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LDR
Louisiana Department of Revenue

Corporation Income
and
Franchise Taxes

Statutes and
Regulations

April 2006
A publication of the
Louisiana Department of Revenue

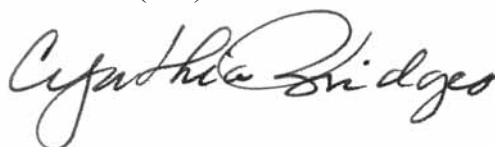
Corporation Income and Franchise Tax

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 2006 1st Extraordinary 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 Taxpayer Services Division at (225) 219-2114.



Cynthia J. Bridges
Secretary
Louisiana Department of Revenue

This publication contains selected statutes and regulations amended or enacted through the 2006 First Extraordinary Session of the Louisiana Legislature. This document is published as a convenience to provide tax information under the authority of RS 47:1509. It is not the official source of the Louisiana Revised Statutes or the Louisiana Administrative Code.

Corporation Income and Franchise Tax

General Information

Corporation Income Tax	2
Corporation Franchise Tax.....	3

Corporation Income Tax Statutes and Regulations

SUBPART A	INTRODUCTORY PROVISIONS, TAX LEVY, RATES OF TAX; CREDITS	
R.S. 47:287.2.	Short Title	6
R.S. 47:287.11.	Tax Imposed	6
R.S. 47:287.12.	Rates of tax.....	6
SUBPART B	COMPUTATION OF LOUISIANA TAXABLE INCOME	
R.S. 47:287.61.	Gross Income Defined	6
R.S. 47:287.63.	Allowable Deductions Defined	6
R.S. 47:287.65.	Net Income Defined	6
R.S. 47:287.67.	Louisiana Net Income Defined	6
R.S. 47:287.69.	Louisiana Taxable Income Defined	7
R.S. 47:287.71.	Modifications To Federal Gross Income	7
LAC 61:I.1114.	Modifications To Federal Gross Income	7
R.S. 47:287.73.	Modifications To Deductions From Gross Income Allowed By Federal Law	7
R.S. 47:287.75.	Computation Of Net Income	8
R.S. 47:287.77.	Computation of Louisiana Net Income Or Loss	8
R.S. 47:287.79.	Computation of Louisiana Taxable Income.....	8
R.S. 47:287.81.	Items Not Deductible; Amounts Attributable To Income Not Taxed	8
R.S. 47:287.83.	Taxes Not Deductible.....	8
LAC 61:I.1122.	Taxes Not Deductible.....	8
R.S. 47:287.85.	Federal Income Tax Deduction	13
LAC 61:I.1123.	Federal Income Tax Deduction	13
R.S. 47:287.86.	Net Operating Loss Deduction	19
LAC 61:I.1124.	Net Operating Loss Deduction	20
R.S. 47:287.91.	Determination Of Louisiana Net Income Or Loss	20
R.S. 47:287.92.	Segregation Of Items Of Gross Income	21
R.S. 47:287.93.	Computation Of Net Allocable Income From Louisiana Sources	21
LAC 61:I.1130.	Computation of Net Allocable Income from Louisiana Sources	22
R.S. 47:287.94.	Computation of net apportionable income from Louisiana sources.....	30
LAC 61:I.1132.	Computation of Net Apportionable Income from Louisiana Sources	32
R.S. 47:287.95.	Determination of Louisiana Apportionment Percent.....	34
LAC 61:I.1134.	Determination of Louisiana Apportionment Percent.....	38
SUBPART C	ACCOUNTING PERIODS AND METHODS OF ACCOUNTING	
R.S. 47:287.441.	Accounting Periods, Methods Of Accounting, And Adjustments.....	44
R.S. 47:287.442.	Exceptions To Taxable Year Of Inclusion; Taxable Year Deductions Taken	44
LAC 61:I.1137.	Exemptions To Taxable Year Of Inclusion; Taxable Year Deductions Taken	45
R.S. 47:287.443.	Effective Dates, Taxable Year, 52-53 Week Year	45
R.S. 47:287.444.	Returns for a Period of less than Twelve Months, Special Tax Computation	46
R.S. 47:287.445.	Special Adjustments For Long-Term Contracts	46
R.S. 47:287.480.	Special Adjustments By The Secretary	46
SUBPART D	EXEMPT ORGANIZATIONS	
R.S. 47:287.501.	Exemption From Tax On Corporations	47
LAC 61:I.1140.	Exemption from Tax On Corporations	47
R.S. 47:287.521.	Farmers' Cooperatives; all Cooperatives.....	48

Corporation Income and Franchise Tax

R.S. 47:287.526.	Shipowners' Protection and Indemnity Associations	48
R.S. 47:287.527.	Political Organizations	48
R.S. 47:287.528.	Homeowners' Associations	48
SUBPART E	ADMINISTRATIVE PROVISIONS; RECORDS, RETURNS, DUE DATES, PAYMENT OF TAXES	
R.S. 47:287.601.	Notice of Regulations Requiring Records, Statements and Special Returns	49
LAC 61:I.1147.	Notice of Regulations Requiring Records, Statements and Special Returns	49
R.S. 47:287.611.	General Requirement of Return, Statement, or List	49
R.S. 47:287.612.	Corporation Returns	49
LAC 61:I.1148.	Corporation Returns	49
R.S. 47:287.613.	Alternative Forms and Instructions	50
R.S. 47:287.614.	Time and Place for filing returns; Information concerning Federal Return; Extension of time to file	50
R.S. 47:287.621.	Failure to file; Penalty	51
R.S. 47:287.623.	Period covered by Returns or Other Documents.....	51
R.S. 47:287.625.	Computations on Returns or Other Documents	51
R.S. 47:287.627.	Identifying Number; Information	51
R.S. 47:287.641.	Due Date of Tax	52
R.S. 47:287.651.	Payment of Tax.....	52
R.S. 47:287.654.	Installment Payments of Estimated Income Tax by Corporations	52
R.S. 47:287.655.	Failure by Corporation to pay Estimated Income Tax	53
R.S. 47:287.656.	Adjustment of Overpayment of Estimated Income Tax by Corporation	54
R.S. 47:287.657.	Refunds and Credits of Overpayment of estimated income tax by Corporations	55
R.S. 47:287.659.	Refunds and Credits; General Rules	55
R.S. 47:287.660.	Overpayment of Installment	55
R.S. 47:287.662.	Overpayment of Income Taxes applied to Corporation Franchise Taxes for Interest computation purposes.....	55
R.S. 47:287.663.	Overpayments arising from Allowance of Deductions for Bad Debts or Worthless Stock	55
R.S. 47:287.664.	Credits arising from Refunds by Utilities	55
R.S. 47:287.681.	Administration	56
R.S. 47:287.682.	Collection from Transferee or Fiduciary; Procedure.....	56
R.S. 47:287.683.	Notice of Fiduciary Relationship.....	56
LAC 61:I.1168.	Notice of Fiduciary Relationship.....	56
SUBPART F	DEFINITIONS AND SPECIAL PROVISIONS	
R.S. 47:287.701.	Definitions, Use of Terms and Purpose	57
R.S. 47:287.730.	Effect of election out of Federal Partnership Provisions	58
R.S. 47:287.732	S Corporations	59
R.S. 47:287.732.1	Qualified Subchapter S Subsidiaries	59
R.S. 47:287.733.	Corporations filing Consolidated Federal Returns	60
LAC 61:I.1175.	Definition of Separate Corporation Basis	61
R.S. 47:287.734.	Domestic International Sales Corporations (DISC's) and Foreign Sales Corporations (FSC's)	61
R.S. 47:287.736.	Real Estate Investment Trusts (REITs)	61
R.S. 47:287.738.	Other Inclusions and Exclusions from Gross Income.....	62
R.S. 47:287.741.	Special Rule for Leases	63
R.S. 47:287.743.	Deductions from Gross Income; Charges in case of Oil and Gas Wells	63
R.S. 47:287.745.	Deduction from Gross Income; Depletion	64
R.S. 47:287.746.	Adjustments to Income and Deductions	64
R.S. 47:287.747.	Situs of stock Cancelled or Redeemed in Liquidation	64
LAC 61:I.1189.	Situs of Stock Canceled or Redeemed in Liquidation	64
R.S. 47:287.748.	Corporation Tax Credit; Re-entrant Jobs Credit	65
R.S. 47:287.749.	Jobs Credit	66
R.S. 47:287.751.	Reconciliation of Transitional Differences	67
R.S. 47:287.752.	Tax Credit for Employment of First Time Drug Offenders	67

Corporation Income and Franchise Tax

R.S. 47:287.753.	Neighborhood Assistance Tax Credit	68
R.S. 47:287.755.	Tax Credit for Contributions to Educational Institutions	69
R.S. 47:287.756.	Tax Credit for Environmental Equipment Purchases	71
R.S. 47:287.757.	Tax Credit for Conversion of Vehicles to Alternative Fuel Usage	71
R.S. 47:287.758.	Tax Credit for Bone Marrow Donor Expense	72
R.S. 47:287.759.	Tax Credit for Employee and Dependent Health Insurance Coverage.....	72
LAC 61:I.1195.	Health Insurance Credit for Contractors of Public Works	73
R.S. 47:287.785.	Rules and Regulations	74

Corporation Franchise Tax Statutes and Regulations

R.S. 47:601.	Imposition of Tax	78
LAC 61:I.301.	Imposition of Tax	78
R.S. 47:602.	Determination of Taxable Capital	80
LAC 61:I.302.	Determination of Taxable Capital	81
R.S. 47:603.	Borrowed Capital	82
LAC 61:I.303	Borrowed Capital	83
R.S. 47:604.	Capital Stock	85
LAC 61:I.304.	Capital Stock	85
R.S. 47:605.	Surplus and Undivided Profits.....	86
LAC 61:I.305.	Surplus and Undivided Profits.....	87
LAC 61:I.320.	Books of the Corporation.....	89
R.S. 47:605.1	Capital Stock, Surplus, and Undivided Profits	90
R.S. 47:606.	Allocation of Taxable Capital	90
LAC 61:I.306.	Allocation of Taxable Capital	94
R.S. 47:607.	Railroad Corporations	103
R.S. 47:608.	Exemptions	103
LAC 61:I.308.	Exemptions	105
R.S. 47:609.	Due Date, Payment and Reporting of Tax.....	119
LAC 61:I.309.	Due Date, Payment and Reporting of Tax.....	119
R.S. 47:611.	Newly Taxable Corporation.....	120
LAC 61:I.311.	Newly Taxable Corporations	120
R.S. 47:612.	Extension of Time for Filing Return and Paying Tax	120
LAC 61:I.312.	Extension of Time for Filing Return and Paying the Tax	121
R.S. 47:613.	Fiscal Year defined; Accounting Period not to be Changed	121
LAC 61:1.313.	Fiscal Year; Accounting Period	121
R.S. 47:614.	Cost of Collection	121
R.S. 47:615.	Disposition of Collections	121
R.S. 47:616.	Franchise Taxes by Local Governments Prohibited	121
R.S. 47:617.	Refunds and Credits.....	121
LAC 61:I.317.	Refunds and Credits.....	122
R.S. 47:618	Trucking Company.....	122

Miscellaneous Provisions

R.S. 25:1226.	Legislative Findings and Purpose (Atchafalaya Trace Heritage Area Development Zone)	126
R.S. 25:1226.1.	Definitions	126
R.S. 25:1226.2.	Atchafalaya Trace Heritage Area Development Zone Review Board	127
R.S. 25:1226.3.	Authority of the Commission	127
R.S. 25:1226.4.	Tax Exemptions and Credits	128
R.S. 25:1226.5.	Violations	129
R.S. 25:1226.6.	Termination and Evaluation of Program	129

Corporation Income and Franchise Tax

R.S. 39:100.1	Sports Facility Assistance Fund.....	129
LAC 61:1.1520.	Withholding by Professional Athletic Teams	130
R.S. 47:1121.	Citation (Motion Picture Incentive Act)	131
R.S. 47:1122.	Findings and Purpose.....	131
R.S. 47:1123.	Definitions	132
R.S. 47:1124.	Sales and Use Tax Reimbursement	132
R.S. 47:1125.	Application for Tax Refund	132
R.S. 47:1125.1.	Employment Tax Credit	133
R.S. 47:1126	Disclaimer.....	134
R.S. 47:1127.	Audit	134
R.S. 47:1128.	Rules and regulations	134
R.S. 47:1675.	General Administrative Provisions for Credits against Income and Corporation Franchise Tax.....	134
R.S. 47:6004.	Employer Credit	136
R.S. 47:6005.	Qualified Recycling Equipment.....	137
R.S. 47:6006.	Tax Credits for Local Inventory Taxes Paid	138
LAC 61:I.1902.	Inventory Tax Credits.....	139
R.S. 47:6006.1.	Tax Credits for taxes paid with respect to Vessels in Outer Continental Shelf Lands Act Waters	139
R.S. 47:6007.	Motion Picture Investor Tax Credit	141
R.S. 47:6008.	Tax Credits for Donations made to assist Playgrounds in Economically Depressed Areas.....	147
R.S. 47:6009.	Louisiana Basic Skills Training Tax Credit	147
R.S. 47:6010.	Employer Tax Credit for Employee Alcohol and Substance Abuse Treatment Programs	148
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.....	149
R.S. 47:6012.	Employer Tax Credits for Donations of Materials, Equipment, Advisors, or Instructors	149
R.S. 47:6013.	Tax Credit for Donations made to Public Schools	150
R.S. 47:6014.	Credit for Property Taxes Paid by Certain Telephone Companies	150
R.S. 47:6015.	Research and Development Tax Credit	152
R.S. 47:6016.	New Markets Tax Credit	154
R.S. 47:6017.	Tax Credits for certain expenses paid by Economic Development Corporations	155
R.S. 47:6018.	Tax Credits for Purchasers from “PIE contractors”	155
R.S. 47:6019.	Tax Credit; Rehabilitation of Historic Structures	156
R.S. 47:6020.	Legislative Findings and Purposes	157
R.S. 47:6020.1.	Angel Investor Tax Credit Program; Establishment; Qualifications; Administration	157
R.S. 47:6020.2.	Angel Investor Tax Credit; Amount; Duration; Forfeit.....	159
R.S. 47:6020.3.	False or Fraudulent Information in making Application, claim for Credit, or other Instrument; Penalties	160
R.S. 47:6020.4.	Angel Investor Tax Credit; Annual Report to Legislature	160
R.S. 47:6021.	Brownfields Investor Tax Credit	160
R.S. 47:6022.	Digital Interactive Media Producer Tax Credit	163
R.S. 51:6023.	Sound Recording Investor Tax Credit	166
R.S. 51:1921.	Short Title	170
R.S. 51:1922.	Policy Statement.....	170
R.S. 51:1923.	Definitions	170
R.S. 51:1924.	Income Tax Credit or Premium Tax Reduction.....	171
R.S. 51:1924.1.	Blank.....	172
R.S. 51:1925.	Certification of a capital company.....	172
R.S. 51:1926.	Requirements for continuance of certification	173
R.S. 51:1927.	Decertification	174
R.S. 51:1927.1.	Annual audit; annual rate of return; appreciation excess; remittance to Louisiana Economic Development Fund	175
R.S. 51:1928.	Voluntary decertification	176
R.S. 51:1929.	Rules and regulations	176

Corporation Income and Franchise Tax

R.S. 51:1929.1.	Guidance by commissioner; advisory opinions.....	176
R.S. 51:1930.	Other department responsibilities	177
R.S. 51:1931.	Program termination.....	177
R.S. 51:1932.	Corporation income and franchise tax exemption.....	177
R.S. 51:1933.	Administration matters.....	177
R.S. 51:1934.	Confidentiality of records	177
R.S. 51:1935.	Investment in approved funds	177
R.S. 51:2201.	Short Title	178
R.S. 51:2202.	Policy Statement as to Public Purpose	178
R.S. 51:2203.	Private Sector Investment; Tax Credit Incentive.....	178
R.S. 51:2204.	Dedicated Research Investment Fund; Created.....	179
R.S. 51:2205.	Administration of Funds; Bylaws; Rules and Regulations; Program Guidelines	179
R.S. 51:2351.	Legislative Findings and Purposes (Technology Commercialization Credit Program)	180
R.S. 51:2352.	Definitions	180
R.S. 51:2353.	Technology Commercialization Credit Program; Establishment; Qualifications; Administration	180
R.S. 51:2354.	Technology Commercialization Credit; Amount; Duration; Forfeit.....	181
R.S. 51:2771.	Louisiana Capital Investment Tax Credit	182

General
Information

Corporation Income Tax

General Information

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 or a completed Application for Automatic Extension of Time to File Corporation Income and Franchise Tax Return (CIFT-620EXT).

