and the remainder of any such credit shall be allocated to the shareholder or shareholders of such S corporation in accordance with their respective interests and applied against the Louisiana income tax of such shareholder or shareholders of the S corporation.

(4) The credit for taxes paid by or on behalf of a partnership shall be allocated to the partners according to their distributive shares of partnership gross income and applied against any Louisiana income tax and corporation franchise tax liability of such partners.

(5) The character of the credit for taxes paid by or on behalf of a partnership or S corporation and allocated to the partners or shareholders, respectively, of such partnership or S corporation, shall be determined as if such credit were incurred by such partners or shareholders, as the case may be in the same manner as incurred by the partnership or S corporation, as the case may be.

C. Notwithstanding any other provision of law to the contrary in Title 47 of the Louisiana Revised Statutes of 1950, as amended, any excess of allowable credit established by this Section over the aggregate tax liabilities against which such credit can be applied, as provided in this Section, shall constitute an overpayment, as defined in R.S. 47:1621(A), and the secretary shall make a refund of such overpayment from the current collections of the taxes imposed by Chapter 1 or Chapter 5 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, as amended, together with interest as provided in R.S. 47:1624. The right to a credit or refund of any such overpayment shall not be subject to the requirements of R.S. 47:1621(B). All credits and refunds, together with interest thereon, must be paid or disallowed within ninety days of receipt by the secretary, of any such claim for refund or credit. Failure of the secretary to pay or disallow, in whole or in part, any claim for a credit or a refund shall entitle the aggrieved taxpayer to proceed with the remedies provided in R.S. 47:1625.

D.(1) For the purpose of allowing the credit or refund for ad valorem taxes paid to political subdivisions as provided herein, the term “vessel” shall include ships, oceangoing tugs, towboats, and barges. The term “Outer Continental Shelf Lands Act Waters” as used herein shall have the meaning ascribed to it in R.S. 47:1702.

(2) The acceptance by the sheriff and ex officio tax collector of the ad valorem taxes paid without protest by a taxpayer as certified under R.S. 47:1956(B) shall conclusively establish: that such property was properly classified as a “vessel”, for purpose of this Section; that such vessel was “principally operated” in Outer Continental Shelf Lands Act Waters during the applicable tax year; and that such taxpayer shall be entitled to a credit or refund pursuant to this Section.

E. The credit provided in this Section shall be allowed as follows:

(1) For ad valorem taxes on Outer Continental Shelf Lands Act Waters vessels paid to political subdivisions on or after July 1, 1994, and before June 30, 1995, the credit shall be sixty percent of such taxes paid.

(2) For ad valorem taxes on Outer Continental Shelf Lands Act Waters vessels paid to political subdivisions on or after July 1, 1995, and before June 30, 1996, the credit shall be eighty percent of such taxes paid.

(3) For ad valorem taxes on Outer Continental Shelf Lands Act Waters vessels paid to political subdivisions on or after July 1, 1996, the credit shall be one hundred percent of such taxes paid.

F. Nothing herein and any taxes paid by a taxpayer relative to any vessel, as defined herein, shall in any way prohibit any taxpayer from the payment of ad valorem taxes under protest or to otherwise resist the collection of such ad valorem taxes. Further, nothing in this Section shall affect, define, interpret, in whole or in part, or otherwise determine the applicability of the international trade exemption in Article VII, Section 21(C)(16) of the Constitution of Louisiana or any other applicable rights, exemptions, exclusions, preemptions, or preemptions under the Constitution of Louisiana as amended, the Constitution of the United States as amended, all treaties and executive agreements of the United States, all intrastate agreements and compacts between Louisiana and other states, all laws of Louisiana as amended, and all laws of the United States of America as amended.

Added by Acts 1994, 3rd Ex.Sess., No. 59, §1, eff. July 7, 1994.

R.S. 47:6007. Motion picture investor tax credit

A. **Purpose.** The primary objective of this Section is to encourage development in Louisiana of a strong capital base for motion picture film, videotape, and television program productions, in order to achieve a more independent, self-supporting industry. This objective is divided into immediate and long-term objectives as follows.

(1) Immediate objectives are to:

(a) Attract private investment for the production of motion pictures, videotape productions, and television programs which contains substantial Louisiana content as defined herein.

(b) Develop a tax infrastructure which encourages private investment. This infrastructure will provide for state participation in the form of tax credits to offset investment base losses for state-certified productions.

(c) Develop a tax infrastructure utilizing tax credits which encourage investments in multiple state-certified production projects.

(2) Long-term objectives are to:

(a) Encourage increased employment opportunities within this sector and increased competition with other states in fully developing economic development options within the film and video industry.

(b) Encourage new education curricula in order to provide a labor force trained in all aspects of film production.

B. Definitions. For the purposes of this Section:

(1) "Actual revenues received" shall mean monies constructively received by an investor for the investor's investment in a state-certified production.

(2) "Base investment" shall mean eighty-five percent of the funds actually invested and expended within the state in a state-certified production.

(3) "Financial institutions or institution" shall mean any bank or savings and loan which is insured by the FDIC or FSLIC.

(4) "Headquartered in Louisiana" shall mean a corporation incorporated in Louisiana for the purpose of producing motion pictures or commercials intended for a theatrical release or for television viewing.

(5) "Investor loss" shall mean the difference between the investor's base investment and actual revenues received in the projected payback period if an investor's base investment exceeds the actual revenues received in the projected payback period.

(6) "Investor profit" shall mean the difference between actual revenues received in the projected payback period and the investor's base investment in those instances where actual revenues received in the projected payback period exceed the investor's base investment.

(7) "Motion picture production company" shall mean a company engaged in the business of producing motion pictures or commercials intended for a theatrical release or for television viewing.

(8) "Multiple certified projects" shall mean motion picture or television productions which have been certified within a ten-year period from the certification date of a previously certified production, thereby qualifying for the investment loss tax credit.

(9) "Projected payback period" shall mean the three-year period, beginning with the release date, whereby investors are expected to recover their investment. The investment not recovered on state-certified productions during the projected payback period is eligible for the investment loss tax credit.

(10) "State-certified production" shall mean a production approved by the commission and lieutenant governor produced by a motion picture production company domiciled and headquartered in Louisiana which contains substantial Louisiana content and a distribution agreement with either a major theatrical exhibitor, television network, or cable television programmer.

(11) "Substantial Louisiana content" shall mean a production certified by the Louisiana Film Commission or its designated affiliate, hereinafter referred to as "the commission" as having a substantial Louisiana content according to guidelines provided herein for the investment loss tax credit.

C. Investment loss tax credit; specific projects. (1) There is hereby authorized a tax credit against state income tax for taxpayers domiciled in the state of Louisiana. The tax credit shall be calculated as a percentage of the investor loss according to the total base investment dollars certified per project.