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

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

Assistance

Taxpayer Services Division

Louisiana Department of Revenue

Post Office Box 201

Baton Rouge, LA 70821•0201

225•219•2114 (Assistance)

225•219•2113 (Forms)

Corporation Franchise Tax

General Information

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 (CIFT-620I). 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 or a completed Application for Automatic Extension of Time to File Corporation Income and Franchise Tax Return (CIFT-620EXT).

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

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

Assistance

Taxpayer Services Division

Louisiana Department of Revenue

Post Office Box 201

Baton Rouge, LA 70821•0201

225•219•2114(Assistance)

225•219•2113 (Forms)

**Corporation
Income Tax
Statutes and
Regulations**

Corporation Income Tax Statutes 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 and other entities taxed as corporations for federal income tax purposes, which entities shall be considered to be corporations for the purposes of this Chapter only, 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. Amended by Acts 1998, No. 42, §1.

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. 47:287.61. 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.

Corporation Income Tax Statutes and Regulations

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) Repealed by Acts 2005, No. 401§2,eff. for all taxable periods after December 31, 2005
- (2) Repealed by Acts 2005, No. 401§2,eff. for all taxable periods after December 31, 2005
- (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.

LAC 61:I. 1114. Modifications of Federal Gross Income

In order to calculate Louisiana gross income, R.S. 47:287.71 requires modifications be made to federal gross income. R.S. 47:287.71(B)(7) provides that exclusions from Subpart F must be taken into account when computing Louisiana gross income. Included in the exclusions from gross income required by R.S. 47:287.71(B)(7) are those modifications provided for in R.S. 47:287.738(C) through (F).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.71, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Service Division, LR 32:261 (February 2006).

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

Corporation Income Tax Statutes and Regulations

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) Repealed by Acts 2005, No. 401§2, eff. for all taxable periods after December 31, 2005
- (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.

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 preferred items such as, but not limited to, accelerated depreciation, depletion, and intangible drilling and*

Corporation Income Tax Statutes and Regulations

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 preferred 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 preferred 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 preferred 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 (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

Corporation Income Tax Statutes and Regulations

(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).....	<u>\$17,812</u>

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

Corporation Income Tax Statutes and Regulations

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
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Corporation Income Tax Statutes and Regulations

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).

Corporation Income Tax Statutes and Regulations

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, or federal income tax credits determined by the Secretary to be presidential disaster area disaster relief credits.
- 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; Acts 1997, No. 165, § 1, eff. June 13, 1997.

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:

Corporation Income Tax Statutes and Regulations

- 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.*
- continue on next page....*

Corporation Income Tax Statutes and Regulations

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
<i>Income</i>		
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	<u>100,000</u>	<u>100,000</u>
Total Income	<u>\$1,605,000</u>	<u>\$1,605,000</u>
<i>Deductions</i>		
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	<u>350,000</u>	<u>350,000</u>
Total deductions	<u>\$497,500</u>	<u>\$505,000</u>
<i>Net Income</i>	<u>\$1,107,500</u>	<u>\$1,100,000</u>
<i>Federal income tax—</i>		
Ordinary income	\$518,400	
Capital gains	<u>25,000</u>	
Total	<u>\$543,400</u>	

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
<i>Deduct allocable income</i>		
Profit from sale of capital assets	\$100,000	
Interest—Bonds, State of Mississippi	5,000	
Net royalty income	<u>50,000</u>	<u>\$155,000</u>

Corporation Income Tax Statutes and Regulations

<i>Net income for apportionment</i>		<u>\$945,000</u>
<i>Net income apportioned to Louisiana (20% of \$945,000)</i>		\$189,000
<i>Add Louisiana allocable income</i>		
<i>Interest</i>	\$5,000	
<i>Profit from sale of capital assets</i>	25,000	
<i>Royalty income</i>	<u>25,000</u>	<u>55,000</u>
<i>Total Louisiana apportionable and allocable income</i>		<u>\$244,000</u>
2. Computations	Ordinary Rates	Alternative Capital Gains Rates
<i>Net income apportioned and allocated to Louisiana</i>	\$219,000	\$25,000
<i>Add: Compensating items of income attributable to Louisiana and taxed by federal but which is not taxed by Louisiana</i>	-0-	-0-
<i>Compensating items of deduction attributed to Louisiana and allowed by Louisiana but not allowed by federal depreciation (20% of \$10,000)</i>	2,000	
<i>Total:</i>	\$221,000	\$25,000
<i>Deduct: Compensating items of income attributed to and taxed by Louisiana but not taxed by federal</i>	-0-	
<i>Compensating items of deduction attributable to Louisiana and allowed by federal but not allowed by Louisiana</i>	-0-	-0-
TOTAL:	\$221,000	\$25,000
<i>Excess of the sum of noncompensating items of deduction attributable to Louisiana and allowed by federal but not allowed by Louisiana</i>		
<i>Louisiana income tax (20% of \$10,000)*</i>	\$2,000	
<i>Noncompensating items of gross income attributed to and taxed by Louisiana but which is not taxed by federal</i>		
<i>Bond interest—State of Mississippi</i>	<u>5,000</u>	
<i>Total</i>	\$7,000	
<i>Over</i>		
<i>Noncompensating items of deduction attributed to and allowed by Louisiana but not allowed by federal depletion on oil royalties</i>	<u>\$3,750</u>	

Corporation Income Tax Statutes and Regulations

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

Corporation Income Tax Statutes and Regulations

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 cap-*

ital 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.*

Corporation Income Tax Statutes and Regulations

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).
- (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

Corporation Income Tax Statutes and Regulations

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.

- (1) 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.
- (2) Net operating losses generated after the effective date of a reorganization cannot be carried back to a corporation that does not survive the reorganization, unless the reorganization is a reorganization under Internal Revenue Code Section 368(a)(1)(F). For purposes of this Part, the surviving entity of a reorganization under Internal Revenue Code Section

368(a)(1)(F) is the same entity as the transferor entity, and the reorganization will be treated as a mere change in form.

Amended by Acts 1990, No. 849, §2; Acts 1992, No. 1083, §1; Acts 2002, No. 10, 1.

LAC 61:I.1124. Net Operating Loss Deduction

A. Election to relinquish carryback of a net operating loss. The election to relinquish carryback is made by filing a return carrying the net operating loss to the earliest of the taxable years allowed for carryovers.

B. Changes to Election

1. *Except as otherwise provided herein, a taxpayer may change the election to relinquish carryback of a net operating loss or the decision to carryback a net operating loss provided any additional tax and interest due as a result of the change is paid and any refund due as a result of the change has not prescribed.*
2. *The change in the election is made by filing an amended return for each tax year affected, paying any tax and interest due and showing any refunds due.*

C. When a change in election is made during an audit or examination, the taxpayer shall submit to the auditor a written notification of the change in election and provide any additional information the auditor may require.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:287.86, R. S. 47:287.785 and R.S. 47:1511.

HISTORICAL NOTE: Adopted by the Department of Revenue, Policy Services Division, LR 30:0000 (November 2004).

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.

Corporation Income Tax Statutes and Regulations

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

- 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) Royalties or similar revenue from the use of patents, trade marks, copyrights, secret processes, and other similar intangible rights.
 - (3) Income from estates, trusts, and partnerships.
 - (4) Income from construction, repair, or other similar services.
- 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.

Amended by Acts 1992, No. 1029, §1; Acts 1993, No. 690, §1, eff. for taxable periods beginning on or after January 1, 1993; Acts 2002, No. 16, § 1, eff. June 7, 2002.

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

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

- 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
 - (2) If the corporation elects to pay tax on interest income as provided in RS 47:287.738(F)(2), interest received by the corporation 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 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.

- (3) 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. A mineral lease, royalty interest, oil payment or other mineral interest shall be allocated to the state in which the property subject to such mineral interest is situated.
- (4) Income from construction, repair, or other similar services shall be allocated to the state in which the work is done.
- (5) For purposes of this Part only, estates, trusts, and partnerships having a corporation as a member or beneficiary shall compute, allocate, and apportion their income 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.

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.

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

Corporation Income Tax Statutes and Regulations

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1987, No. 53, §1; Acts 2002, No. 16, § 1, eff. June 7, 2002.

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

A. Allocation of items of income and loss. R.S. 47:287.93 provides that items of gross allocable income or loss shall be allocated directly to the state or states within which such items of income are earned or derived. The statute attributes every item of gross allocable income to a location and does not allow for any unallocated items of income. The principles embodied in the statute and this regulation are that items of allocable income from the use of tangible assets are allocated to the location of the tangible asset at the time of the use; income from the use of intangible assets is allocated to the business situs of the intangible asset, or in the absence of a business situs, to the commercial domicile of the corporation; and items of allocable income from services are allocated to the location at which the service was performed.

1. Rents and Royalties from Immovable or Corporeal Movable Property

- a. Rents and royalties from immovable or corporeal movable property shall be allocated to the state where such property is located at the time the income is derived.*
- b. Rents or royalties from incorporeal immovables, such as mineral interests, are allocated to the state in which the property subject to the interest is located.*

2. Interest from Controlled Corporation

- a. Under the provisions of R.S. 47:287.738(F)(2), a corporation may elect to pay tax on interest income from a corporation that is controlled by the former through direct ownership of 50 percent or more of the voting stock of the latter.*
- b. The election is made for each taxable period by employing the method on the return or amended return.*
- c. If the election is made, interest from securities and credits that is received by the electing corporation from another corporation controlled by the former through the direct 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, as follows:*

- i. 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 that it produces.*

- ii. The value of Louisiana real and tangible property and real and tangible property within and without the state shall be the average value of such property at the beginning and close of the taxable period, determined on a comparable basis. If the average value does not fairly represent the average of the property owned during the year, the average value shall be obtained by dividing the sum of the monthly balances by the number of months in the taxable period.*

iii. Value of Property to Be Used

- (a). For purposes of this Subsection, the value of property to be used shall be determined using one of the following methods. The taxpayer will choose which valuation method to use on the first return filed following the effective date of this regulation on which a R.S. 47:287.738(F)(2) election is made by employing the chosen valuation method on the tax return. Once a valuation method is chosen, this valuation method must be used on all future returns upon which the R.S. 47:287.738(F)(2) election is made and cannot be changed without the approval of the secretary upon the showing of good cause.*

- (i). The value of property is cost to the taxpayer, less a reasonable reserve for depreciation, amortization, depletion, and obsolescence, or*

- (ii). The value of property is cost to the taxpayer, so long as the property continues to be used in the taxpayer's trade or business.*

- (iii). The value of property is the value reflected on the taxpayer's books, so long as the value is not below zero.*

- (b). The secretary may require a different method of valuation or adjust reserves if the method elected by the taxpayer does not reflect the fair value of the property.*

3. Royalties or Similar Revenue Received for the Use of Patents, Trademarks, Copyrights, Secret Processes, and Other Similar Intangible Rights

- a. Royalties or similar revenue received for the use of*

Corporation Income Tax Statutes and Regulations

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.

i. *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 2006, 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 \$100,000.00 for such use. The entire royalty income of \$100,000.00 is allocable to Louisiana.*

ii. *Example: ABC Company, Inc. is a trademark holding company incorporated in Delaware that owns certain trademarks relating to the sale of retail goods and/or services. In 2005, ABC entered into a licensing agreement with XYZ Retail Co. in which XYZ was authorized to use the trademark in exchange for consideration of royalty payments. In 2006, XYZ used the trademark to promote the sale of retail goods and/or services in Louisiana. The royalty payment attributable to the Louisiana stores was \$250,000.00. ABC must allocate the royalty income of \$250,000.00 to Louisiana.*

b. *Income from a mineral lease, royalty interest, oil payment, or other mineral interest shall be allocated to the state or states in which the property subject to such mineral interest is situated.*

4. *Income from Construction, Repair, or Other Similar Services*

a. *Income from construction, repair, or other similar services is allocable to the state or states in which the work is done.*

b. *The phrase other similar services means any work that 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.*

i. *It is not necessary that the services rendered*

actually result in the improvement of the immovable property.

ii. *Mineral Properties. For the purpose of this Section, mineral properties, whether under lease or not, constitute immovable properties. Thus, the drilling of a well on a mineral lease is considered to have as its purpose the improvement of such property notwithstanding the fact that the well may have been dry.*

c. *Examples of other similar services include, but are not limited to:*

i. *landscaping services;*

ii. *the painting of houses;*

iii. *the removal of stumps from farmland; and*

iv. *the demolition of buildings.*

B. *Deduction of expenses, losses and other deductions. 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 that are directly attributable to such income plus a ratable portion of the allowable deductions, except federal income taxes, that are not directly attributable to any item or class of gross income.*

1. *Interest Expense*

a. *The method of allocation and apportionment for interest set forth in these regulations is based on the approach that money is fungible and that interest expense is attributable to all activities and property regardless of any specific purpose for incurring an obligation on which interest is paid. Exceptions to the fungibility method are set forth in LAC 61:I.1130.B.1.b. The fungibility approach recognizes that all activities and property require funds and that management has a great deal of flexibility as to the source and use of funds and that 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. When money is borrowed for a specific purpose, such borrowing will free other funds for other purposes, and it is reasonable under this approach to attribute part of the cost of borrowing to such other purposes. Consistent with the principles of fungibility, except as otherwise provided, the aggregate of deductions for interest in all cases shall be considered related to all income producing activities and*

Corporation Income Tax Statutes and Regulations

- assets of the taxpayer and, thus, allocable to all the gross income that the assets of the taxpayer generate, have generated, or could reasonably have been expected to generate.*
- b. *Exceptions to the fungibility method are allowed in the same circumstances that exceptions are allowed by IRC § 861 and the regulations promulgated thereunder. These exceptions include:*
- i. *the direct allocation of interest expense to the income generated by certain assets that are subject to qualified nonrecourse indebtedness;*
 - ii. *the direct allocation of interest expense to income generated by certain assets that are acquired in integrated financial transactions.*
- c. *Interest Expense Applicable to Louisiana Gross Allocable Income. Interest expense that is applicable to assets that produce or that are held for the production of Louisiana gross allocable income shall be an item of deduction in determining net allocable income or loss from Louisiana.*
- i. *Except as otherwise provided, the amount of interest that is applicable to such assets shall be determined by multiplying the amount of interest expense applicable to total allocable assets, 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 assets that produce or that are held for the production of Louisiana allocable income and the denominator of which is the average value of assets that produce or that are held for the production of allocable income within and without Louisiana.*
 - ii. *When Louisiana net apportionable income is determined on the separate accounting method, refer to LAC 61:I.1132.C.2 for rules pertaining to the determination of the amount of interest expense applicable to Louisiana allocable income.*
- d. *Interest Expense Applicable to Total Allocable Assets*
- i. *Interest expense applicable to total allocable assets is interest expense that is applicable to assets that produce or that are held for the production of allocable income within and without Louisiana.*
 - ii. *When a R.S. 47:287.738(F)(2) election is made, assets that produce or that are held for the production of allocable income will include direct investments in 50 percent or more owned subsidiaries (other than normal trade accounts receivable) whether or not such investments, advances, or loans produce any income.*
 - iii. *The amount of interest that is applicable to assets producing or held for the production of allocable income shall be determined by multiplying the total amount of interest expense by a ratio, the numerator of which is the average value of assets that produce or that are held for the production of allocable income, and the denominator of which is the average value of all assets of the taxpayer.*
 - iv. *Although income exempt from Louisiana income tax, such as interest, is not taxable and is therefore not included in allocable income, the adjustment for the amount of interest expense applicable to assets producing such income is computed in the same manner as in the case of assets producing allocable income.*
 - (a). *For convenience of computation such assets are grouped with assets producing or held for the production of allocable income.*
 - (b). *Whenever interest expense applicable to U.S. government bonds and notes that are held as temporary cash investments determined as provided above, exceeds the amount of income derived from such investments, the interest expense that is attributable to such investments shall be limited to the amount of income derived from such investments.*
 - (c). *The amount of interest expense applicable to U.S. government bonds and notes that are held as temporary cash investments, determined without reference to the income therefrom, is that portion of the interest expense applicable to assets that produce or that are held for the production of allocable income, that 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 assets that produce or that are held for the production of allocable income.*
 - e. *Investments in Stock of Controlled Corporations. When a corporation holds stock in corporations controlled by direct ownership of 50 percent or*

Corporation Income Tax Statutes and Regulations

more of the voting stock of the latter, the stock shall be included in the numerator of the Louisiana interest expense computation as Louisiana assets based on the following allocation.

- i. This stock is to be attributed as Louisiana assets on the basis of the proportion of the respective amounts of income upon which Louisiana income tax has been paid to all income, including exempt income, earned everywhere of the controlled corporation.
 - ii. Stock held in corporations exempt from Louisiana income tax shall not be included as a Louisiana asset for the purpose of this computation.
- f. Loans to Controlled Corporations.
- i. When a R.S. 47:287.738(F)(2) election is made and the electing corporation loans interest-bearing funds to corporations controlled by direct ownership of 50 percent or more of the voting stock of the controlled corporation, the receivable shall be included in the numerator of the Louisiana interest expense computation as Louisiana assets based on the following allocation.
 - (a). These receivables are to be attributed as Louisiana assets on the basis of the ratio of the value of the controlled corporation's real and tangible personal property located in Louisiana to the value of such property within and without Louisiana.
 - (b). For the purpose of the allocation, 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 that it produces.
 - ii. Receivables Resulting from Loans of Non-Interest Bearing Funds. When a R.S. 47:287.738(F)(2) election is made:
 - (a). Receivables resulting from loans of non-interest bearing funds to controlled corporations 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 assets that produce or that are held for the production of allocable income from sources within and without Louisiana.
 - (b). When receivables resulting from loans of

non-interest bearing funds to controlled corporations have a Louisiana business situs, or, in the absence of a business situs, the lending corporation has a Louisiana commercial domicile, such receivables shall not be included in the numerator of the interest expense allocation formula for the purpose of LAC 61:I.1130.B.1.c., unless the secretary, in order to clearly reflect Louisiana apportionable and allocable net income, imputes interest income on such receivables.

g. Average Value

- i. Except as otherwise provided in this section, average value shall mean the value at the beginning of the taxable period plus the value at the end of the taxable period, the sum of which is divided by two.
- ii. If the average value as calculated above does not fairly represent the average of the property owned during the year, the average value shall be obtained by dividing the sum of the monthly balances by the number of months in the taxable period.

b. Value of Property to Be Used

- i. For purposes of this Subsection, the value of property to be used shall be determined using one of the following methods. The taxpayer will elect which method to use on the first income tax return filed for the taxable period following the taxable period in which these regulations take effect by employing the elected method on the tax return. Once made, the election is irrevocable, without the approval of the secretary upon the showing of good cause.
 - (a). The value of property is cost to the taxpayer, less a reasonable reserve for depreciation, amortization, depletion, and obsolescence, or
 - (b). The value of property is cost to the taxpayer, so long as the property continues to be used in the taxpayer's trade or business, or
 - (c). The value of property is the value reflected on the taxpayer's books, so long as the value is not below zero.
- ii. The secretary may require a different method of valuation or adjust reserves if the method elected by the taxpayer does not reflect the fair value of the property.

Corporation Income Tax Statutes and Regulations

- iii. *Intangible assets that produce or that are held for the production of allocable income within and without Louisiana may acquire a business situs in more than one state. The percentage of the value of the asset that is to be attributed to Louisiana is a factual determination required to be made with respect to each asset and will take into consideration such factors as:*
 - (a). *the number of locations at which the asset is used,*
 - (b). *the number of days during the taxable period the asset is used within and without Louisiana,*
 - (c). *the amount of income that the asset generated within and without Louisiana, and*
 - (d). *the earning power of the asset at the time the interest expense is generated.*
- i. *Examples. The following examples are applicable for both foreign and domestic corporations.*
 - (a). *Example 1. The XYZ Corporation has incurred interest expense in the amount of \$150,000.00 during the year 2006 and has not elected to treat interest income from 50 percent or more owned subsidiaries as taxable income. The subsidiary of XYZ Corporation earns no income in Louisiana. During 2006 XYZ Corporation derived total allocable and exempt income and Louisiana allocable income as follows:*

continue on next page....

Corporation Income Tax Statutes and Regulations

	<i>Louisiana</i>	<i>Total</i>
*Interest from 80% owned Subsidiary	\$0	\$10,000
*Interest (interest bearing checking)	\$0	\$5,000
*Dividends	\$0	\$5,000
Net rent income	\$10,000	\$10,000
Trademark royalty income	\$4,000	\$10,000
Total	\$14,000	\$40,000

*Exempt but included with allocable income only for convenience in computing the applicable expense.

Its assets, liabilities, and net worth as of January 1, 2006, and December 31, 2006, were as follows:

	<i>1-1-06</i>	<i>12-31-06</i>
<i>Assets:</i>		
Cash (currency on hand)	\$10,000	\$10,000
Cash (non-interest bearing checking)	90,000	\$140,000
Cash (interest bearing checking)	\$110,000	\$220,000
Accounts receivable	\$780,000	\$800,000
Inventories	\$600,000	\$1,000,000
Stocks – 80% owned subsidiary	\$100,000	\$100,000
Trademark	\$80,000	\$80,000
Loan to 80% owned subsidiary	\$310,000	\$430,000
Real estate (rental property)	\$100,000	\$100,000
Less depreciation reserve	<u>\$20,000</u>	<u>\$25,000</u>
Net	\$80,000	\$75,000
Real estate	\$5,000,000	\$5,125,000
Less depreciation reserve	<u>\$1,080,000</u>	<u>\$1,300,000</u>
Net	\$3,920,000	\$3,825,000
Total Assets	<u>\$6,080,000</u>	<u>\$6,680,000</u>
<i>Liabilities and Net Worth:</i>		
Accounts payable	\$400,000	\$1,000,000
Bonds	<u>\$3,000,000</u>	<u>\$3,000,000</u>
Total Liabilities	\$3,400,000	\$4,000,000
Capital stock	\$2,080,000	\$2,080,000
Earned surplus	<u>\$600,000</u>	<u>\$600,000</u>
Net worth	\$2,680,000	\$2,680,000
Total Liabilities and Net Worth	<u>\$6,080,000</u>	<u>\$6,680,000</u>

The amount of interest that is applicable to the assets that produce or are held for the production of allocable or exempt income within and without Louisiana is \$18,633.00, determined as follows:

Corporation Income Tax Statutes and Regulations

	<i>Allocable Assets</i>		<i>Total Assets</i>	
	<i>1-1-06</i>	<i>12-31-06</i>	<i>1-1-06</i>	<i>12-31-06</i>
<i>Loan to 80% owned subsidiary</i>	\$310,000	\$430,000	\$310,000	\$430,000
<i>Cash (interest bearing checking)</i>	\$110,000	\$220,000	\$110,000	\$220,000
<i>Rental property (net)</i>	\$80,000	\$75,000	\$80,000	\$75,000
<i>Stock – 80% owned subsidiary</i>	\$100,000	\$100,000	\$100,000	\$100,000
<i>Trademark asset</i>	\$80,000	\$80,000	\$80,000	\$80,000
<i>Other assets</i>	\$0	\$0	\$5,400,000	\$5,775,000
<i>Totals</i>	\$680,000	\$905,000	\$6,080,000	\$6,680,000
<i>1-1-06 totals</i>		<u>\$680,000</u>		<u>\$6,080,000</u>
<i>Totals</i>		<u>\$1,585,000</u>		<u>\$12,760,000</u>
<i>Average</i>		<u>\$792,500</u>		<u>\$6,380,000</u>
<i>Ratio</i>				.12422
<i>Interest expense attributed to total allocable or exempt assets (.12422 X \$150,000)</i>				\$18,633

The amount of interest expense that is applicable to the assets that produce or are held for the production of Louisiana allocable income is \$2,668.00 determined as follows:

Louisiana allocable assets:

<i>January 1, 2006 – Rental property</i>	\$80,000
<i>**January 1, 2006 – Trademark asset</i>	\$32,000
<i>December 31, 2006 – Rental property</i>	\$75,000
<i>**December 31, 2006 – Trademark Asset</i>	\$40,000
<i>Total</i>	\$227,000
<i>Average Louisiana allocable assets</i>	\$113,500
<i>Average total allocable assets</i>	\$792,500
<i>Ratio of Louisiana average to total average allocable assets</i>	.14322
<i>Interest expense attributed to total allocable or exempt assets</i>	\$18,633
<i>Interest expense allocated to Louisiana allocable assets (.14322 x \$18,633)</i>	\$2,668

**For purposes of this example, it has been assumed that the ratio of trademark royalties for the prior month from Louisiana sources to total trademark royalties for the prior month is representative of the value of the asset attributable to Louisiana at balance sheet date. In December 2005, Louisiana trademark royalties were \$480.00 and total trademark royalties were \$1,200.00. In December 2006, Louisiana trademark royalties were \$550.00 and total trademark royalties were \$1,100.00.

(b). Example 2. Assume the same facts as Example 1 except that XYZ Corporation has elected under R.S.47:287.738(F)(2) to treat interest income from its 50 percent or more owned subsidiary as taxable allocable income. The ratio of the value of real and tangible personal property of the controlled corporation located in Louisiana to the value of such property within and without Louisiana is 10 percent for both the beginning and ending balance sheets. Therefore, 10 percent of the interest from the subsidiary is allocated to Louisiana and 10 percent of the receivable is attributed to Louisiana. In addition, the ratio of the subsidiary's income earned within Louisiana upon which Louisiana income tax has been paid to income earned everywhere of the subsidiary in the prior and current years is five percent. Therefore five percent of XYZ's investment in the sub-

Corporation Income Tax Statutes and Regulations

subsidiary is attributed to Louisiana. Example 1 would change as follows:

Total allocable and exempt income and Louisiana allocable income would be:

	<i>Louisiana</i>	<i>Total</i>
<i>*Interest from 80% owned Subsidiary</i>	<i>\$1,000</i>	<i>\$10,000</i>
<i>**Interest (interest bearing checking)</i>	<i>\$0</i>	<i>\$5,000</i>
<i>**Dividends</i>	<i>\$0</i>	<i>\$5,000</i>
<i>Net rent income</i>	<i>\$10,000</i>	<i>\$10,000</i>
<i>Trademark royalty income</i>	<i>\$4,000</i>	<i>\$10,000</i>
<i>Total</i>	<i>\$15,000</i>	<i>\$40,000</i>

The amount of interest that is applicable to the assets that produce or are held for the production of allocable or exempt income within and without Louisiana remains \$18,633.00, calculated in the same manner. The only difference is that the loan to the subsidiary is now an allocable asset. The amount of interest expense that is applicable to the assets that produce or are held for the production of Louisiana allocable income or to the portion of the investment in a 50 percent or more owned subsidiary that has produced income that has been taxed by Louisiana is \$3,656.00 determined as follows:

Louisiana allocable assets:

<i>January 1, 2006 – Rental property</i>	<i>\$80,000</i>
<i>January 1, 2006 – Trademark asset</i>	<i>\$32,000</i>
<i>**January 1, 2006 – Stock of subsidiary</i>	<i>\$5,000</i>
<i>January 1, 2006 – Loan to subsidiary</i>	<i>\$31,000</i>
<i>December 31, 2006 – Rental property</i>	<i>\$75,000</i>
<i>December 31, 2006 – Trademark Asset</i>	<i>\$40,000</i>
<i>**December 31, 2006 – Stock of subsidiary</i>	<i>\$5,000</i>
<i>December 31, 2006 – Loan to subsidiary</i>	<i>\$43,000</i>
<i>Total</i>	<i>\$227,000</i>

Average Louisiana allocable assets *\$155,500*

Average total allocable assets *\$792,500*

Ratio of Louisiana average to total average allocable assets *.19621*

Interest expense attributed to total allocable or exempt assets *\$18,633*

Interest expense attributed to Louisiana (.19621 × \$18,633) *\$3,656*

** Taxpayer has elected to be taxed on certain interest income.*

*** Exempt but included only for convenience in computing the applicable expense.*

2. *Overhead Expense*

a. 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.

Corporation Income Tax Statutes and Regulations

i. 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.

ii. 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 total 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.

iii. If the taxpayer has not maintained documents or records sufficient to compute the ratios required by this Subparagraph, the secretary shall, upon examination, determine the method by which to attribute overhead expense.

b. Overhead Expense Attributable to All Other Items of Gross Allocable Income. 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 that clearly reflects net allocable income from such items of income.

3. Generally, direct and indirect expenses, other than interest expenses, attributed to allocable income from foreign sources for federal purposes are deductible in arriving at total net allocable income. Expenses, other than interest expenses, sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be actual expenses attributed to such income.

C. This regulation shall not restrict the authority of the secretary to adjust the allocation of items of income and expense when the secretary determines that such adjustments are necessary in order to clearly reflect the taxpayer's Louisiana income.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.81, R.S. 47:287.92, R.S. 47:287.93, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 32:410 (March 2006).

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

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

Corporation Income Tax Statutes and Regulations

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.

- H.** When net apportionable income is computed by means of the separate accounting method, or at any time the Louisiana apportionment percent is zero, profits or losses from sales or exchanges of property not made in the regular course of business shall be apportioned to Louisiana on the ratio of gross income from Louisiana sources, other than such profits or losses, to gross income of the corporation, other than such profits or losses. When all of the gross income of the corporation is from such profits or losses, the portion of the profits or losses from sales or exchanges of property not made in the regular course of business attributable to Louisiana shall be determined as follows:
- (1) Profits or losses on sales or exchanges of tangible property shall be attributed to Louisiana if the property was located in Louisiana at the time of sale or exchange.
 - (2) Profits or losses on sales or exchanges of an ownership interest in a corporation, partnership, limited liability company, or other business organization shall be attributed to Louisiana to the extent the assets of the organization, of which an ownership interest was sold, are located in Louisiana at the time of the sale or exchange.
 - (3) Profits or losses on sales or exchanges of a patent, trademark, copyright, secret process, or other similar intangible right shall be attributed to Louisiana to the extent of use of the right in Louisiana compared to use everywhere.
 - (4) Profits or losses on sales or exchanges of other intangible assets, including debt instruments, shall be attributed to the state in which the assets have their situs 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, to the commercial domicile of the taxpayer.

Corporation Income Tax Statutes and Regulations

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 1993, No. 690, §1, eff. for all taxable periods beginning after December 31, 1992; Amended by Acts 2002, No. 16, § 2, eff. June 7, 2002. Amended by Acts 2005, No. 401§1,eff. for taxable periods beginning after December 31, 2005.

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*

Corporation Income Tax Statutes and Regulations

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

Corporation Income Tax Statutes and Regulations

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

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. (1)(a) 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:

- (i) 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.
 - (ii) The ratio of the amount of gross apportionable income from Louisiana sources to the total amount of gross apportionable income of the taxpayer.
- (b) 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.
- (c) 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.

(2)(a) Notwithstanding any other provisions of this Part to the contrary, this Subsection shall not require the apportionment of income to this state of any trucking company whose Louisiana net income is derived solely from the business of transportation by truck if during the course of the income tax year:

Corporation Income Tax Statutes and Regulations

- (i) It does not own or rent any real or personal property in this state, except mobile property.
- (ii) It makes no pickups or deliveries within this state.
- (iii) It makes no more than twelve trips into this state.