(a) If total base investment is greater than two million dollars and less than or equal to ten million dollars, the taxpayer shall be allowed a tax credit of fifty percent of the actual investor loss.

(b) If the total base investment is greater than ten million dollars and less than or equal to twenty-five million dollars, the taxpayer shall be allowed a tax credit of sixty percent of the investor loss.

(c) If the total base investment is greater than twenty-five million dollars, the taxpayer shall be allowed a tax credit of sixty-seven percent of the investor loss.

(2) In the event that the entire credit cannot be used in the year earned, the credit may be applied against income tax liabilities for the subsequent ten years.

D. Investment loss tax credit; multiple projects. In the event that the taxpayer has participated in more than one state-certified production and at least one of those projects has generated an investor profit, seventy percent of the investment loss may be applied against any tax liability generated from other profitable state-certified productions on a dollar-per-dollar basis. Investment losses may be carried forward for a period of ten years.

E. Certification and administration. (1) The lieutenant governor and commission shall determine through the promulgation of rules what projects contain substantial Louisiana content. To this end, the commission shall establish a point system such that a minimum number of total points must exist in order for the commission to certify that the production contains substantial Louisiana content. Criteria shall be based on the utilization of talent and resources available in Louisiana. As availability of talent and resources increases over time, so shall the difficulty in receiving certification of substantial Louisiana content. Prior to adoption, these rules shall be approved by the House Committee on Ways and Means, the Senate Committee on Revenue and Fiscal Affairs, the House Committee on Municipal, Parochial and Cultural Affairs, and the Senate Committee on Commerce and Consumer Protection.

(2) Certification shall be submitted to investors and to the secretary of the Department of Revenue and Taxation.

(3) The secretary of the Department of Revenue and Taxation, in consultation with the lieutenant governor and the director of the Louisiana Film Commission, shall promulgate such rules and regulations as are necessary to carry out the intent and purposes of this Section in accordance with the general guidelines provided herein.

(4) Any taxpayer applying for the credit shall be required to reimburse the Department of Revenue and Taxation for any audits required in relation to granting the credit.

F. Recapture of credits. (1) If, during any taxable period which ends after the end of the projected payback period for a state-certified project, additional actual revenues attributable to the state-certified project are constructively received by an investor subsequent to the end of the projected payback period, then the income tax for such taxable period shall be increased by the recapture of credit provided by this Section.

(2) The investor loss previously computed for the project shall be recomputed to include the additional actual revenue constructively received as if the additional revenue had been received during the payback period. The investor loss so determined shall be the investor loss for purposes of computing all current and future credit under this Section.

(3) The taxpayer shall recompute his income tax liability for all prior taxable periods in which credit was taken attributable to the project from which additional actual revenues have been received. The recomputed tax liabilities shall be computed based upon the investor loss as recomputed to include additional actual revenues received. Any excess of the sum of the tax liabilities after credits for years so recomputed over the tax liabilities after credits for such years as reported shall be the amount of recapture of credit provided by this Section.

Added by Acts 1992, No. 894, §1; eff. for taxable periods beginning on or after January 1, 1993; Notwithstanding any provisions of law to the contrary, the authority to receive a credit against income tax by virtue of the provisions of Section 1 of this Act shall cease as of December 31, 2003 unless reauthorized by Act of the legislature before that time.

R.S. 47:6008. Tax credits for donations made to assist playgrounds in economically depressed areas

A. There shall be allowed a credit against the individual and corporate income tax and the corporation franchise tax for qualified donations made to qualified playgrounds. The credit shall be an amount equal to the lesser of one thousand dollars or one-half of the value of the cash, equipment, goods, or services donated. Any such credit shall be taken as a credit against the applicable tax or taxes only in the taxable period in which the donation is made. The total amount of the credits taken by any taxpayer during any taxable year shall not exceed one thousand dollars.

B.(1) The term “qualified donation” shall mean a donation made to a qualified playground to assist in the construction, operation, use, or maintenance of the playground. The term “qualified donation” shall also mean a donation made to assist in the development, implementation, or sponsoring of recreational, educational, or health-related programs or events for the benefit of the children served by the qualified playground regardless of whether the donation is made directly to the qualified playground, to the qualified playground’s volunteer organization or booster club, or to a nonprofit corporation whose chartered purpose is to provide assistance to the qualified playground. Any such donation may be in the form of cash or the donation of equipment, goods, or services.

(2) The term “qualified playground” shall mean a playground, recreational facility, or park owned or operated by the state or a political subdivision or by a community or volunteer organization or nonprofit corporation and which is eligible to receive any funds under the community development block grant (CDBG) program of the United States Department of Housing and Urban Development.

C. The secretary of the Department of Revenue and Taxation shall promulgate such rules and regulations as may be deemed necessary to carry out the purposes of this Section.

Added by Acts 1992, No. 898, §1. The provisions of this Act shall be applicable to all taxable periods beginning after December 31, 1992.

R.S. 47:6009. Louisiana Basic Skills Training Tax Credit

A. Purpose. The legislature of the state of Louisiana hereby finds and declares that the health, safety, and welfare of the people of this state are directly and significantly impacted by the jobs and employment opportunities created and retained within the state. The willingness and ability of business and industry to create and retain jobs is, in turn, dependent to a great extent on the educational attainment and basic skills levels of the Louisiana workforce. With changing work methods, advanced technologies, and an increasingly competitive global economy, it is imperative that Louisiana workers possess needed basic reading and mathematical skills and knowledge and be more productive contributors to enhancing the viability and economic success of their employing companies. It is, therefore, declared to be the purpose of this Section to stimulate both increased worker trainability and productivity and business and industrial growth and development through the provisions of a tax credit which supports and encourages employee basic skills training.

B. Definitions. For the purposes of this Section, the following terms shall have the meanings hereinafter ascribed to them, unless the context clearly indicates otherwise:

(1) "Accredited education agency" means any public school board or system, public technical institute, or public or regionally accredited independent institution of higher education.

(2) "Basic skills training" means any employer-paid training which enhances reading, writing, or mathematical skills, at least to the twelfth grade level, of employees who are unable to function effectively on the job due to deficiencies in the aforementioned skills areas, who are not promotable for these same reasons, or who may be displaced because their skill deficiencies inhibit their trainability in new work methods and technologies.

(3) "Post-course evaluation" means completion of a California Achievement Test or a similarly recognized reliable and valid testing instrument to determine the grade-level equivalent achievement levels of a basic skills training program participant in the subject areas of reading and mathematics following, or upon, completion of a basic skills training program.

(4) "Precourse evaluation" means completion of a California Achievement Test or a similarly recognized reliable and valid testing instrument to determine the grade-level equivalent achievement levels of a basic skills training program participant in the subject areas of reading and mathematics prior to beginning a basic skills training program.