(b) As used in this Paragraph, the term "trucking company" means a motor carrier as defined by the provisions of R.S. 32:1(37) or R.S. 45:162(10), or an express carrier which primarily transports the tangible personal property of others by motor vehicle for compensation.

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. Repealed by Acts 2005, No 401 §2, eff. for taxable periods beginning after December 31, 2005.

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)(a) For taxable periods beginning on or after January 1, 1997, and ending on or before December 31, 2005, and 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.

(b) For taxable periods beginning on or after January 1, 2006, and 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 a single ratio consisting of the ratio provided for in Subparagraph (1)(c) of this Subsection.

(c) 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:

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

Corporation Income Tax Statutes and Regulations

- (ii) Any taxpayer whose income is primarily derived from the production or sale of unrefined oil and gas.
 - (iii) Any taxpayer defined as an integrated oil company per the United States Internal Revenue Code - 26 USC 291(b)(4), or 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. Provided, any taxpayer, whose activities during the taxable year do not include any "gross receipts from retail sales of oil and/or natural gas", or any "refinery activities of oil and/or natural gas", will not be considered as an integrated oil company for Louisiana tax purposes, notwithstanding such taxpayer may be a "related party" or a "member of the federal consolidated group" under the United States Internal Revenue Code.
- (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

Corporation Income Tax Statutes and Regulations

Trade Zones Act shall be considered as located outside of Louisiana.

I. (Repealed by L. 2002, Act 4, § 2, eff. 6-7-02.)

J. (1) Corporations utilizing common paymaster. For purposes of this Section, a parent corporation or any other member of the same affiliated group of corporations serving as common paymaster for payroll purposes shall eliminate all payrolls from the numerator and denominator of its salary, wages, and other compensation factor computation that represent the amounts paid on behalf of affiliated corporations for which it has charged such affiliate the cost and that does not meet the definition of salary, wages, and other compensation insofar as the common paymaster is concerned. A subsidiary or other member of an affiliated group that is a member of or participant in a common paymaster plan for payroll purposes shall include in its numerator and denominator of the salary, wages, and other compensation factor computation amounts paid to a common paymaster as reimbursement in whatever form and by whatever label for salary, wages, and other compensation as defined.

(2) For purposes of this Section, “salary, wages, and other compensation” means remuneration paid or caused to be paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded.

(3) For purposes of this Section, “employee” means any officer of a corporation, or any individual who has the status of an employee in an employer-employee relationship. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act.

K. Attribution of revenue from television, radio, and other broadcasting.

(1) Definitions. For the purposes of this Subsection, the following terms have the following meanings unless the context clearly indicates otherwise:

(a) “Broadcast” means transmission by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber

optics, satellite transmissions directly or indirectly to viewers and listeners, or by any other means of communications.

(b) “Film” or “film programming” means all performances, events, or productions intended to be broadcast for visual perception, including but not limited to news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works. Each episode of a series of films shall constitute a separate “film” even if the series relates to the same principal subject.

(c) “Radio” or “radio programming” means all performances, events, or productions intended to be broadcast for auditory perception, including but not limited to news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works. Each episode of a series of radio programming shall constitute a separate “radio programming” even if the series relates to the same principal subject.

(d) “Subscriber” means the individual residence or other outlet that is the ultimate recipient of the transmission.

(2) Gross apportionable income from broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission, or any other means of communication, either through a network, including owned and affiliated stations, or through an affiliated, unaffiliated, or independent television or radio broadcasting station, shall be attributed to this state as follows:

(a) For purposes of computing the apportionment percents provided by Subsections A through F of this Section, the gross apportionable income, including advertising income, attributed to this state from broadcasting film or radio programming shall be determined by multiplying total gross apportionable income from broadcasting film or radio programming, including advertising revenue, by the audience factor.

(b) Except as otherwise provided by this Subsection, the audience factor shall be determined by the ratio of the taxpayer’s

Corporation Income Tax Statutes and Regulations

Louisiana viewing or listening audience to their total viewing or listening audience. The audience factor shall be determined based on the books and records of the taxpayer or on published rating statistics. However, the method used to determine the audience factor must be used consistently from year to year and must fairly represent the taxpayer's activity in Louisiana.

- (c)(i) When broadcasting is through or by a cable television system or other arrangement under which ultimate viewers or listeners must pay for the right to receive the broadcast, the audience factor shall be the ratio that the subscribers for that cable television system or other arrangement located in Louisiana bears to the total subscribers of that cable television system or other arrangement if the payment entitles the ultimate viewers or listeners to continuous reception of programming during a subscription period.
- (ii) If the number of subscribers cannot be accurately determined from the taxpayer's books and records, the audience factor shall be determined based on the applicable year's subscription statistics located in published surveys. However, the source selected to determine the audience factor must be consistently used from year to year and must fairly represent the taxpayer's activity in Louisiana.
- (iii) If the payment entitles the ultimate viewers or listeners to only discrete episodes or instances of film or radio programming, the audience factor shall be the ratio of the subscribers for such discrete programming located in Louisiana to the total subscribers for such discrete programming. If the number of subscribers for such discrete episodes or instances cannot be accurately determined from the taxpayer's books and records, the audience factor shall be determined based on statistics located in published surveys. However, the source selected to determine the audience factor must be consistently used from year to year and must fairly represent the taxpayer's activity in

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; 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; Acts 1998, No. 2, §1; Acts 1998, No. 26, §1, eff. June 24, 1998; Acts 2002, No. 16, § 2; Added by Acts 2002, No. 65, § 1, eff. for taxable years beginning after December 31, 2001; Acts 2005, No 401 §1.

119USCA §81a et. seq.

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

A. General. R.S. 47:287.95 provides for an apportionment percent that 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, other transportation businesses, and certain service enterprises. 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 are zero in any one or more ratios in the apportionment formula, such ratio shall be dropped from the apportionment formula and the arithmetical average determined from the total remaining ratios

B. Property Ratio

- 1. The value of immovable and corporeal movable property owned by the taxpayer and used in the production of net apportionable income is included in each formula except those provided for certain service businesses and those using the single sales ratio under the general formula. 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 ratio. However, where the entire property is used in the production of both allocable and apportionable income the value of the entire property shall be included in the property ratio. Idle property and property under construction, during such construction and prior to being placed in service, shall not be included in the property ratio. Property held as reserve or standby facilities, or property held as a reserve source of materials*

Corporation Income Tax Statutes and Regulations

shall be considered used. For example, a taxpayer who purchases a lignite deposit that is held as a reserve source of fuel should include the value of such deposits in the property ratio. Non-productive mineral leases are considered to be held for such use and should be included in the property ratio. 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. R.S. 47:287.95(A)(1) provides that aircraft owned by a taxpayer whose net apportionable income is derived primarily from air transportation should not be included in the property ratio.

2. *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 rivers or 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 rivers or 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 rivers or 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 rivers or 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 rivers or streams bordering on both Louisiana and another state shall be considered Louisiana operating equipment miles.
3. *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 by any method deemed reasonable by him.
- C. *Wage Ratio.* 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

Corporation Income Tax Statutes and Regulations

benefit of employees of the taxpayer for services rendered in connection with the production of net apportionable income.

D. **Revenue Ratio.** This ratio is generally composed of sales, charges for service, and other gross apportionable income. Neither allocable income nor income excluded from gross income, such as interest and dividends, is included in the ratio. For all formulas except that provided by R.S. 47:287.95(F), the revenue ratio consists of the ratio of the gross apportionable income of the taxpayer from Louisiana sources to the total gross apportionable income of the taxpayer. For the formula provided by R.S. 47:287.95(F), the revenue ratio consists of 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. Sales not made in the regular course of business are not included in the formula provided by R.S. 47:287.95(F).

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. Revenue from transportation exclusively without Louisiana shall not be included in gross apportionable income attributable to Louisiana. Gross apportionable income attributable to Louisiana shall be computed separately for each of the four classes enumerated below:

- a. A unit of transportation shall consist of the following:
 - i. in the case of the transportation of passengers, the transportation of one passenger a distance of 1 mile;
 - ii. 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 1 mile;
 - iii. in the case of the transportation of property other than liquids, the transportation of 1 ton of the property a distance of 1 mile;
 - iv. in the case of the transportation of natural gas, the transportation of one MCF or one MBTU a distance of 1 mile.

b. 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.

c. *Example: ABC Corporation is in the business of transporting natural gas as a common carrier. During the year 2005, ABC entered into five transactions. In the first transaction one million MMCF was transported from Texas, through Louisiana, to Mississippi. The total distance transported was 500 miles, of which 200 miles was in Louisiana. The charge for the transportation was \$250,000.00. In the second transaction one million MMCF was transported from one point in Louisiana to another point in Louisiana, a distance of 150 miles, for a charge of \$150,000.00. In the third transaction one million MMCF was transported from one point in Texas to another point in Texas, a distance of 500 miles, for a charge of \$250,000.00. In the fourth transaction one million MMCF was transported from a point in Louisiana to a point in another state for a charge of \$500,000.00. The total distance transported was 1,000 miles, of which 100 miles were in Louisiana. In the fifth transaction one million MMCF was transported from a point in Louisiana to a point in another state for a charge of \$250,000.00. The distance transported was 500 miles, of which 100 was in Louisiana. The portion of the gross apportionable income attributed to Louisiana would be computed as follows:*

	<i>Louisiana Amount</i>
First Transaction – $200/500 \times \$250,000 =$	\$100,000
Second Transaction – entirely from Louisiana =	150,000
Third Transaction – neither entirely nor partially in Louisiana	-0-
Fourth Transaction – $100/1,000 \times \$500,000 =$	50,000
Fifth Transaction – $100/500 \times \$250,000 =$	50,000
Louisiana Income From Transportation of Natural Gas	\$350,000

2. **Revenue From Telephone, Telecommunications, and Other Similar Services.**

a. Gross apportionable income attributable to Louisiana from providing telephone, telecommunications, and similar services shall include, but is not limited to:

Corporation Income Tax Statutes and Regulations

- i. revenue derived from charges for providing telephone “access” from a location in this state. “Access” means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to a service address located in the state and without regard to actual usage;
 - ii. revenue derived from charges for unlimited calling privileges, if the charges are billed by reference to a service address located in this state;
 - iii. revenue from intrastate telephone calls or other telecommunications, except for mobile telecommunication services, beginning and ending in Louisiana;
 - iv. revenue from interstate or international telephone calls or other telecommunications, except for mobile telecommunication services, either beginning or ending in Louisiana if the service address charged for the call or telecommunication is located in Louisiana, regardless of where the charges are billed or paid;
 - v. revenue from mobile telecommunications service;
 - (a). revenue from mobile telecommunications services shall be attributed to the place of primary use, which is the residential or primary business street address of the customer;
 - (b). if a customer receives multiple services, such as multiple telephone numbers, the place of primary use of each separate service shall determine where the revenue from that service is attributed;
 - (c). revenue from mobile telecommunications services shall be attributed to Louisiana if the place of primary use of the service is Louisiana;
- b. Definitions. For the purposes of this paragraph, the following terms have the following meanings unless the context clearly indicates otherwise:
- i. Call—a specific telecommunications transmission;
 - ii. Customer—any person or entity that contracts with a home service provider or the end user of the mobile telecommunications service if the end user is not the person or entity that contracts with the home service provider for mobile telecommunications service;
 - iii. Home service provider—the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services;
 - iv. Place of Primary Use of Mobile Telecommunications Service—the street address representative of where the customer’s use of mobile telecommunications service primarily occurs. This address must be within the licensed service area of the home service provider and must be either the residential or the primary business street address of the customer. The home service provider shall be responsible for obtaining and maintaining the customer’s place of primary use as prescribed by R.S. 47:301(14)(i)(ii)(bb)(XI);
 - v. Service Address—the address where the telephone equipment is located and to which the telephone number is assigned;
 - vi. Telecommunications—the electronic transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through the use of any medium such as wires, cables, satellite, microwave, electromagnetic waves, light waves or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission;
 - vii. Telecommunications Service—providing telecommunications, including service provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.
3. Attribution of Sales Made in the Regular Course of Business
- a. Sales made in the regular course of business attributable to Louisiana under R.S. 47:287.95 are those sales 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

Corporation Income Tax Statutes and Regulations

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 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 seller 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.*
- c. Where the transportation involved is transportation by the purchaser, in determining whether or not the transportation relates to the sale by the 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 taxpayer 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. Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier. 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 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.**
 - e. 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**

Corporation Income Tax Statutes and Regulations

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.

4. Attribution of Gains from Sales Not Made in the Regular Course of Business

- a. The net profit from sales not made in the regular course of business shall be included in the ratios provided by R.S. 47:287.95(C) and (D).
- b. The net profit from the sale of a mineral lease, royalty interest, oil payment, or other mineral interest shall be attributed to the state or states in which the property subject to such mineral interest is located.
- c. The net profit from the sale of other intangibles shall be attributed to the state or states in which the intangible has acquired a business situs if the intangible has been so used in connection with a 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.
- d. The net profit from the sale of the tangibles shall be attributed to the state or states in which the tangible is located at the time of sale.

5. Exchanges. 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 that should be included in the sales ratio or whether they constitute exchanges which are not sales and should be excluded from the sales ratio.

6. Recoveries and Reductions of Expense. Transactions that are actually recoveries of expenses or transactions that are part of a sequence of transactions for the purpose of managing risk, preventing loss, securing product, securing market or protecting profit shall not be considered gross apportionable income for purposes of determining the Louisiana apportionment percent. Examples of such transactions include, but are not limited to:

- a. Corporation A rents retail space in a shopping mall. The glass in the front door of the shop has broken and Corporation A is unable to immedi-

ately contact the building owner. Corporation A has the glass replaced and is later reimbursed by the building owner. The reimbursement is not gross apportionable income for purposes of determining the Louisiana apportionment percent.

- b. Corporation B buys and sells wheat. As part of securing a supply of wheat at the best possible price Corporation B will, when it believes prices will be rising in the future, purchase options to buy a fixed quantity of wheat at a fixed price on a fixed date in the future. At times market conditions will change subsequent to the purchase of an option and, believing that prices will fall and the wheat can be bought even cheaper than the option price in the future, the option will be sold. The amount received from the sale of the option is not gross apportionable income for purposes of determining the Louisiana apportionment percent. The amount received relates to the ultimate cost of goods sold.
- c. Corporation C grows and sells wheat. It knows that at harvest it will have at least a certain amount of wheat that must be sold. To ensure a market for its wheat at harvest Corporation B buys options to sell fixed quantities of wheat at fixed prices at harvest time. At times market conditions will change subsequent to the purchase of an option and, believing that there will be sufficient buyers willing to pay a sufficient price at harvest time, the option will be sold. The amount received from the sale of the option is not gross apportionable income for purposes of determining the Louisiana apportionment percent. The amount received relates to marketing expenses.
- d. Corporation D grows, buys and sells wheat. To manage market risk in its business Corporation D engages in complex, sophisticated transactions involving options, futures contracts and various derivative contracts. Any amounts received in the course of these risk management transactions are not gross apportionable income for the purposes of determining the Louisiana apportionment percent. The amounts received relate to insurance expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.95, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:105 (February 1988), repromulgated by the Department of Revenue, Policy Services Division, LR 30:482 (March

Corporation Income Tax Statutes and Regulations

2004), amended LR 31:694 (March 2005),
amended LR 32:421 (March 2006).

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 taxpay-

er'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.

Corporation Income Tax Statutes and Regulations

(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:

<i>Accrued interest</i>	<i>\$5,000</i>
<i>Income from operations</i>	<i>20,000</i>
<i>Total income</i>	<i>\$25,000</i>
<i>Less total authorized deductions</i>	<i>21,000</i>
<i>Taxable income.....</i>	<i>\$4,000</i>
<i>Tax per return.....</i>	<i>\$160</i>
<i>Computation to determine if item</i>	
<i>has borne tax in full:</i>	
<i>Amount improperly reported.....</i>	<i>\$5,000</i>
<i>Tax at lowest rate of taxpayer</i>	<i>\$200</i>
<i>Tax paid</i>	<i>160</i>
<i>Amount of tax unpaid</i>	<i>\$40</i>

Computation of portion of item to be reported in 1983:

<i>Improperly reported item</i>	<i>\$5,000</i>
<i>Taxable balance of net income in 1982</i>	<i>4,000</i>
<i>Portion of item to be reported.....</i>	<i>\$1,000</i>

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.

Corporation Income Tax Statutes and Regulations

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

Corporation Income Tax Statutes and Regulations

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 of 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

Corporation Income Tax Statutes and Regulations

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.

Corporation Income Tax Statutes and Regulations

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 or by electronically filing a return, 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 mar-*

Corporation Income Tax Statutes and Regulations

ket 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 non-recognition 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.

D. Change in Ownership

1. Except as otherwise provided herein, when a change in ownership results in no change to the accounting period but results in the income of the taxpayer being reported on two separate federal returns, the taxpayer may either file one return for the entire accounting period or file two short period returns. If two short period returns are filed the due date of both returns is the due date of the accounting period year-end return.
2. Except as otherwise provided herein, when a change in ownership results in a change to the accounting period, the filing of two short periods is required. The due date of the first short period return is the fifteenth day of the fourth month following the last day of the calendar month in which the change of ownership occurred. If information concerning the federal income deduction is not available, an amended return will be required for this period once the information is known. The due date of the last short period return is the due date of the new accounting period year-end return.
3. When a one-day return is required under federal law, that one-day is a separate accounting period for Louisiana reporting purposes. A separate return is required for that one day. This will usually result in the filing of three short period returns. The due date of the first period return is the fifteenth day of the fourth month following the last day of the calendar

month in which the change in ownership occurred. The due date of the one-day return is the fifteenth day of the fourth month following the last day of the calendar month in which the one day falls. The due date of the last short period return is the due date of the new accounting period year-end return.

4. All short period tax is computed under the provisions of R.S. 47:287.444

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.441, R.S. 47:287.444, R.S. 47:287.601, R.S. 47:287.612, R.S. 47:287.614, R.S. 47:287.623, R.S. 47:287.651, R.S. 47:287.732, R.S. 47:287.785 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), amended by the Department of Revenue, Policy Services Division, LR 30:0000 (December 2004).

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 true and correct duplicate of its federal income tax return, statement, or report for

Corporation Income Tax Statutes and Regulations

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; Acts 2001, No. 1032, §15.

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 identifica-

Corporation Income Tax Statutes and Regulations

tion 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, electronic funds transfer, or credit or debit cards.

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended 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 1 st day of the 4 th month of the taxable year	25	25	25	25
(2) After the last day of the 3 rd month and before the 1 st 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 5 th month and before they; 1st day of the 9 th month of the taxable year			50	50
(4) After the last day of the 8 th month and before the 1 st day of the 12 th 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

Corporation Income Tax Statutes and Regulations

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.

Corporation Income Tax Statutes and Regulations

(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, without 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

Corporation Income Tax Statutes and Regulations

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.1

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

1R.S. 47:1621 et seq.

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.1

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

1R.S. 47:1621 et seq.

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

Corporation Income Tax Statutes and Regulations

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.¹

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

1R.S. 47:1501 et seq.

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

Corporation Income Tax Statutes and Regulations

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 comput-

Corporation Income Tax Statutes and Regulations

ed 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. 47:287.730. Effect of Election Out of Federal Partnership Provisions

- A. An election made pursuant to I.R.C. (26 USC) Section 761 to exclude an unincorporated organization from the application of all or part of Subchapter K of the Internal Revenue Code shall be binding upon the members of the unincorporated organization for purposes of computing the tax imposed by this Part. Whenever such an election is made, the unincorporated organization making the election shall not be treated as a partnership for purposes of this Part.
- B. Under no circumstances shall income from an unincorporated organization that has made the I.R.C. Section 761 election be treated as "income from partnerships" for purposes of this Part; rather, it shall be treated by a member of the unincorporated organization as income from the underlying property as coowner of the property. The share of each item of income, gain, loss, deduction, or credit, realized or incurred by a member of such unincorporated organization that has made the I.R.C. Section 761 election shall be treated as follows:
 - (1) The member shall be treated as directly realizing the member's share of items of gross income attributable to the unincorporated organization.
 - (2) The member shall be treated as directly incurring the member's share of items of expense attributable to the unincorporated organization.
 - (3) The member shall be treated as directly accruing items of credit attributable to the unincorporated organization.

Corporation Income Tax Statutes and Regulations

- (4) The member shall treat the member's interest in each asset of the unincorporated organization as owned directly by the member.
- (5) The member shall treat the member's share of each liability as incurred directly by the member.

Added by Acts 2005, No. 351 §1, eff. for taxable periods beginning after December 31, 2004.

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. Except as provided in Subsection C of this Section, 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).

C. Qualified Subchapter S subsidiary income.

The income of a corporation for which an S corporation has made a valid election under the Internal Revenue Code to treat the corporation as a qualified Subchapter S subsidiary shall be included in the income of the S corporation unless the qualified Subchapter S subsidiary is treated as a separate corporation under the provisions of R.S. 47:287.732.1.

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, Acts 2002, No. 17, § 1, eff. for taxable periods beginning after December 31, 2002.

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

R.S. 47:287.732.1. Qualified Subchapter S subsidiaries

A. Taxation of a qualified Subchapter S subsidiary. Except as provided in Subsection C of this Section, a corporation treated as a qualified

Corporation Income Tax Statutes and Regulations

Subchapter S subsidiary for purposes of the Internal Revenue Code shall be required to comply with this Part the same as any other corporation. The provisions of this Part shall apply as if the qualified Subchapter S subsidiary and its parent had been required to file income tax returns with the Internal Revenue Service as C corporations for the current and all prior taxable years in accordance with federal law.

B. Special adjustments by the secretary. In addition to the authority granted by R.S. 47:287.480, whenever a qualified Subchapter S subsidiary does not qualify for the exclusion provided by Subsection C of this Section, the secretary may require combined or consolidated reports or returns as may be necessary to properly reflect the taxable income earned in Louisiana. This authority shall not limit the secretary's authority to require use of the separate accounting method as provided by R.S. 47:287.94 when the apportionment method produces a manifestly unfair result.

C. Qualified Subchapter S subsidiary exclusion. An exclusion is allowed for corporations classified as qualified Subchapter S subsidiaries under federal law for the taxable year as follows:

- (1) In computing Louisiana taxable income pursuant to this Part, a qualified Subchapter S subsidiary may exclude all of its Louisiana net income for the taxable year, provided that the S corporation that owns the stock of the qualified Subchapter S subsidiary files a Louisiana income tax return that includes all of the income of the qualified Subchapter S subsidiary in computing its net income for the taxable year.
- (2) If the Louisiana taxable income of a qualified Subchapter S subsidiary qualifies for the exclusion provided in Paragraph (1) of this Subsection, the qualified Subchapter S subsidiary shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, credit, and any other items of the qualified Subchapter S subsidiary shall be treated as assets, liabilities, and items of income, deduction, credit, and other items of the corporation owning the stock of the qualified Subchapter S subsidiary.
- (3) If the Louisiana taxable income of a qualified Subchapter S subsidiary is excluded for the taxable year under Paragraph (1) of this

Subsection, the S corporation that owns the stock of the qualified Subchapter S subsidiary may exclude the percentage of the qualified Subchapter S subsidiary's Louisiana net income for the taxable year as provided in R.S. 47:287.732(B).

Added by Acts 2002, No 17, Section 1, effective for taxable periods beginning after December 31, 2002.

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,¹ but deferred for federal income tax purposes pursuant to the regulations under Section 1502 of the Internal Revenue Code,² 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).

Corporation Income Tax Statutes and Regulations

- (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.

126 U.S.C.A. §311(b).

226 U.S.C.A. §1502.

LAC 61:I.1175. Definition of Separate Corporation Basis

Louisiana Revised Statute 47:287.733 provides that corporations that are included with affiliates in a consolidated federal income tax return must file their Louisiana corporation income tax on a separate corporation basis. For Louisiana income tax purposes, filing a return on a separate corporation basis means filing a return as if the affiliate either elects not to be part of the consolidated group or is not included in a federal consolidated return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.733, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 32:260 (February 2006).

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)

- A. The tax imposed by this Part upon corporations shall be imposed upon real estate investment trusts and shall be computed only upon that part of the net income of the real estate investment trust which is subject to federal income tax as provided in Sections 857 and 858 of the Internal Revenue Code of 1986, as amended, except as otherwise provided in this Section.
- B. The term "real estate investment trust" shall have the meaning ascribed to such term in Section 856 of the Internal Revenue Code of 1986, as amended.
- C. The dividend paid deduction otherwise allowed by federal law in computing net income of a real estate investment trust that is subject to federal income tax shall not be allowed as a deduction in computing the tax imposed by this Part unless the real estate investment trust is either (1) a publicly traded real estate investment trust or (2) a qualified real estate investment trust as defined in this Section.
- D. For purposes of this Section, the term "qualified real estate investment trust" shall mean any real estate investment trust other than a real estate investment trust more than fifty percent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly, by a single entity that is:
- (1) Subject to the provisions of Subchapter C of Chapter 1 of Subtitle A of Title 26 of the United States Code, as amended, and not exempt from federal income tax pursuant to the provisions of Section 501 of the Internal Revenue Code of 1986, as amended.
 - (2) Not a real estate investment trust as defined in

Corporation Income Tax Statutes and Regulations

this Section or a qualified real estate investment trust subsidiary under Section 856(i) of the Internal Revenue Code of 1986, as amended.

Amended by Acts 2005, No.396 §1, eff. for all taxable periods beginning after December 31, 2005; 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-United States companies.

Notwithstanding any federal law to the contrary, gross income as defined in R.S. 47:287.61 of this Part shall include rents, salaries, wages, premiums, annuities, compensations, remuneration, emoluments, and other fixed or determinable annual or periodical gains, profits, and income taxed pursuant to United States Internal Revenue Code. 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 deter-

mined 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 adjusted 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.

F. Deduction for interest and dividends.

- (1) Effective for taxable years beginning after December 31, 2005, there shall be allowed for each taxable year a deduction equal to the amount of dividends that would otherwise be

Corporation Income Tax Statutes and Regulations

included in gross income.

- (2) Effective for taxable years beginning after December 31, 2005, there shall be allowed for each taxable year a deduction equal to the amount of interest that would otherwise be included in gross income; however, a corporation may elect to pay tax on interest income from a corporation which is controlled by the former through ownership of fifty percent or more of the voting stock of the latter and to use the provisions of R.S. 47:287.93(A)(2).

Added by Acts 1986, 1st Ex.Sess., No. 16, §1, eff. Dec. 24, 1986. Amended by Acts 2005, No. 401, §1

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

Corporation Income Tax Statutes and Regulations

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 corporation 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.

Corporation Income Tax Statutes and Regulations

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.

Corporation Income Tax Statutes and Regulations

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

Corporation Income Tax Statutes and Regulations

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,¹ 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.²

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

¹Louisiana Enterprise Zone Act, R.S. 51:1781 et seq.
²R.S. 51:1781 et seq.

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 non violent 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 non violent offense.

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 or any other court-ordered 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 such form shall contain a signed 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 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) “Non violent offense” means an offense that

Corporation Income Tax Statutes and Regulations

is not defined as a “crime of violence” pursuant to R.s. 14:2(13).

- (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 non violent offense.

Added by Acts 1994, 3rd Ex.Sess., No. 104, §1. Amended by Acts 2001, o. 1032 §15.

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

Corporation Income Tax Statutes and Regulations

such proposals by business firms with the assistance and approval of the secretary of the Department of Revenue. 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.

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 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) "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,

Corporation Income Tax Statutes and Regulations

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.

- 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 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.

Corporation Income Tax Statutes and Regulations

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 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 pur-

Corporation Income Tax Statutes and Regulations

suant 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 reason-

ably 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. 47:287.759. Tax credit; for employee and dependent health insurance coverage

A. When any contractor or subcontractor in the letting of any contract for the construction of a public work offers health insurance coverage as provided for in this Section, they shall be eligible for a five percent income tax credit on forty percent of the amount of the contract received in a tax year if eighty-five percent of the full-time

Corporation Income Tax Statutes and Regulations

employees of each contractor are offered health insurance coverage and each such general contractor or subcontractor pays seventy-five percent of the total premium for such health insurance coverage for each full-time employee who chooses to participate and pays not less than fifty percent of the total premium for health insurance coverage for each dependent of the full-time employee who elects to participate in dependent coverage.

- B. For the purposes of this Section, a full-time employee shall be one that is scheduled to work a minimum of thirty-five hours per week and who earns from the general contractor or subcontractor less than forty thousand dollars annually.
- C. (1) The credit shall be allowed against the income tax for the period in which the credit is earned.
- (2) A credit shall not be allowed to a general contractor for any contract amounts received that are paid to a subcontractor eligible for a credit on such amount.
- (3) The credit shall not exceed three million dollars per year.

Added by Acts 2005, No. 504 §1, eff. for taxable periods beginning after Jan. 1, 2005 but before Jan. 1, 2008.

LAC 61:I. 1195. Health Insurance Credit for Contractors of Public Works

A. Louisiana Revised Statutes 47:287.759 allows for a tax credit against corporation income tax to contractors and subcontractors constructing a public work who offer health insurance to their employees and their dependents.

- 1. The amount of the credit is 2 percent of the total amount of the contract for the public work less any amounts paid to a subcontractor for a portion of the work performed by the subcontractor.*
- 2. The total tax credit for all taxpayers is limited to \$3 million per calendar year.*
- 3. At least 85 percent of the full-time employees must be offered health insurance. Contractors and subcontractors must pay 75 percent of the total premium for the health insurance of employees who choose to participate and at least 50 percent for each participating dependent of such employees.*
- 4. Employees do not include independent contractors.*

B. *Definitions*

Dependents—*spouse and those persons who would qualify as dependents on the employee's federal income tax return;*

Earnings—*gross wages of the employee not including fringe benefits.*

Health Insurance—*coverage for basic hospital care, and coverage for physician care, as well as coverage for health care.*

Public Work—*a building, physical improvement, or other fixed construction owned by the state or a political subdivision of the state;*

C. *Procedure for Allocation of the Health Insurance Credit*

- 1. The department will determine if the \$3 million cap on the health insurance credit has been exceeded after all possible extensions to file have passed for all taxpayers.*
- 2. If the \$3 million cap on the health insurance credit is not exceeded and all applicable extensions to file returns have expired, contractors and subcontractors who earn the health insurance credit will be allowed the full amount of the credit properly claimed on their tax return with appropriate interest.*
- 3. However, if more than \$3 million is claimed statewide, the department will allocate the credit on a pro rata basis in proportion to the amount of health insurance credit properly claimed on each employer's timely filed tax return. The allocation will be made after the filing deadline inclusive of all applicable extension periods.*
 - a. Contractors and subcontractors claiming the health insurance credit and an overall refund of overpayment for the taxable year should file their return with the department.*
- (1) The department will reduce the taxpayer's total refund of overpayment by the amount of the health insurance credit claimed on the tax return.*
- (2) An initial refund of overpayment, the amount of which is exclusive of the health insurance credit amount, will be sent to the taxpayer with a letter stating that the taxpayer's claimed health insurance credit will be held in abeyance until after the extended filing deadline and subsequently will be refunded with appropriate interest.*
- (3) The health insurance credit will be processed and refunded proportionately after the last extension for filing deadline.*
- (4) If the health insurance credit is reduced as provided by §1195.C.3 and the taxpayer owes additional money to the department, an assessment will be sent exclusive of penalties and interest if paid within 60 days.*

Corporation Income Tax Statutes and Regulations

(a) *If the additional amount owed is paid within the 60-day period, the interest will be abated pursuant to R.S. 47:1601. Payment of the additional amount owed within the 60-day period will be considered to be a request for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.*

(b) *If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.*

b. *Contractors and subcontractors who claim the health insurance credit and still owe additional taxes for the taxable year, should file their return with the department and remit payment with the return.*

(1) *If the taxpayer's health insurance credit is reduced as provided by §1195.C.3, the taxpayer will receive an assessment for the difference without being subject to penalties and interest if paid within 60 days.*

(2) *If the additional amount owed is paid within the 60-day period, the interest will be abated pursuant to R.S. 47:1601. Payment of the additional amount owed within the 60-day period will be considered to be a request for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.*

(3) *If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.*

c. *Contractors and subcontractors who claim the health insurance credit that reduce their tax liability to zero for a taxable year should file their return with the department.*

(1) *If the taxpayer's health insurance credit is reduced as provided by §1195.C.3 such that the taxpayer owes additional tax, the taxpayer will receive an assessment for the taxes owed exclusive of interest and penalties if paid within 60 days.*

(2) *If the additional amount owed is paid within the 60-day period, the interest is abated pursuant to R.S. 47:1601. Payment of the additional amount owed within the 60-day period will be considered to be a request for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.*

(3) *If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.*

D. *Information that must be submitted with the return in order to properly claim the credit:*

1. *statement that health insurance has been offered to at least 85 percent of the employees;*

2. *copy of the health insurance coverage plan from the insurance company;*

3. *number of full-time employees working for the contractor or subcontractor; and*

4. *amount of the contract for public work.*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.759, R. S. 47:1601, R.S. 47:1603, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 32:864(May 2006).