C. Criteria. To be eligible to receive the tax credits provided under this Section, these criteria must be met:

(1) Participants must be full-time employees of a Louisiana business or industry who are voluntarily participating in the basic skills course provided for in this Section. No credit shall be allowed if employees are required to participate in the course as a condition of their employment.

(2) Participants must be Louisiana residents.

(3) Prior to beginning a basic skills training program provided by an accredited education agency, participants must complete a precourse evaluation performed by such an agency and must have grade-equivalent achievement levels below the twelfth grade level in one of the two subject areas of reading and mathematics.

(4) Upon completion of the above-identified basic skills training program, participants must complete a post-course evaluation performed by an accredited public education agency and must demonstrate at least three years grade level growth in reading and mathematics.

D. Tax credits. (1) Any Louisiana business or industry which satisfies the criteria provided for herein shall, with submission of proper and complete applications, receive a two hundred fifty dollar tax credit per participating employee, with the total of all such basic skills training tax credits not to exceed thirty thousand dollars for any such single business or industry enterprise in a particular tax year. This tax credit may be applied to any state income tax liability or any state corporation franchise tax liability and, if the entire credit cannot be used in the year earned, the remainder may be applied against income tax or corporation franchise tax liabilities for the succeeding two tax years, or until the entire credit is used, whichever occurs first.

(2) The tax credits provided for herein shall not be used by any business enterprise or corporation other than the business enterprise actually qualifying for the credits. The basic skills training tax credits as authorized in this Section shall be in addition to all other tax credits granted by the state of Louisiana.

E. Administration. The Louisiana Department of Education, in cooperation with the Department of Revenue and Taxation, shall administer the provisions of this Section and shall have the following powers and duties in addition to those set forth in other laws of this state:

(1) To promulgate rules and regulations to effectuate this Section, in accordance with the Administrative Procedure Act.

(2) To monitor the implementation and operation of this Section.

(3) To submit an annual written report evaluating the effectiveness of this tax credit training program and offering, and if deemed necessary and appropriate, suggestions

for legislation to the governor and the legislature no later than the first day of March of each year.

Added by Acts 1992, No. 1098, §1, eff. July 1, 1993.

R.S. 47:6010. Employer tax credit for employee alcohol and substance abuse treatment programs

A. Definitions. For purposes of this Section:

(1) "Employee" means any person who works for salary, wages, or other remuneration for an employer, including those working part-time or as leased employees.

(2) "Employer" means a person or entity that is subject to the provisions of this Section.

(3) "Qualified alcohol and other drug abuse treatment plan" means any written plan of an employer for the exclusive benefit of his employees to provide them with qualified treatment services, but only if such plan meets the following requirements:

(a) Such plan covers all of the qualified treatment services described in Paragraph (5) of this Subsection.

(b) The contributions and benefits provided under the plan do not discriminate in favor of highly compensated employees or their dependents.

(c) The plan benefits a group of employees who qualify under a classification set up by the employer and found by the secretary of the Department of Health and Hospitals not to be discriminatory in favor of highly compensated employees or their dependents.

(d) The plan does not include any eligibility requirement, or any limitation on benefits, based on prior or existing alcohol and/or other drug abuse or health conditions.

(e) Reasonable notification of the availability and terms of the plan are provided to eligible employees.

(4) "Qualified treatment expenses" means any amount paid or incurred by an employer to provide, directly any of the qualified treatment services to employees under a qualified alcohol and other drug abuse treatment plan of such employer or for insurance expenses related to coverage for such qualified treatment services.

(5)(a) "Qualified treatment services" means the following services provided with respect to the treatment of alcohol and other drug abuse:

(i) Crisis intervention, including assessment, diagnosis, and referral.

(ii) Inpatient detoxification services.

(iii) Non-hospital residential alcohol and other drug treatment services.

(iv) Outpatient alcohol or other drug treatment services.

(v) Family co-dependency treatment.

(b) Such services shall be provided by programs licensed by the Department of Health and Hospitals.

B. Tax credit for alcohol and other substance abuse treatment programs.

(1) An employer shall receive a credit against his state income tax of five percent of the qualified treatment expenses for alcohol and substance abuse treatment paid or incurred by the employer on behalf of his employees during the taxable year.

(2) No deduction shall be allowed for any qualified treatment expenses that are taken into account in determining the amount of the credit under Paragraph (1) of this Subsection.

(3) No credit as provided in this Section shall be allowed for drug testing.

C. Rules and Regulations. The Louisiana Department of Revenue and Taxation in consultation with the Department of Health and Hospitals, the Department of Labor, and the commissioner of insurance shall promulgate rules and regulations to facilitate the implementation of this Section.

Added by Acts 1994, 3rd Ex.Sess., No. 33, §1, eff. July 1, 1994. Amended by Acts 1996, No. 23, §1, eff. June 27, 1996.

R.S. 47:6011. Tax credit for donations to the Old State Capitol, the State Capitol Complex, and the division of archives, records management, and history

A. The intent of this Section is to provide an incentive to corporations, persons, estates, and trusts to donate historical property to the following:

(1) The secretary of state or the Advisory Board of the Old State Capitol, jointly or separately, as provided in R.S. 25:377 for the Old State Capitol.

(2) The superintendent of state buildings under the authority and pursuant to the consent of the governor, the speaker of the House of Representatives, and the president of the Senate, as provided for in R.S. 49:150.1(F), for the State Capitol Complex.

(3) The secretary of state for the division of archives, records management, and history as provided for in Chapter 5 of Title 44 of the Louisiana Revised Statutes of 1950. [FN1]

B. Any corporation, person, estate, or trust donating historical property to such offices and agencies shall be allowed a credit as determined pursuant to this Section against their corporate income or individual income tax liability.

C. For purposes of this Section the following words and phrases shall have the following meanings:

(1) "Corporation" means any business entity authorized to do business in the state of Louisiana and subject to the state corporate income tax.

(2) "Historical property" means furniture, interior or exterior furnishings, antiques, artifacts, relics, works of art, papers, letters, books, drawings, maps, photographs, or other similar tangible personal property which reflect the politics, history, art, and culture of Louisiana.

(3) "Persons, estates, and trusts" shall be as defined by R.S. 47:31. [FN2]

D.(1) There shall be allowed a credit against the corporate income or individual income tax liability for donations of historical property made to the offices and agencies and for the purposes set forth in Subsection A of this Section. The credit allowed by this Section shall be computed at the rate of fifty percent of such property's value as determined according to this Section.

(2) When property is donated, the office or agency accepting the donation shall obtain at least one appraisal from a qualified appraiser. The donor shall be responsible for the cost for no more than two such appraisals. The value of donated property shall be based upon such appraised value.

(3) A donation shall not qualify for this credit unless approved and accepted by the governor and the secretary of state. The office or agency charged with the administration of the Old State Capitol, the State Capitol Complex, or the division of archives, records management, and history shall furnish to the donor a certification of such donation which shall include the date and the value of the donation. The donor shall attach the certification to the income tax return filed with the Department of Revenue and Taxation.

(4) The credit taken in any tax year shall be limited to twenty-five percent of the total of the tax liability for that tax year for corporations and fifty percent of the total of the tax liability for that tax year for other taxpayers. Any credit not used for the tax year in which the donation was made may be carried over for succeeding tax years until the full credit has been taken. The credit provided for in this Section shall be in lieu of any deduction from gross income or other income tax credit provided for the donation by any provision of Louisiana individual or corporate income tax law.

(5) In addition to any other requirements of this Section, any donation valued at seventy thousand dollars or more shall not qualify for the credit unless the donation is approved by the Joint Legislative Committee on the Budget. At such time during any year that credits given during that year total seventy thousand dollars in the aggregate, no additional donations may be accepted for that year.

E. The secretary of the Department of Revenue and Taxation shall promulgate such rules and regulations as may be deemed necessary to carry out the purposes of this Section.

F. Any office or agency receiving any donation under this Section shall report to the Joint Legislative Committee on the Budget with respect to any historical property donated, along with information concerning the type and condition of property, the value of the property, the amount of the tax credit, and any other information which may be requested by the committee.

G. The provisions of this Section shall be effective for donations made after August 1, 1996.

Added by Acts 1996, No. 10, §1, eff. Aug. 1, 1996.

TERMINATION

Section 2 of Acts 1996, No. 10 (§1 of which enacted this section) provides:

Section 2. "The provisions of this Act shall become null and void on June 30, 1998."

R.S. 51:1921. Short title

This Chapter may be cited as the Louisiana Capital Companies Tax Credit Program.

Added by Acts 1983, No. 642 §1.

R.S. 51:1922. Policy statement

The primary purpose of the Louisiana Capital Companies Tax Credit Program is to provide assistance in the formation and expansion of new businesses which create jobs in the state by providing for the availability of venture capital financing to entrepreneurs, managers, inventors, and other individuals for the development and operation of qualified Louisiana businesses.

Added by Acts 1983, No. 642, §1. Amended by Acts 1989, No. 496, §1.

R.S. 51:1923. Definitions

For the purposes of this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise:

(1) "Certified capital" means an investment of cash pursuant to R.S. 51:1924(A) and (B) or an investment pursuant to R.S. 22:1068(E) into a certified Louisiana capital company.

(2) "Certified Louisiana capital company" means any partnership, corporation, or other legal entity, whether organized on a profit or nonprofit basis, that has as its primary business activity the investment of cash in such a manner as to acquire equity in or provide financing assistance as a licensed business and industrial development corporation to qualified Louisiana businesses that are in need of capital for survival, expansion, new product development, or similar business purposes and that is certified by the secretary, through the commissioner of the office of financial institutions, as meeting the criteria of this Chapter and thus eligible for the tax credit provided in this Chapter.

(3) "Department" means the office of financial institutions within the Department of Economic Development.

(4) "Equity in a qualified Louisiana business" is defined as an interest that in substance and in form is either:

(a) Common stock, preferred stock, or an equivalent ownership interest in a limited liability company, partnership, or other entity.

(b) A loan with a stated maturity of not less than five years which provides for conversion into equity at a future date or has equity features. The department shall promulgate rules to determine what constitutes equity features for the purpose of this definition.

(5) "Qualified investment" means an investment that in substance and in form furthers economic development within Louisiana as defined by rule and is either:

(a) A transaction that consists of the investment of cash and results in the acquisition of equity in a qualified Louisiana business.

(b) Financing assistance provided in cash to a qualified Louisiana business by a business and industrial development corporation licensed pursuant to the Louisiana Business and Industrial Development Corporation Act, R.S. 51:2386 et seq.

(6)(a) "Qualified Louisiana business" means a business that at the time of investment meets, or, as the direct result of an investment pursuant to this Chapter would meet, each of the following requirements:

(i) Operates primarily in Louisiana or performs substantially all of its production in Louisiana.

(ii) Has, together with its affiliates, a net worth which is not in excess of eighteen million dollars.

(iii) Has, together with its affiliates, an average annual net income, after federal income taxes, excluding any carryover losses, for the preceding two completed fiscal years which is not in excess of six million dollars.

(iv) Has, together with its affiliates, no more than five hundred employees.

(b) Any business, which is classified as a qualified Louisiana business at the time of the first investment in said business by a certified Louisiana capital company, shall remain classified as a qualified Louisiana business for any later additional investment into the business by that certified Louisiana capital company, provided each additional investment meets the definition of a qualified investment.

(7) "Secretary" means the secretary of the Department of Economic Development, through the commissioner of the office of financial institutions.

(8) "Investment pool" means the aggregate of all investments of certified capital in a particular certified Louisiana capital company which are made as part of the same transaction.

(9) "Investment date" means, with respect to each investment pool, the date on which the investment pool transaction closes.

Added by Acts 1983, No. 642, §1. Amended by Acts 1989, No. 496, §1; amended by Acts, 1993, No. 279, §2, eff. June 2, 1993; Acts 1996, No. 21, §2, eff. June 27, 1996.

R.S. 51:1924. Income tax credit or premium tax reduction

A. A person, either natural or artificial, who invests in the certified capital of a certified Louisiana capital company may claim either a premium tax reduction pursuant to R.S. 22:1068(E) or a credit against the person's Louisiana income tax in the person's taxable year in which the investment is made, as certified by the department, pursuant to rules promulgated by the secretary, to the Department of Insurance or the Department of Revenue and Taxation.

B. The credit shall be calculated by the department as thirty-five percent of the person's cash investment in the certified capital of a certified Louisiana capital company.

C. A capital company's initial capitalization, at the time of seeking certification, must be two hundred thousand dollars or more.

D. Repealed by Acts 1996, No. 21, § 3, eff. June 27, 1996.

E. The amount of the tax credit which exceeds the person's tax liability for the taxable year for which a credit is allowed may be carried forward to subsequent years until the credit is exhausted.

F. The department shall provide for the transfer or sale of an income tax credit under this Chapter.

G. The certified Louisiana capital company shall include in any offering involving the sale of shares to an investor, the following statement:

"The state of Louisiana is not liable for damages to an investor in a certified Louisiana capital company. Use of the words 'certified' or 'Louisiana' in an offering does not constitute a recommendation or endorsement of the investment by the Louisiana Department of Economic Development".