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 car-

Corporation Income Tax Statutes and Regulations

ryover 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
Statutes and Regulations

Corporation Franchise Tax Statutes 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 one dollar and fifty cents for each one thousand dollars, or major fraction thereof on the first three hundred thousand dollars of taxable capital and at a rate of three dollars for each one thousand dollars or major fraction thereof, which exceeds three hundred thousand dollars of taxable capital. Taxable capital shall be determined as hereinafter provided; the minimum tax shall not be less than ten dollars 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.

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; Acts 2004, 1st Ex. Sess., No. 2 §1 eff. Jan. 1, 2006.

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*

Corporation Franchise Tax Statutes and Regulations

payment of taxes) as are imposed on a business or non-profit 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 government-

tal 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,

Corporation Franchise Tax Statutes and Regulations

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.

- 1 (1) Taxable capital shall be the amount of a corporation's issued and outstanding capital stock, surplus, undivided profits, and that portion of borrowed capital provided for in R.S. 47:603 until borrowed capital is no longer included in taxable capital.
- (2) Every corporation taxed under this Chapter shall determine the amount of its issued and outstanding capital stock, surplus, undivided profits, and borrowed capital that portion of borrowed capital provided for in R.S. 47:603 until borrowed capital is no longer included in taxable 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 taxable 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 taxable 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 19351 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 deductions 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 stock 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 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

D. Holding Corporation deductions.

- (1) Any corporation having one or more subsidiary public water utility corporation 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.

Corporation Franchise Tax Statutes and Regulations

- (2) "Subsidiary public water utility corporation" is defined to be any public utility corporation organized under the

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 taxable 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 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.

F. Insurance Holding Corporation deduction.

For tax years beginning on and after July 1, 2002 and before January 1, 2005, any corporation owning at least eighty percent of the capital stock of a subsidiary property and casualty insurance corporation, such subsidiary having capital and surplus of less than twenty million dollars, shall be entitled to deduct from the amount of its taxable capital the amount of its investments in and advances to such subsidiary insurance corporation that was allocated to Louisiana under R.S. 47:606(B).

- G.**(1) For taxable years beginning before January 1, 2012, the portion of the deduction for "invest-

ments in and advances to" as provided for in this Section which is composed of loans and advances, after the application of R.S. 47:605.1, shall be reduced by the same percentage and at the same time as is provided for the reduction of borrowed capital in R.S. 47:603(A).

- (2) For taxable years beginning after December 31, 2011, the deduction for "investments in and advances to" as provided for in this Section shall only include amounts included in the taxable capital of the recipient.

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. Amended by Acts 2002, No. 59 §1, eff. for taxable years beginning after June 30, 2002. Amended by Acts 2004, 1st Ex. Sess., No. 2 §1, eff. for taxable years beginning after December 31, 2005.

1 U.S.C.A. §79 et seq.

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 cor-

Corporation Franchise Tax Statutes and Regulations

poration (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

A.(1). As used in this Chapter, “borrowed capital” means all indebtedness of a corporation, subject to the provisions of this Chapter, excluding indebtedness classified as capital stock, surplus, and undivided profits under the provisions of RS 47:605.1, 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.

- (2)(a) For taxable years beginning after December 31, 2005, and before January 1, 2007, taxable capital for purposes of this Chapter shall include eighty-six percent of borrowed capital as determined pursuant to the provisions of this Section.
- (b) For taxable years beginning after December 31, 2006, and before January 1, 2008, taxable capital for purposes of this Chapter shall include seventy-two percent of borrowed capital as determined pursuant to the provisions of this Section.
- (c) For taxable years beginning after December 31, 2007, and before January 1, 2009, taxable capital for purposes of this Chapter shall include fifty-eight percent of borrowed capital as determined pursuant to the provisions of this Section.
- (d) For taxable years beginning after December 31, 2008, and before January 1, 2010, taxable capital for purposes of this Chapter shall include forty-four percent of borrowed capital as determined pursuant to the provisions of this Section.
- (e) For taxable years beginning after December 31, 2009, and before January 1, 2011, taxable capital for purposes of this Chapter shall include thirty percent of borrowed capital as determined pursuant to the provisions of this Section.
- (f) For taxable years beginning after December 31, 2010, and before January 1, 2012, taxable capital for purposes of this Chapter shall include sixteen percent of borrowed capital as determined pursuant to the provisions of this Section.
- (g) For taxable years beginning after December 31, 2011, or thereafter, taxable capital for purposes of this Chapter shall not include borrowed capital.

B. 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

Corporation Franchise Tax Statutes and Regulations

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.
- (5) Financing of the inventory of a motor vehicle, manufactured home, recreational vehicle, boat, motorcycle, motor home, or farm implement dealership when the financing is secured by specific motor vehicles, manufactured homes, recreational vehicles, boats, motorcycles, motor homes, or farm implements, each of which is identified by a manufacturer or vehicle identification number, and an amount equivalent to the funds lent on each motor vehicle, manufactured home, recreational vehicle, boat, motorcycle, motor home, or farm implement is required to be repaid as each such unit is sold.

Amended by Acts 2002, No. 38, § 1, eff. June 25, 2002; Acts 2004, 1st Ex. Sess., No. 2. §1, eff. Jan, 2006.

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*

Corporation Franchise Tax Statutes and Regulations

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

Corporation Franchise Tax Statutes and Regulations

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 taxing 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 nec-

Corporation Franchise Tax Statutes and Regulations

essary 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.

Corporation Franchise Tax Statutes and Regulations

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 “indebtedness” 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.*

Corporation Franchise Tax Statutes and Regulations

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 partially 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.
- C. Adjustment by regulated companies for depreciation sustained but not recorded. When, because of regulations of a governmental agency controlling the books of a taxpayer, the taxpayer is unable to record on 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.
1. Permission to add to depreciation reserves and reduce surplus must be requested in advance and shall be granted only in those instances in which a governmental agency requires that the books of the corporation reflect a depreciation method under which the total accumulated depreciation reflected on the books is less than would be reflected if the straight-line method of depreciation had been applied from the date of acquisition of the asset. The period over which depreciation shall be computed shall be the expected useful life of the asset.
 2. The amount of adjustment shall be the amount of accumulated depreciation which would be reflected on the books if the straight-line method had been applied from the date of acquisition of the asset, less the amount of accumulated depreciation actually reflected on the books.
 3. Permission granted by the secretary shall be automatically revoked upon a material change in the facts and circumstances presented by the taxpayer.
 4. Permission granted by the secretary shall be for a period of six years, at which time the taxpayer must reapply for permission to continue making the adjustments.
- D. For purposes of this Chapter, reserves include 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 indebtedness is used in R.S. 47:603.
- E. For purposes of this Chapter, the term assets shall mean

Corporation Franchise Tax Statutes and Regulations

all of a corporation's property and rights of every kind. The definition of the term assets for corporation franchise tax purposes may differ from the definition of assets for general accounting purposes.

AUTHORITY NOTE: *Promulgated in accordance with R.S. 47:605, and R.S. 47:1511.*

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), LR 28:1995 (September 2002), LR 29:1520 (August 2003).*

LAC 61:I.320. Books of the Corporation

A. Generally the "books of the corporation" are financial statements that will include an income statement, a balance sheet (listing assets, liabilities, and owners equity including changes thereto), and other appropriate information. The following may be considered applicable financial statements.

1. Statement required to be filed with the Securities and Exchange Commission (SEC). A financial statement that is required to be filed with the Securities and Exchange Commission.

2.a. Certified audited financial statement. A certified audited financial statement that is used for credit purposes, for reporting to shareholders or for any other substantial non-tax purpose. Such a statement must be accompanied by the report of an independent (as defined in the American Institute of Certified Public Accountants Professional Standards, Code of Professional Conduct, Rule 101 and its interpretations and rulings) certified public accountant or, in the case of a foreign corporation, a similarly qualified and independent professional who is licensed in any foreign country. A financial statement is "certified audited" for purposes of this Section if it is:

i. certified to be fairly presented (an unqualified or "clean" opinion);

ii. subject to a qualified opinion that such financial statement is fairly presented subject to a concern about a contingency (a qualified "subject to" opinion);

iii. subject to a qualified opinion that such financial statement is fairly presented, except for a method of accounting with which the accountant disagrees (a qualified "except for" opinion); or

iv. subject to an adverse opinion, but only if the accountant discloses the amount of the disagree-

ment with the statement.

b. Any other statement or report, such as a review statement or a compilation report that is not subject to a full audit is not a certified audit statement.

3. A financial statement provided to a government regulator. A financial statement that is required to be provided to the federal government, or any agency thereof (other than the Securities and Exchange Commission), a state government or agency thereof, or a political subdivision of a state or agency thereof. Except as otherwise provided herein, an income tax return, franchise tax return or other tax return prepared solely for the purpose of determining any tax liability that is filed with a federal, state or local government or agency cannot be an applicable financial statement.

4. Other financial statements. A financial statement that is used for credit purposes, for reporting to shareholders, or for any other substantial non-tax purpose, even though such financial statement is not described in Paragraphs A.1-3 of this Section.

B. Priority Among Statements

1. In general, if a taxpayer has more than one financial statement described in Paragraphs A.1-4 of this Section, the taxpayer's applicable financial statement is the statement with the highest priority.

a. Priority is determined in the following order:

i. a financial statement described in Paragraph A.1 of this Section;

ii. a certified audited statement described in Paragraph A.2 of this Section;

iii. a financial statement provided to a government regulator described in Paragraph A.3 of this Section;

iv. any other financial statement described in Paragraph A.4 of this Section.

b. For example, Corporation A, which uses a calendar year for both financial accounting and tax purposes, prepares a financial statement for calendar year 2003 that is provided to a state regulator and an unaudited financial statement that is provided to A's creditors. The statement provided to the state regulator is A's financial statement with the highest priority and thus is A's financial statement.

2. Special priority rules for use of certified audit financial statements and other financial statements.

a. In the case of financial statements described in

Corporation Franchise Tax Statutes and Regulations

Paragraphs A.2 and A.4 of this Section, within each of these categories the taxpayer's applicable financial statement is determined according to the following priority:

- i. a statement used for credit purposes;*
- ii. a statement used for disclosure to shareholders; and*
- iii. any other statement used for other substantial non-tax purposes.*

b. For example, Corporation B uses a calendar year for both financial accounting and tax purposes. B prepares a financial statement for 2003 that it uses for credit purposes and prepares another financial statement for calendar year 2003 that it uses for disclosure to shareholders. Both financial statements are unaudited. The statement used for credit purposes is B's financial statement with the highest priority and thus is B's applicable financial statement.

3. Priority among financial statements provided a government regulator. In the case of two or more financial statements described in Paragraph A.3 of this Section that are of equal priority, the taxpayer's applicable financial statement is determined according to the following priority:

- a. a statement required to be provided to the federal government or any of its agencies;*
- b. a statement required to be provided to a state government or any of its agencies; and*
- c. a statement required to be provided to any subdivision of a state or any agency of a subdivision.*

C. Whenever more than one entity, for franchise tax purposes, is included in a corporation's books, as herein defined, separate books shall be constructed for each entity doing business in Louisiana. These books shall be constructed following the same principles and methods as were employed when constructing the original books.

D. Nothing in this regulation shall restrict the secretary's authority to revise the books of the corporation as needed for the purpose of ascertaining the correct franchise tax liability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:604, R.S. 47:605 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 30:804 (April 2004).

R.S. 47:605.1. Capital stock, surplus, and undivided profits

A. If a corporation's total debt to all related parties exceeds the capital stock and surplus and undivided profits of the corporation as determined under R.S. 47:604 and 605, then fifty percent of the amount of the excess shall be included in the capital stock and surplus and undivided profits of the corporation and excluded from debt.

B. For purposes of this Section, "debt" shall not:

- (1) Include trade debt that is less than one hundred eighty days old,
- (2) Include deposit liabilities to related parties, or
- (3) Be reduced by receivables.

C. For purposes of this Section, "related party" means any member of a controlled group of corporations as defined in 26 U.S.C. Section 1563, or any other person that would be a member of a controlled group if rules similar to those of 26 U.S.C. Section 1563 were applied to that person.

Added by Acts 2004, 1st Ex Sess., No. 2 §1, eff. January 1, 2006; Amended by Acts 2005, No. 355 §1, eff. January 1, 2006.

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 taxable 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

Corporation Franchise Tax Statutes and Regulations

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) Revenue from broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission, or any other means of communication, either through a network, including owned and affiliated stations, or through an affiliated, unaffiliated, or inde-

pendent television or radio broadcasting station, shall be attributed to the state as follows:

- (i) The revenue, including advertising revenue attributed to the state from broadcasting film or radio programming, shall be determined by multiplying total revenue from broadcasting film or radio programming, including advertising revenue, by the audience factor.
- (ii) Except as otherwise provided by this Subsection, the audience factor shall be determined by the ratio of the taxpayer's Louisiana viewing or listening audience to their total viewing or listening audience. The audience factor shall be determined based on the books and records of the taxpayer or published rating statistics. However, the method used to determine the audience factor must be used consistently from year to year and must fairly represent the taxpayer's activity in Louisiana.
- (iii) When broadcasting is through or by a cable television system or other arrangement under which ultimate viewers or listeners must pay for the right to receive the broadcast, the audience factor shall be the ratio that the subscribers for that cable television system or other arrangement located in Louisiana bears to the total subscribers of that cable television system or other arrangement if the payment entitles the ultimate viewers or listeners to continuous reception of programming during a subscription period.
 - (aa) If the number of subscribers cannot be accurately determined from the taxpayer's books and records, the audience factor shall be determined based on the applicable year's subscription statistics located in published surveys. However, the source selected to determine the audience factor must be consistently used from year to year and must fairly represent the taxpayer's activity in Louisiana.
 - (bb) If the payment entitles the ultimate viewers or listeners to only discrete

Corporation Franchise Tax Statutes and Regulations

episodes or instances of film or radio programming, the audience factor shall be the ratio that the subscribers for such discrete programming located in Louisiana bears to the total subscribers for such discrete programming. If the number of subscribers for such discrete episodes or instances cannot be accurately determined from the books and records maintained by the taxpayer, the audience factor shall be determined on the basis of statistics located in published surveys. However, the source selected to determine the audience factor must be consistently used from year to year for that purpose and must fairly represent the taxpayer's activity in Louisiana.

(iv) Definitions. For the purposes of this Subsection, the following terms have the following meanings unless the context clearly indicates otherwise:

(aa) "Broadcast" means transmission by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions, directly or indirectly to viewers and listeners, or by any other means of communications.