Added by Acts 1983, No. 642, §1. Amended by Acts 1984, No. 891, §1, eff. July 20, 1984; Acts 1986, No. 695, §1; Acts 1989, No. 496, §1; Acts 1996, No. 21, §2, eff. June 27, 1996.

R.S. 51:1925. Certification of a capital company

A. The department shall provide by rule or regulation in accordance with the provisions of the Administrative Procedure Act for the procedures for making an application for certification of a capital company.

B. The department, through the secretary, shall review the articles of incorporation or the articles of partnership or articles of organization of each applicant for certification and the business history of the applicant, determine that the capitalization is at least two hundred thousand dollars, and determine that the officers, board of directors, partners, managers, or members are thoroughly acquainted with the requirements of the capital company's tax credit program and the certification and decertification procedures.

C. Within sixty days of application, the secretary shall issue the certification and notify the Department of Revenue and Taxation and the Commissioner of Insurance of said certification or shall refuse the certification and communicate in detail to the applicant the grounds for the refusal, including suggestions for the removal of those grounds.

D. The department shall furnish a list of persons or businesses who may claim the tax credit to the Department of Revenue and Taxation and the commissioner of insurance on a calendar year quarterly basis following receipt of such quarterly information as provided for under R.S. 51:1926(F).

Added by Acts 1983, No. 642, §1. Amended by Acts 1989, No.496,§1; Acts 1987, No. 703, §1; Acts 1993, No. 279, §2, eff. June 2, 1993.

R.S. 51:1926. Requirements for continuance of certification

A. A certified Louisiana capital company is required to comply with all of the requirements of this Section in order to continue certification of its investment pools as certified capital. To continue the certification of any investment pools as certified capital, a certified Louisiana capital company must make qualified investments from each investment pool according to the following schedule:

(1) Within three years after the investment date for each investment pool, at least fifty percent of each investment pool must be invested, with at least thirty percent of each investment pool placed in qualified investments.

(2) Within five years after the investment date for each investment pool, at least eighty percent of each investment pool must be invested, with at least fifty percent of each investment pool placed in qualified investments.

(3) The following are not qualified investments under this Subsection:

(a) Investments in businesses predominantly engaged in oil and gas exploration and development, gaming, real estate development for resale, banking, or lending.

(b) Investments in associates of certified Louisiana capital companies. The secretary, by rule, shall define "associate". If a legal entity is not an associate before a certified Louisiana capital company or any of its affiliated certified Louisiana capital companies initially invests in the entity, it will not be an associate if the certified Louisiana capital company or any of its affiliated certified Louisiana capital companies provide additional investment subsequent to the initial investment in the entity.

(c) That portion of a certified Louisiana capital company's qualified investments outstanding at any one time in any qualified Louisiana business or group of affiliated qualified Louisiana businesses in excess of fifteen percent of the certified Louisiana capital company's total certified capital.

(d) Qualified investments, with the exception of participations between certified Louisiana capital companies, which are reported as qualified investments on another certified Louisiana capital company's books.

(e) Reciprocal investments or loans made between certified Louisiana capital companies.

B. A certified Louisiana capital company shall make no investment if after making such investment the total investment outstanding would exceed fifteen percent of the total certified capital under management, unless the investment is defined to be a permissible investment for a certified Louisiana capital company. The department may promulgate rules which include a method of defining "permissible investments."

C. Repealed by Acts 1996, No. 21, § 3, eff. June 27, 1996.

D. Documents and other materials submitted by certified Louisiana capital companies or by Louisiana businesses for purposes of the continuance of certification shall not be public records if such records are determined to be trade or business secrets and shall be maintained in a secured environment by the department. All reports, applications, and other information submitted to the department shall contain no materially false or misleading information.

E. All qualified investments in equity in qualified Louisiana businesses as defined in R.S. 51:1923, including any losses therein incurred after certification, will be considered in the calculation of the percentage requirements under Subsections A and B of this Section.

F.(1) Each certified Louisiana capital company shall report the following to the department on a calendar quarterly basis, starting with the first quarter after certification and each quarter thereafter, if any of the following information has changed since the first or any subsequent quarterly report filed:

(a) The name of each investor in a certified Louisiana capital company entitled to either an income tax credit or an insurance premium tax credit, including federal and state income tax identification numbers and, if applicable, the insurance premium tax identification number.

(b) The amount of each investor's investment and tax credit.

(c) The date on which the certified Louisiana capital company received the investment.

(d) The amount of the certified Louisiana capital company's certified capital at the end of the quarter.

(e) Whether or not the certified Louisiana capital company has invested more than fifteen percent, of the total certified capital under management in any one company.

(2) Each certified Louisiana capital company shall report to the department annually, on or before January thirty-first, all qualified investments that the company has made during the previous calendar year, as well as the investment pool from which each investment originated.

(3) The certified Louisiana capital company shall submit to the department, on or before April thirtieth, annual audited financial statements which include the opinion of an independent certified public accountant.

G.(1) Prior to making an investment in a business, a certified Louisiana capital company shall obtain, from an authorized representative of the business, a signed affidavit which shall be maintained by the company in its files.

(2) The secretary shall by rule specify the substantive content of the affidavit.

H. A certified Louisiana capital company shall not:

(1) Operate or conceal any fact or condition which, if such operation or condition had existed at the time of application for certification, would have justified the secretary's refusal of the certified Louisiana capital company's certification.

(2) Make any material misrepresentation to the secretary in an application for certification which would have justified the secretary's refusal of the certification.

(3) Willfully violate any provision of this Chapter any rule or regulation promulgated thereunder, or any order of the secretary.

Added by Acts 1983, No. 642, §1. Amended by Acts 1984, No. 891, §1, eff. July 20, 1984; Acts 1986, No. 695, §1; Acts 1989, No. 496, §1; Acts 1993, No. 279, eff. June 2, 1993; Acts 1996, No. 21, §2, eff. June 27, 1996.

R.S. 51:1927. Decertification

A. The secretary shall conduct an annual review of each capital company certified under the program to determine if the certified Louisiana capital company is abiding by the requirements of certification for its various investment pools, to advise the certified Louisiana capital company as to the certification status of its qualified investments, and to ensure compliance with R.S. 51:1926. The cost of the annual review shall be paid by each certified Louisiana capital company according to a reasonable fee schedule adopted under the provisions of the Administrative Procedure Act.

B. Any violation of R.S. 51:1926, other than R.S. 51:1926(A), shall be grounds for decertification of the certified Louisiana capital company and any investment pools that have not been decertified. A violation of R.S. 51:1926(A) shall be grounds for decertification of the noncomplying investment pool in accordance with Subsection C of this Section. If the secretary determines that a company is not in compliance with any requirements of R.S. 51:1926, he shall, by written notice, inform the officers of the company and the board of directors, partners, managers, or members that the certified Louisiana capital company and any investment pools that have not yet been decertified, as the case may be, may be subject to involuntary decertification in one hundred twenty days from the date of mailing of the notice unless they correct the deficiencies and are again in compliance with all requirements for certification.

C. At the end of the one hundred twenty-day grace period, if the certified Louisiana capital company and any investment pools that have not yet been decertified, as the case may be, are still not in compliance with R.S. 51:1926, the secretary shall send a notice of involuntary decertification of the certified Louisiana capital company and any affected investment pools, as appropriate, to the company, to the secretary of the Department of Revenue and Taxation, and the commissioner of the Department of Insurance. Voluntary or involuntary decertification of a certified Louisiana capital company and any affected investment pools may cause the forfeiture of the remaining and unclaimed income tax credits under this Chapter and premium tax credits under R.S. 22:1068(E), which correspond to such certified Louisiana capital company or to such investment pools, respectively, and shall cause the recapture of all credits taken by investors with respect to such certified Louisiana capital company or to such investment pools, respectively, to be due and payable to the Department of Revenue and Taxation or the Department of Insurance in the year of decertification, notwithstanding the years for which the credits were originally taken may have prescribed, as follows:

(1) If any investment pools are decertified due to the inability of a certified Louisiana capital company to comply with all requirements for continued certification under the provisions of R.S. 51:1926 within three years of the investment dates of such investment pools, one hundred percent of all credits relating to such investment pools which have been taken by investors shall be due and payable and any remaining and previously unclaimed investor credits relating to such investment pools shall be forfeited.

(2) When a certified Louisiana capital company meets all requirements for continued certification of any investment pools under R.S. 51:1926 including R.S. 51:1926(A)(1), but excluding R.S. 51:1926(A)(2), those credits relating to such investment pools which have been or will be taken by investors within three years from the investment dates of such investment pools will not be subject to recapture or repayment.

(3) When a certified Louisiana capital company meets all requirements of Paragraph (2) of this Subsection and subsequently fails to meet the requirements for continued certification of any investment pools under the provisions of R.S. 51:1926, only those credits that have been or will be taken by investors after the third anniversary of the investment dates of such investment pools shall be subject to recapture and repayment and any other remaining and previously unclaimed credits shall be forfeited.

(4) Once a certified Louisiana capital company meets all requirements for continued certification of any investment pools under R.S. 51:1926 if a certified Louisiana capital company and/or any investment pools are subsequently decertified, only those credits remaining and previously unclaimed which shall not be taken by investors prior to the fifth anniversary date of the investment date of such investment pools shall be forfeited.

(5) Following the tenth anniversary of the investment dates of any investment pools, or when a certified Louisiana capital company has invested sixty percent of such investment pools in qualified investments, no tax credits claimed or to be claimed under R.S. 51:1924(A) and (B), R.S. 51:1932, and R.S. 22:1068(E) in respect of such investment pools will be subject to repayment, recapture, retaliation, or forfeiture by the certified Louisiana capital company or its investors.

D. The Department of Revenue and Taxation and the Department of Insurance shall send written notice to the address of each person or insurance company whose tax credit has been subject to repayment or forfeiture, using the address last shown on the last income tax or premium tax filing.

Added by Acts 1983, No. 642, §1. Amended by Acts 1989, No. 496, §1; Acts 1993, No. 279, §2, eff. June 2, 1993; Acts 1996, No. 21, §2, eff. June 27, 1996.

R.S. 51:1928. Voluntary decertification

A. At any time a certified Louisiana capital company may voluntarily decertify particular investment pools by sending written request for decertification to the secretary and by remitting to the secretary of the Department of Revenue and Taxation and the commissioner of the Department of Insurance the amounts described in R.S. 51:1927(C). These amounts are due notwithstanding the fact that the years for which the credits were originally taken may have prescribed. Thereafter, the capital company shall be a full subrogee to the state of Louisiana through the Department of Revenue and Taxation and the Department of Insurance for such sums as were remitted by the company, against its investors or equity owners.

B. After ten years of continued certification of any investment pool or at any time when a certified Louisiana capital company has invested sixty percent of any investment pool in qualified investments, a certified Louisiana capital company may voluntarily decertify such investment pool by sending a written request for a review and decertification. If the decertification of the investment pool is approved by the department, no tax credits claimed or to be claimed under R.S. 51:1924(A) and (B), R.S. 51:1932, and R.S. 22:1068(E) with respect to such investment pool will be subject to repayment, recapture, retaliation, or forfeiture by the certified Louisiana capital company or its investors.

Added by Acts 1983, No. 642, §1. Amended by Acts 1987, No. 703, §1; Acts 1989, No. 496, §1; Acts 1993, No. 279, §2, eff. June 2, 1993; Acts 1996, No. 21, §2, eff. June 27, 1996.

R.S. 51:1929. Rules and regulations

The department may make and promulgate rules and regulations as necessary to carry out the provisions of this Chapter, including but not limited to the following:

(1) Providing for definitions.

(2) Establishing licensure requirements.

(3) Providing for certification and decertification of licensees.

(4) Addressing issues regarding premium tax reductions and income tax credits.

(5) Establishing fees and assessments.

(6) Establishing dates by which reports shall be filed with the department.

(7) Providing for administrative and enforcement actions.

Added by Acts 1989, No. 496, §1. Amended by Acts 1996, No. 21, §2, eff. June 27, 1996.

R.S. 51:1930. Other department responsibilities

The department, in addition to other grants of authority to promote the economic development of the state, is hereby authorized to serve as a clearinghouse for information relevant to potential incorporators or organizers of certified Louisiana capital companies and for the locating and promoting of qualified Louisiana businesses seeking infusions of capital.

Added by Acts 1983, No. 642, §1. Amended by Acts 1989, No. 496, §1.

R.S. 51:1931. Program termination

The secretary shall not certify a capital company to begin the program later than December 31, 1997. The secretary shall not certify capital later than December 31, 1998.

Added by Acts 1983, No. 642, §1. Amended by Acts 1989, No. 496, §1; Acts 1992, No. 849, §2; Acts 1993, No. 279, §2, eff. June 2, 1993; Acts 1994, 3rd Ex.Sess., No. 9, §2; Acts 1996, No. 21, §2, eff. June 27, 1996.

R.S. 51:1932. Corporation income and franchise tax exemption

A. Notwithstanding any other provision of law to the contrary, any corporation that is a certified Louisiana capital company as provided for in this Chapter shall be exempt from the corporation income tax and the corporation franchise tax levied pursuant to Title 47 of the Louisiana Revised Statutes of 1950 for five consecutive taxable periods. The exemption from corporation income tax shall commence with the taxable period in which the capital company is certified by the department. The exemption from corporation franchise tax shall commence with the taxable period next following the taxable period in which certification as a certified Louisiana capital company is obtained from the department.