(bb) "Film" or "film programming" means all performances, events, or productions intended to be broadcast for visual perception, including but not limited to news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works. Each episode of a series of films shall constitute a separate "film" even if the series relates to the same principal subject.

(cc) "Radio" or "radio programming" means all performances, events, or productions intended to be broadcast for auditory perception, including but not limited to news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works. Each episode of a series of radio programming shall constitute a separate "radio programming" even if the series relates

to the same principal subject.

(dd) "Subscriber" means the individual residence or other outlet that is the ultimate recipient of the transmission.

(f) 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.

(g) 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.

(h) Interest on customers' notes and accounts shall be attributed to the state in which such customers are located.

(i) 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.

(j) 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.

(k) Revenues from a parent or subsidiary corporation shall be allocated as provided in Sub-section B of this Section.

(l) 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:

Corporation Franchise Tax Statutes and Regulations

- (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)(a) For taxable periods beginning on or after January 1, 1997, and before January 1, 2007, 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 Subparagraph (3)(a) of this Subsection.
- (b) For taxable periods beginning on or after January 1, 2007, for corporations engaged in the business of manufacturing, the sole ratio shall be computed by means of a single ratio consisting of the ratio provided for in Paragraph (A)(1) of this Section.
 - (c) 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:
 - (i) Any taxpayer whose income is primarily derived from the production or sale of unrefined oil and gas.
 - (ii) Any taxpayer whose income is primarily derived from the manufacture, distribution, distillation, importation, or sale of alcoholic beverages.
 - (iii) Any taxpayer defined as an integrated oil company per the United States Internal Revenue Code - 26 USC 291(b)(4), or 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. Provided, any taxpayer, whose activities during the taxable year do not include any "gross receipts from retail sales of oil and/or natural gas", or any "refinery activities of oil and/or natural gas", will not be considered as an

Corporation Franchise Tax Statutes and Regulations

integrated oil company for Louisiana tax purposes, notwithstanding such taxpayer may be a "related party" or a "member of the federal consolidated group" under the United States Internal Revenue Code.

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 taxable 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).

F. Mergers. When a corporation merges with another corporation and the merging corporation dissolves or ceases to exist, the allocation of taxable capital for determining the amount of tax due for the tax period ending after the tax period in which the merger occurred shall be computed

as follows:

- (1) To compute the ratio of sales and other revenues attributable to Louisiana as prescribed under Paragraph (1) of Subsection A of this Section, the merging corporation's net sales and other revenues from the beginning of the surviving corporation's taxable period to the date of the merger must be included with the surviving corporation's net sales and other revenues.
- (2) To compute the ratio of the value of property and assets attributable to Louisiana as prescribed under Paragraph (2) of Subsection A of this Section, the merging corporation's property and assets must be included with the surviving corporation's property and assets. If the merger is effective at 12:00 midnight on the last day of the merged corporation's accounting period, which period 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.

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; Acts 1998, No. 5 §1, eff. for taxable periods beginning after December 31, 1999; Acts 2002, No. 65, § 2, eff. for taxable years beginning after December 31, 2002.

LAC 61:I. 306. Allocation of Taxable Capital

A. General Allocation Formula. Every corporation subject to the corporation franchise tax must determine the extent to which its entire franchise taxable base is employed in the exercise of its franchise within this state. For all taxpayers other than those in the business of manufacturing, the extent of such use of total taxable base in the state is determined by multiplying the total taxable capital by the ratio obtained through the arithmetical average of 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 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

Corporation Franchise Tax Statutes and Regulations

taxpayer's property and assets wherever situated or used. For taxpayers in the business of manufacturing, the extent of such use of total taxable base in the state is determined by multiplying the total taxable capital by 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.

1. *Net Sales and Other Revenue.* Net sales to be combined with other revenue in determining both the numerator and denominator of the revenue ratio for purposes of calculating the portion of the taxpayer's total taxable 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 to determine whether they constitute sales made to customers that should be included in the revenue ratio or whether they constitute exchanges that are not sales and should be excluded from the revenue ratio. Sales of scrap materials and by-products are construed to meet the requirements for inclusion in the revenue ratio. Sales made other than to customers, such as, but not limited to, sales of stocks, bonds, futures, options, derivatives, 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 ratio. Similarly, revenues and/or gains on the sale of property other than stock in trade shall not be included in the revenue ratio 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 not 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 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 pur-

chaser. 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 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.

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. Transportation of Natural Resources by a

Corporation Franchise Tax Statutes and Regulations

Public Carrier Pipeline. Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier. 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 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 public carrier pipeline, 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.

iv. *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 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.

c. *Revenue from Transportation Other Than Air Travel.* Revenue 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. Revenue from transportation exclusively without Louisiana shall not be included in the revenue attributed to Louisiana. Revenue attributable to Louisiana shall be computed separately for each of the four classes enumerated below:

i. 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 1 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 1 mile;

(c). in the case of the transportation of property other than liquids, the transportation of 1 ton of the property a distance of 1 mile;

(d). in the case of the transportation of natural gas, the transportation of one MCF or one MBTU a distance of 1 mile.

ii. 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.

iii. *Example:* ABC Corporation is in the business of transporting natural gas as a common carrier. During the year 2005, ABC entered into five transactions. In the first transaction one million MMCF was transported from Texas, through Louisiana, to Mississippi. The total distance transported was 500 miles, of which 200 miles was in Louisiana. The charge for the transportation was \$250,000.00. In the second transaction one million MMCF was transported from one point in Louisiana to another point in Louisiana, a distance of 150 miles, for a charge of \$150,000.00. In the third transaction one million MMCF was transported from one point in Texas to another point in Texas,

Corporation Franchise Tax Statutes and Regulations

a distance of 500 miles, for a charge of \$250,000.00. In the fourth transaction one million MMCF was transported from a point in Louisiana to a point in another state for a charge of \$500,000.00. The total distance transported was 1,000 miles, of which 100 miles were in Louisiana. In the fifth transaction one million MMCF was transported from a point in Louisiana to a point in another state for a charge of \$250,000.00. The distance transported was 500 miles, of which 100 was in Louisiana. The portion of the gross apportionable income attributed to Louisiana would be computed as follows:

	Louisiana Amount
First Transaction – $200/500 \times \$250,000 =$	\$100,000
Second Transaction – entirely from Louisiana =	150,000
Third Transaction – neither entirely nor partially in Louisiana	-0-
Fourth Transaction – $100/1,000 \times \$500,000 =$	50,000
Fifth Transaction – $100/500 \times \$250,000 =$	50,000
<i>Louisiana Income From</i>	
Transportation of Natural Gas	\$350,000

d. Revenue from Services Other Than from Transportation

i. For purposes of R.S. 47:606(A), in addition to any other revenue attributed to Louisiana, the following revenue from providing telephone, telecommunications, and similar services shall be attributed to Louisiana:

- (a). revenue derived from charges for providing telephone “access” from a location in this state. Access means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to a service address located in the state and without regard to actual usage;*
- (b). revenue derived from charges for unlimited calling privileges, if the charges are billed by reference to a service address located in this state;*
- (c). revenue from intrastate telephone calls or other telecommunications, except for mobile telecommunication services, beginning and ending in Louisiana;*
- (d). revenue from interstate or international telephone calls or other telecommunications,*

except for mobile telecommunication services, either beginning or ending in Louisiana if the service address charged for the call or telecommunication is located in Louisiana, regardless of where the charges are billed or paid;

(e). revenue from mobile telecommunications service:

- (i). revenue from mobile telecommunications services shall be attributed to the place of primary use, which is the residential or primary business street address of the customer;*
- (ii). if a customer receives multiple services, such as multiple telephone numbers, the place of primary use of each separate service shall determine where the revenue from that service is attributed;*
- (iii). revenue from mobile telecommunications services shall be attributed to Louisiana if the place of primary use of the service is Louisiana.*

(f). Definitions. For the purpose of this Subparagraph, the following terms have the following meanings unless the context clearly indicates otherwise:

- (i). Call—a specific telecommunications transmission;*
- (ii). Customer—any person or entity that contracts with a home service provider or the end user of the mobile telecommunications service if the end user is not the person or entity that contracts with the home service provider for mobile telecommunications service;*
- (iii). Home Service Provider—the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services;*
- (iv). Place of Primary Use of Mobile Telecommunications Service—the street address representative of where the customer’s use of mobile telecommunications service primarily occurs. This address must be within the licensed service area of the home service provider and must be either the residential or the primary business street address of the customer. The home service provider shall be responsible for obtaining and maintaining the customer’s place of primary use as prescribed by R.S. 47:301(14)(i)(ii)(bb)(XI);*

Corporation Franchise Tax Statutes and Regulations

- (v). *Service Address*—the address where the telephone equipment is located and to which the telephone number is assigned;
 - (vi). *Telecommunications*—the electronic transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through the use of any medium such as wires, cables, satellite, microwave, electromagnetic waves, light waves or any combination of those or similar media now in existence or that might be devised, by telecommunications does not include the information content of any such transmission;
 - (vii). *Telecommunication Service*—providing telecommunications including service provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.
 - ii. Revenue derived from services, other than from transportation, or telephone, telecommunications, and similar services, shall be attributed to the state in which the services are rendered. Services are rendered where they are received by the customer.
 - iii. 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.
- e. *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 or states 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.
- f. *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. 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.
- g. *Other Interest and Dividends*

Corporation Franchise Tax Statutes and Regulations

- 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. 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.*
- b. 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.*
 - i. 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.*
 - j. All Other Revenues*
 - i. All revenues which are not specifically described in §306.A.1.a-i 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. (a) Revenues from partnerships shall be attributed within and without Louisiana based on the proportion of the partnership's capital employed in Louisiana. The proportion of the partnership's capital employed in Louisiana is*

Corporation Franchise Tax Statutes and Regulations

the allocation ratio, also known as the franchise tax apportionment ratio, that would be computed for the partnership if the partnership were a corporation subject to franchise tax.

(b) Revenues from a partnership are the partner's distributive share of partnership net income when the partner's distributive share of partnership net income is a positive amount. Losses from a partnership are not revenues from a partnership.

(c) Revenue from a partnership should be revenue from the partnership as reflected on the taxpayer's books. However, if there is no difference in the proportions of incomes, expenses, gains, losses, credits and other items accruing to the taxpayer from the partnership for book purposes and tax purposes the taxpayer may use tax basis revenue from a partnership. Once a taxpayer uses either book basis revenue or tax basis revenue, that basis must be used for all future tax periods.

iv. The term partnership includes a syndicate, group, pool, joint venture, limited liability company, or other unincorporated organization 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 corporation 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 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. Assets will be allocated as follows:*
- a. Cash on hand shall be allocated to the state in which the cash is physically located.*
 - b. 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 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 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 corporation shall be allocated as provided in R.S. 47:606(B) and the regulations issued thereunder.*
- e. 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.g 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 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.*
- g. 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*

Corporation Franchise Tax Statutes and Regulations

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 rivers or 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 rivers or 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 rivers or 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 rivers or 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 rivers or 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 one tenth of one ton;*
- xv. the value of inventories of merchandise in tran-*

Corporation Franchise Tax Statutes and Regulations

sit 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 may require the allocation of the value of the property on the basis of any method deemed reasonable by the secretary.

b. 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 proportion of the partnership's capital employed in Louisiana. The proportion of the partnership's capital employed in Louisiana is the allocation ratio, also known as the franchise tax apportionment ratio, that would be computed for the partnership if the partnership were a corporation subject to franchise tax.

B. Allocation of Intercompany Items

1. Without regard to the legal or commercial domicile of a corporation subject to the corporation franchise tax, and without regard to the business situs of investments in or advances to a subsidiary or parent corporation by a corporation subject to the corporation franchise tax, 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 corporation franchise tax.

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, 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 alternative minimum tax; 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 that 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.

Corporation Franchise Tax Statutes and Regulations

6. *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 taxable capital upon which the corporation franchise tax 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), repromulgated by the Department of Revenue, Policy Services Division, LR 30:453 (March 2004), amended LR 31:696 (March 2005), LR 32:415 (March 2006).*

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

Corporation Franchise Tax Statutes and Regulations

- the state of Louisiana, other than family corporations exempt under the provisions of Subparagraph (1)(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;
 - (10) Insurance corporations paying a premium tax under Title 22 of the Louisiana Revised Statutes of 1950;
 - (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

Corporation Franchise Tax Statutes and Regulations

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;

- (15) 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;*

Corporation Franchise Tax Statutes and Regulations

- 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

Corporation Franchise Tax Statutes and Regulations

- 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*

Corporation Franchise Tax Statutes and Regulations

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

Corporation Franchise Tax Statutes and Regulations

- 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 amend-*

Corporation Franchise Tax Statutes and Regulations

ment, 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 characteristics, 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 works; 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,*

Corporation Franchise Tax Statutes and Regulations

- (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 reg-*

ularly 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*

Corporation Franchise Tax Statutes and Regulations

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, copy-

rights, 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 pur-

Corporation Franchise Tax Statutes and Regulations

poses, 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 non-profitable 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 non-profitable 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*

Corporation Franchise Tax Statutes and Regulations

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 circum-*

Corporation Franchise Tax Statutes and Regulations

- stances 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 by-laws permit activities other than the holding of title to property, collecting the income therefrom, paying the necessary expenses of operating the property,*

Corporation Franchise Tax Statutes and Regulations

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,

Corporation Franchise Tax Statutes and Regulations

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

Corporation Franchise Tax Statutes and Regulations

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. However, 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

Corporation Franchise Tax Statutes and Regulations

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.(1). 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, except provided for in paragraph (2) of this subsection, 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.

(2)(a) For taxable periods beginning after August 28, 2005, a corporation that incurred extraordinary debt as a result of a gubernatorially declared disaster of 2005 may elect to compute its borrowed capital on the basis of the calendar or fiscal year closing immediately prior to August 28, 2005, if it meets either of the following conditions:

- (i) Fifty percent or more of the corporation's revenue derived in the state for the fiscal year closing immediately prior to August 28, 2005, was directly attributable to one or more Hurricane Katrina or Hurricane Rita Federal Emergency Management Agency Individual Assistance Areas.
- (ii) Fifty percent or more of the corporation's property and assets in the state were situated or used in one or more Hurricane Katrina or Hurricane Rita Federal Emergency Management

Agency Individual Assistance Areas on the date of the calendar or fiscal year closing immediately prior to August 28, 2005.

(b) Extraordinary debt incurred as a result of a gubernatorially declared disaster of 2005 means any borrowed capital of a corporation to which Item (2)(a)(i) or (ii) applies that is in excess of the borrowed capital on that corporation's books on the calendar or fiscal year closing immediately prior to August 28, 2005.

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.
Amended by Acts 2005, 1st Ex. Sess., No. 27§1, eff. Aug. 15, 2005.

LAC 61:I.309. Due Date, Payment and Reporting of Tax

A. The corporation franchise tax becomes due 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 on or before the fifteenth day of the third month following the month in which the tax becomes due; in the case of a calendar year taxpayer, the tax becomes due on January 1 and is payable to the secretary on or before April 15. If the day on which the tax is payable falls on a Saturday, Sunday, or legal holiday the tax is payable on the next business day. For purposes of this section, fiscal or calendar year shall be determined by reference to the

Corporation Franchise Tax Statutes and Regulations

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, 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 become due 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 R.S. 47:609 and 47:1511.*

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), amended by the Department of Revenue, Policy Services Division, L.R. 28:97 (January 2002).*

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.

Corporation Franchise Tax Statutes and Regulations

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, regular-

ly 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

Repealed by Acts 1998, No. 4, §1, eff. June 4, 1998.

R.S. 47:615. Disposition of collections

Repealed by Acts 1998, No. 4, §1, eff. June 4, 1998.

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.

Corporation Franchise Tax Statutes and Regulations

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.

Added by Acts 1976, No. 87, §1, eff. Jan. 1, 1997. Amended by Acts 1982, No. 853, §1, eff. Oct. 1, 1982; Acts 1985, No. 106, §1, eff. June 29, 1985; Acts 1986, No. 597, §2, eff. July 6, 1986; Acts 1988, 1st Ex.Sess., No. 4, §1, eff. March 28, 1988, Amended by Acts 1997, No. 1172, §8, eff. June 30, 1997.