B. In the case of a corporation obtaining certification as a certified Louisiana capital company prior to the beginning of its first taxable period, the exemption from corporation income tax provided for in Subsection A shall commence with the corporation's first taxable period and shall continue through its next four consecutive taxable periods. The exemption from corporation franchise tax shall commence with the corporation's second taxable period and shall continue through its next four consecutive taxable periods.

Added by Acts 1996, No. 915, *1. Amended by Acts 1989, No. 496, § 1.

R.S. 51:2201. Short title

This Chapter shall be known and may be cited as the "Dedicated Research Investment Act."

Added by Acts 1987, No. 300, § 1.

R.S. 51:2202. Policy statement as to public purpose

A. Biomedical and biotechnological education and research transferred and nurtured as a result of that education and research are basic to Louisiana's future economic growth. New advances in biomedical sciences and biotechnology have produced significant new industries, and it is essential that Louisiana establish a research and development program in basic and applied biomedical sciences to serve as a nucleus for these new industries. Education and research produce new products, reveal new markets, attract world renowned scientific faculty to colleges and universities, provide broader opportunities for endowed chairs and graduate students, develop new industries, expand existing industries and employment, and provide opportunities for Louisiana graduates to make use of their education and training in the state.

B. It is therefore declared to be the public policy of this state to encourage and promote basic and applied biomedical and biotechnological research and development and graduate education in order to promote the general welfare of the people of Louisiana. It is a public purpose to invest in the expansion of university education and research programs into areas of knowledge that are susceptible to technological realization that can be nurtured into commercial enterprises using Louisiana's people, resources, and products to create marketable products for the rest of the world.

C. It is the desire of the legislature that private industry become more involved with economic development in this state through investment in research and development to promote the growth of the economy of the state for the common benefit of all its people. To these ends the legislature enacts this Chapter to create the Dedicated Research Investment Fund to enhance basic and applied biomedical and biotechnological research in this state.

Added by Acts 1987, No. 300, § 1.

R.S. 51:2203. Private sector investment; tax credit incentive

A. A credit may be claimed by any person, either natural or artificial, against the person's Louisiana income tax in the year in which the Board of Regents certifies to the Department of Revenue and Taxation that the person is qualified for the credit and in every year thereafter to the full income tax liability of the person until the credit is exhausted.

B. The credit shall be calculated by the department as thirty-five percent of the person's cash donation to the Dedicated Research Investment Fund, if the initial donation at the time of seeking certification or within one year thereafter is two hundred thousand dollars or more.

Added by Acts 1987, No. 300, § 1.

R.S. 51:2204. Dedicated Research Investment Fund; created

A. There is hereby created in the state treasury a fund to be known as the Dedicated Research Investment Fund. All money received by the fund, except as otherwise provided by Article VII, Section 9(B) of the Constitution of Louisiana, shall be deposited immediately upon receipt into the state treasury.

B. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to moneys being placed in the state general fund, an amount equal to that deposited as required by Subsection A of this Section shall be credited to the Dedicated Research Investment Fund. The moneys in this fund shall be used solely as provided by Subsection C of this Section and only in the amounts appropriated by the legislature. All unexpended and unencumbered moneys in this fund at the end of the fiscal year shall remain in the fund. The moneys in this fund shall be invested by the state treasurer in the same manner as moneys in the state general fund and interest earned on the investment of these moneys shall be credited to the fund, again, following compliance with the requirements of Article VII, Section 9(B) relative to the Bond Security and Redemption Fund and shall remain in this fund at the end of each fiscal year.

C. The moneys in the Dedicated Research Investment Fund shall be used solely to fund research and development projects in public and private institutions of higher education in this state in the field of basic and applied biomedical and biotechnological research; to endow chairs of excellence; to fund graduate fellowships in biomedical and biotechnological research, twenty percent of which must be awarded to the state's historically black colleges and universities and other minorities; and to fund any other related programs or activities that will enhance research in these fields.

Added by Acts 1987, No. 300, §1.

R.S. 51:2771. Louisiana Capital Investment Tax Credit

A. Definitions

For purposes of this Section:

(1) "Base wage requirement" means either an average hourly wage of not less than eight dollars per hour or an average total compensation of not less than ten dollars per hour.

(2)(a) "Capital costs" means all costs and expenses incurred by one or more investing companies in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period commencing with the date on which such acquisition, construction, installation, and equipping commences and ending on the date on which the qualifying project is placed in service, including without limitation all of the following:

(i) The costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and to contractors, subcontractors, builders, and materialmen.

(ii) The costs of acquiring land or rights in land and any cost incidental thereto, including recording fees.

(iii) The costs of contract bonds and of insurance of all kinds that may be required or necessary during the acquisition, construction, or installation of a qualifying project.

(iv) The costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental mitigation, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, and installation of a qualifying project.

(v) The costs associated with: installation of fixtures and equipment; surveys including archaeological and environmental surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, paving and provisions for drainage, storm water retention, installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the property.

(vi) All other costs of a nature comparable to those described, including without limitation all project costs which are required to be capitalized for federal income tax purposes pursuant to 26 U.S.C. § 263A.

(vii) Costs otherwise defined as capital costs that are incurred by the investing company where the investing company is the lessee under a lease that has a term of not less than five years, is firm and noncancellable, and is characterized as a capital lease for federal income tax purposes; provided, that if the project is a headquarters facility, the lease may be characterized as an operating lease for federal income tax purposes in which event capital costs shall include the net present value of the payments made by the investing company under the lease computed using the applicable federal rate for the month in which the qualifying project is placed in service and for the term most closely approximating the term of the lease.

(b) Capital costs shall not include property previously owned or leased by the investing company or a related party unless such property was physically located outside the state for a period of at least one year prior to the date on which the qualifying project was placed in service.

(3) "Capital credit" means an annual amount equal to five percent of the capital costs of the qualifying project, such amount to be credited or allowed in accordance with Subsection E of this Section, against the corporate franchise tax liability generated by or arising out of the qualifying project in each of the twenty years commencing with the year during which the qualifying project is placed in service and continuing for nineteen consecutive years thereafter.

(4) "Department" means the Louisiana Department of Revenue and Taxation.

(5) "Headquarters facility" means a facility which will serve as the national, regional, or state headquarters for an investing company that conducts significant business operations outside the state and will serve as the principal office of the principal operating officer of the investing company.

(6) "Industrial, warehousing, or research activity" means any trade or business described in 1987 Standard Industrial Classification Major Groups 20 to 39, inclusive, 50 and 51, Industrial Group Number 737, and Industry Numbers 8731, 8733, and 8734, as set forth in the Standard Industrial Classification Manual published by the United States Government Office of Management and Budget, and includes such trades and businesses as may be hereafter reclassified in any subsequent publication of the Standard Industrial Classification Manual or other industry classification system developed in conjunction with the United States Department of Commerce, or any process or treatment facility which recycles, reclaims, or converts materials, which include solids, liquids, or gases, to a reusable product.

(7) "Investing company" means any corporation, partnership, limited liability company, proprietorship, trust, or other business entity, regardless of form, making a qualified investment.

(8) "New employees" means those persons who have not been previously employed at the site on which the qualifying project is or will be located or by an investing company or companies in the state; will be employed full time at the qualifying project; and will be subject to Louisiana personal income tax, upon commencement of employment at the qualifying project.

(9) "Project" means any land, building or other improvement, and all real and personal properties deemed necessary or useful in connection therewith, whether or not previously in existence, located or to be located in the state.

(10) "Qualifying investment" means the undertaking by one or more investing companies of a qualifying project.

(11) "Qualifying project" means a project to be sponsored or undertaken by one or more investing companies meeting any one of the following requirements:

(a) A project the capital costs of which are not less than twenty million dollars, and at which the predominant trade or business activity conducted will constitute industrial, warehousing, or research activity.

(b) A small business addition the capital costs of which are not less than one million dollars, and at which the predominant trade or business activity conducted will constitute industrial, warehousing, or research activity.

(c) A headquarters facility the capital costs of which are not less than twenty million dollars.

(12) "Related party" means a person or entity that bears a relationship to an investing company described in Section 267 of the Internal Revenue Code of 1986, as amended.

(13) "Small business addition" means any land, building or other improvement, and all real and personal properties deemed necessary or useful in connection therewith, whether or not previously in existence, to be used as a part of any existing facility of a business located in the state that, prior to the date on which the addition is placed in service, had one hundred or fewer full-time employees.

B. At any time prior to the date on which a qualifying project is placed in service, an investing company may file with the department a written statement of intent to claim the capital credit provided in this Section. Such filing by an investing company shall constitute a filing on behalf of the shareholders, partners, members, owners, or beneficiaries of the investing company entitled to the capital credit in accordance with Subsection E of this Section. Such statement shall contain a description of the qualifying project; the date on which the acquisition, construction, installation, or equipping of the qualifying project was commenced or is expected to commence; the actual or, if not known, the estimated capital costs of the qualifying project; the number of new employees to be employed at the qualifying project; the name of each investing company, or the name or names of its shareholders, partners, members, owners, or beneficiaries to become entitled to the capital credit; and any other information required by the department.

C. Upon compliance with all of the provisions of this Section, each investing company shall, upon filing the required statements and upon making of qualified investments, be entitled to the capital credit, such credit to be allocated and available in accordance with this Section. The department shall enter into written agreements with an investing company or companies specifying the method by which income generated by or arising out of the project will be determined, and with respect to qualifying projects undertaken by partnerships, limited liability companies, or other joint ventures, the allocation and treatment of the capital credit provided pursuant to this Section.

D.(1)(a) It shall be a condition to the receipt of a capital credit that either of the following occur:

(i) Not less than twenty jobs for new employees at a qualifying project other than a small business addition be provided commencing with the date which is not later than one year after the qualifying project is placed in service and continuing each year thereafter during which the capital credit is available with respect to the qualifying project and that the wages for each new employee at the qualifying project be not less than the base wage requirement during each year during which all or any part of the capital credit is available with respect to the qualifying project.

(ii) Not less than ten jobs for new employees at the qualifying project which is a small business addition be provided commencing with the date which is not later than one year after the qualifying project is placed in service and continuing each year thereafter during which the capital credit is available with respect to the qualifying project and that the wages for each new employee at the qualifying project be not less than the base wage requirement during each year during which all or any part of the capital credit is available with respect to the qualifying project.

(b) If an investing company closes an existing facility in this state and within two years following the closing places a qualifying project in service, only the number of new employees in excess of the number of employees who worked at the existing facility at the time of the closure shall be deemed to be new employees for purposes of this Section.

(2) The legislature recognizes that one or more entities may enter into a joint venture in the form of a limited liability company, partnership, or other form of business entity in connection with a qualifying project. The requirements of this Section respecting minimum capital costs and employment shall be applied to the qualifying project. It is not a requirement of this Section that the entity employing any new employees be the same entity entitled to receive the capital credit so long as the requirements of capital costs and new employees are implemented and maintained with respect to the qualifying project.

(3) A change of ownership or assignment of interest in any qualifying project shall not qualify the qualifying project or any taxpayer to receive any additional capital credits, and the purchaser, assignee, or successor of the qualifying project or interests therein shall be entitled to the capital credit upon the same conditions and for the same period as the investing company or companies originally entitled to the capital credit.

(4) The department may adopt regulations to provide that the capital credit may be allocated to the tax years of the recipient of the capital credit, including the method of determining the pro rata amount of capital credit, if any, available where the tax year of the recipient of the capital credit will end subsequent to the end of any calendar year period specified in this Section.

E. Each investing company, or its shareholders, partners, members, owners, or beneficiaries shall be entitled to the capital credit for each tax year of an investing company with respect to which a capital credit is provided pursuant to this Section. The capital credit shall be allowed against the corporate franchise tax.

F. The capital credit shall be reduced or eliminated with respect to a qualifying project at the time the sum of all capital credits received or allowed with respect to a qualifying project equals one hundred percent of the capital costs of such qualifying project, all to the end that the aggregate amount of capital credits shall not exceed one hundred percent of the capital costs of the qualifying project.

G. The department shall report annually to the legislature as to the qualifying projects with respect to which capital credits are claimed during the year. This report shall be due no later than the fifth calendar day of each regular session of the legislature and shall state the number of qualifying projects, the capital costs of each qualifying project, and the total amount of capital credits claimed during the year.

H. The department shall adopt rules and regulations to implement the provisions of this Section. However, no such rule shall become effective without prior approval by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs. The department shall audit each investing company periodically to monitor compliance by the investing company with the provisions of this Section which are conditions to the continued availability of capital credits.

I. At the time of filing any tax return with the department in which any capital credit is claimed under this Section, the chief executive officer, the chief financial officer, or the person signing the tax return on behalf of the investing company shall file with the department an affidavit stating that the investing company was, throughout the period for which a capital credit is claimed, in compliance with this Section which are conditions to the qualification for and the continued availability of the capital credit herein authorized. The affidavit shall certify that the sum of all capital credit claimed in the return, does not exceed the capital costs of the qualifying project.

J. Notwithstanding any other provision of law, a company receiving a tax credit under the provisions of this Section shall not be eligible for the tax exemption provided for in R.S. 47:3202 through 3205.

Added by Acts, 1996, 1st Ex. Sess., No. 42, §1, eff. July 1, 1996.