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).

R.S. 47:618. Trucking Company

Notwithstanding any other provisions of this Chapter to the contrary, trucking companies which are not required to apportion income to this state because they do not meet the minimal nexus provisions of R.S. 47:287.95(C)(2) shall not be subject to the corporation franchise tax.

Added by Acts 1998, No. 26, § 1, eff. June 24, 1998.

Corporation Franchise Tax Statutes and Regulations

Miscellaneous Provisions

Miscellaneous Provisions

Atchafalaya Trace Heritage Area Development Zone

R.S. 25:1226. Legislative findings and purpose

A. The legislature finds the following:

- (1) The unique, nationally significant cultural, historic, natural, and scenic resources of the Atchafalaya Trace Heritage Area should be utilized in a sustainable manner to their maximum potential in order to improve the quality of life of the inhabitants of the region.
- (2) Many residents of the area have historically suffered from a lack of economic opportunities due to a poor infrastructure, few employment opportunities, and a lack of access to capital.
- (3) Many of the tax incentive and capital access programs administered by the Department of Economic Development do not target heritage-based businesses located in the trace area.
- (4) The Atchafalaya Trace Commission is in a unique position to provide valuable assistance to the residents of the trace area in obtaining access to capital, tax incentives, educational resources, and other economic development tools in order to enhance the economic vitality of the area.

B. This Part is intended to achieve the following purposes:

- (1) To assist individuals and businesses that are engaged in heritage-based commercial activities in obtaining capital and tax incentives through existing programs administered by the Department of Economic Development and other local, state, and federal agencies.
- (2) To create a pilot program that provides specific tax incentives for heritage-based cottage industry located in the trace area in order to foster more economic development and job opportunities for the residents of the area.
- (3) To improve the overall quality of life of the residents of the Atchafalaya Trace Heritage Area.

Added by Acts 2002, 1st Ex. Sess., No. 9, § 1, eff. on January 1, 2003.

R.S. 25:1226.1. Definitions

For the purposes of this Part, the following terms shall have the meanings hereinafter ascribed to them:

- (1) “Commission” means the Atchafalaya Trace Commission.
- (2) “Cultural heritage” means those qualities that capture the traditions, customs, beliefs, history, folklore, lifeways, and material culture of the Atchafalaya Trace Heritage Area.
- (3) “Department” means the Department of Economic Development.
- (4) “Development zone” means the Atchafalaya Trace Heritage Area Development Zone, which encompasses the territory of the following parishes in their entirety: St. Mary, Iberia, St. Martin, St. Landry, Avoyelles, Pointe Coupee, Iberville, Assumption, Terrebonne, Lafayette, West Baton Rouge, Concordia, and East Baton Rouge.
- (5) “Heritage-based cottage industry” means a small business with no more than twenty full or part-time employees or an individual that is sustainably harnessing the Atchafalaya Trace Heritage Area’s cultural heritage and natural heritage resources for purposes which include interpreting, accessing, developing, promoting, or reinforcing the unique character and characteristics of the heritage area. “Heritagebased cottage industries” shall include lodging, including bed and breakfasts, camping, houseboats and recreational vehicle facilities; museums, including living museums and interpretive facilities; artists and craftsmakers of authentic or locally made products; authentic food packaging, production, and harvesting; music production and instrument making, historic homes, house museums, and historic sites; boat, canoe, kayak, and bicycle rentals; wild and scenic sites; hunting, fishing, and birding guide services; tour planning and cultural guide services; swamp tours, airboat tours, helicopter tours, plane tours, and balloon tours; retail facilities of authentic products and agricultural tours. “Heritage-based cottage industry” shall not include hotels, motels, restaurants, gaming facilities, churches, and housing. A “heritage-based cottage industry” may be a new, existing, or expanding business. In order to qualify as a “heritage-based cottage industry” for purposes of this Act, the owner of the business must be a resident of the heritage area development zone.
- (6) “Natural heritage” means one of those qualities that capture the environmental features of the Atchafalaya Trace Heritage Area, including man-made and natural resources and wildlife.

Miscellaneous Provisions

(7) "Review board" means the Atchafalaya Trace Heritage Area Development Zone Review Board.

(8) "Small business" means a business with no more than twenty full or part-time employees.

Added by Acts 2002, 1st Ex. Sess., No. 9, § 1, eff. on January 1, 2003.

R.S. 25:1226.2. Atchafalaya Trace Heritage Area Development Zone Review Board

A. The review board shall be composed of the following eight members:

- (1) The governor or his designee.
- (2) The secretary of the Department of Economic Development or his designee.
- (3) The secretary of the Department of Culture, Recreation and Tourism or his designee.
- (4) The chairman of the Atchafalaya Trace Heritage Area Commission or his designee.
- (5) The executive director of the Atchafalaya Trace Commission.
- (6) The secretary of the Department of Revenue or his designee.
- (7) The chairman of the House Committee on Ways and Means or his designee.
- (8) The chairman of the Senate Revenue and Fiscal Affairs Committee or his designee.

B. Members of the board shall receive no additional pay for their service on the review board.

C.(1) The review board shall meet as often as it deems necessary, but at least once each year, to evaluate applications made by heritage-based cottage industry located in the development zone for those tax exemptions or credits provided for in this Part.

(2) The review board shall rate each application and recommend for approval by the State Board of Commerce and Industry those applicants it determines, according to established criteria, to be eligible and that will be beneficial to the development of the development zone.

D. The review board may adopt bylaws to govern its affairs and activities.

Acts 2002, 1st Ex. Sess., No. 9, § 1, eff. on January 1, 2003.

R.S. 25:1226.3. Authority of the Commission

The commission shall have the authority to do the following:

- (1) Adopt and promulgate rules in accordance with the Administrative Procedure Act to effectuate the provisions of this Part, and to establish eligibility requirements for those entities applying for those tax exemptions and credits provided for in this Part.
- (2) Provide assistance to heritage-based cottage industry located in the development zone in accessing existing tax exemption, rebate, and credit programs administered by the department.
- (3) Provide assistance to heritage-based cottage industry located in the development zone in accessing capital through existing programs administered by the Louisiana Economic Development Corporation and by various federal agencies.
- (4) Provide assistance to heritage-based cottage industry located in the development zone in utilizing educational and small business resource programs administered by various local and state agencies, including but not limited to the community economic development educational programs offered by the Louisiana State University Agricultural Center.
- (5) Use funds available to the commission to develop a Louisiana-made product catalog and internet shopping pages.
- (6) Use funds available to the commission to identify potential export markets for consumer or durable goods produced in the development zone.
- (7) Use funds available to the commission to engage in community revitalization and building rehabilitation initiatives in the development zone.
- (8) Use funds available to the commission to match federal funds once national heritage area designation is achieved.
- (9) Interpret and provide access to the nationally significant resources of the region.

Added by Acts 2002, 1st Ex. Sess., No. 9, § 1, eff. on January 1, 2003.

Miscellaneous Provisions

R.S. 25:1226.4. Tax Exemptions and Credits

A.(1) The State Board of Commerce and Industry, hereinafter referred to as the “commerce board”, with the approval of the governor, may enter into contracts for periods not exceeding five years with heritage-based cottage industry located or to be located in the development zone under which such concerns are granted exemptions and credits from the taxes imposed by this state, as provided in Subsection C of this Section, subject to such terms, conditions, and limitations as the commerce board deems to be in the best interests of the state.

(2) No contract shall be granted for any exemptions or credits provided for in this Section which are not directly related to the concern located within the development zone; and no tax exemption or credit shall be granted for any tax or portion of a tax applicable to operations or activities of a concern located outside of the development zone.

B.(1) Applications for contracts of exemption or credit shall be submitted first to the review board, which shall evaluate the eligibility of each applicant according to criteria and rules adopted by the commission. The review board shall recommend to the department those applications it deems eligible to receive tax benefits.

(2) The department shall review the application to determine whether the requirements for a contract have been satisfied and shall determine whether exemptions or credits should be provided in a contract. The Department of Revenue shall aid the department in determining whether the tax information furnished by the applicant is true and correct. The Department of Labor shall aid the department in verifying employment data.

(3) The commerce board shall review any recommendations for exemptions or credits made by the department. It shall conduct public hearings on any application for exemption or credit upon such terms and under such procedures as it shall adopt and promulgate by rule. The commerce board, in consultation with the Department of Revenue, shall forward its recommendations, together with all supporting documents and the recommendations of the department, to the governor.

(4) The department and the commerce board may adopt and promulgate such rules and regulations consistent with the provisions of this Section as are necessary to carry out the provisions of this

Section.

C.(1) Whenever the governor finds that a concern satisfies the requirements of this Part and the criteria established by rule, he shall advise the commerce board that it may enter into a contract with such cottage industry for a tax credit of up to seven hundred fifty dollars which may be used against the tax liability for state income and corporation franchise taxes related to the operations of the cottage industry within the development zone.

(2) In addition to those tax credits provided for in Paragraph (1) of this Subsection, the board may also enter into contracts with eligible cottage industries for a seven hundred fifty dollar tax credit per new employee hired during the taxable year for which the credit is claimed. In order to qualify for this credit, the applicant must have net new hires of one full-time employee or two part-time employees. A full-time employee is a person employed for at least thirty-two hours per week. A part-time employee is a person employed for at least twenty hours per week. In order to qualify as a new hire for purposes of this credit, the employee must have been a resident of the heritage area development zone for at least thirty days prior to employment. The credit may be applied to any state income tax liability or any state corporate franchise tax liability, but not liabilities for penalty or interest due or outstanding at the time the credit is generated. This credit shall be applicable only to a position that did not previously exist in the business and that is filled by a resident of the development zone who is performing duties in connection with the operation of the business as a regular, full-time employee.

(3) Taxpayers who are awarded credits pursuant to the provisions of this Part in excess of their income and corporation franchise tax liability may carry forward their unused credits for no more than ten years from the date the credit was originally awarded.

(4) Application of credits awarded pursuant to the provisions of this Part.

(a) All entities taxed as corporations for Louisiana income or corporation franchise tax purposes shall claim any credit allowed under this Section on their corporation income and corporation franchise tax return.

(b) Individuals shall claim any credit allowed

Miscellaneous Provisions

under this Section on their individual income tax return.

- (c) Estates or trusts shall claim any credit allowed under this Section on their fiduciary income tax returns.
- (d) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:
 - (i) Corporate partners or members shall claim their share of the credit on their corporation income or corporation franchise tax returns.
 - (ii) Individual partners or members shall claim their share of the credit on their individual income tax returns.
 - (iii) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

Added by Acts 2002, 1st Ex. Sess., No. 9, § 1, eff. on January 1, 2003.

R.S. 25:1226.5. Violations

Upon violation of any of the terms and conditions of the contract under which credits are granted, the commerce board, with approval of the governor, shall give notice thereof in writing, and unless the violation is corrected within ninety days, any remaining portion of the exemption from taxation granted under any contract entered into pursuant to this Part may be terminated, the amount of all credits awarded pursuant to this Part that were credited against tax liability shall be repaid to the state, and any unused credits shall be canceled.

Added by Acts 2002, 1st Ex. Sess., No. 9, § 1, eff. on January 1, 2003.

R.S. 25:1226.6. Termination and Evaluation of Program

A. On and after January 1, 2007, no new applications to receive tax exemptions or credits pursuant to this Part shall be approved by the State Board of Commerce and Industry, nor shall the commission engage in any of the activities described in R.S. 25:1226.3. However, a business which, prior to January 1, 2007, has been approved by the board to receive tax exemptions or credits under this program shall continue to receive such tax benefits pursuant to the terms of its agreement with the state of Louisiana as long as the business retains its eligibility.

B. The commission shall periodically monitor the implementation and operation of the provisions of this Part. Prior to the cessation of activities as provided for in Subsection A of this Section, the commission shall provide written evaluation of the program and its economic impact on the development zone to the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs. The written evaluation shall be utilized by the legislature to determine whether to continue the effectiveness of this Part and whether to create similar development zones in other heritage areas in the state.

Added by Acts 2002, 1st Ex. Sess., No. 9, § 1, eff. on January 1, 2003.

R.S. 39:100.1 Sports Facility Assistance Fund

A. There is hereby created, as a special fund in the statetreasury, the Sports Facility Assistance Fund hereafter sometimes referred to as "the fund".

B.(1) Notwithstanding any other provision of law, 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 after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall pay an amount equal to income taxes collected by the state attributable to the income of nonresident professional athletes and professional sports franchises that was earned in Louisiana into the Sports Facility Assistance Fund.

(2) The monies 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 monies in the fund at the end of the fiscal year shall remain in the fund. The monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies shall be credited to the fund following compliance with the requirements of Article VII, Section 9(B) relative to the Bond Security and Redemption Fund.

(3) For purposes of this Subpart, "professional athlete" means an athlete that either plays for a professional sports franchise or who is a member of a pro-

Miscellaneous Provisions

fessional sports association or league. A "professional sports franchise" means a member team of a professional sports association or league. "Professional sports association or league" means any of the following:

- (a) Professional Golfers Association of America.
- (b) National Football League.
- (c) National Basketball Association.
- (d) National Hockey League.
- (e) East Coast Hockey League.
- (f) Pacific Coast League.

C. Except as otherwise provided in this Subsection, the monies in the fund shall be appropriated to the owner of the facility, course, stadium, or arena at which nonresident professional athletes and professional sports franchises earned income in Louisiana. Except as otherwise provided in this Subsection, such monies appropriated shall be used for renovations, additions, operations, or maintenance of such facility, course, stadium, or arena. Except for monies deposited in the fund resulting from participation in the Pacific Coast League, monies appropriated to the Louisiana Stadium and Exposition District shall be used solely and exclusively for renovation of the Superdome and for stadium development. Monies deposited in the fund resulting from participation in the Pacific Coast League and appropriated to the Louisiana Stadium and Exposition District shall be used solely and exclusively for renovations, operation, and maintenance of the baseball facility owned by the district in Jefferson Parish. Monies deposited in the fund resulting from the golf tournament known as the Compaq Classic, or its successor, shall be appropriated to the Classic Foundation, Inc. for expenses of the foundation incurred in connection with the Compaq Classic.

Added by Acts 2001, No. 1203 §1. Amended by Acts 2002, 1st Ex. Sess., No. 146 §1, eff. April 23, 2002; Acts 2003, No. 119 §1,3 eff. May 28, 2003; Acts 2004, No. 88 §1, eff. May 28, 2004.

LAC 61:I.1520. Withholding by Professional Athletic Teams

A. Definitions Nonresident-any person not domiciled, residing in, or having a permanent place of abode in Louisiana. Professional Athletic Team-a member team of a professional sports association or league. Team Member-shall include those employees of a professional athletic team who are active play-

ers, players on the disabled list, and any other persons required to travel and who travels with and perform services on behalf of a professional athletic team on a regular basis. This definition includes, but is not limited to, coaches, managers, and trainers.

B. Withholding Requirement for Nonresident Team Members

1. Professional Athletic Teams not Domiciled in Louisiana

a. Any professional athletic team that is not domiciled in Louisiana and that pays compensation to a nonresident individual for services rendered to the team within Louisiana shall be deemed to be an employer making payment of wages and shall be required to withhold Louisiana individual income tax from that portion of the compensation for services rendered to the team attributable to "duty days" spent in Louisiana, as defined in LAC 61:I.1304(I), for each game played in Louisiana.

b. This Section does not alter the professional athletic team's withholding requirements for team members who are residents of Louisiana. The withholding for these team members must be as provided for in R.S. 47:111.

2. Professional athletic teams with a Louisiana domicile. Professional athletic teams that are domiciled in Louisiana must withhold for all team members as provided for in R.S. 47:111.

3. This Section does not alter any professional athletic team member's requirement to file the income tax schedule required under LAC 61:I.1305.

C. Rate of Withholding. The withholding tax rate under this Section shall be 4.2 percent of the compensation attributable to "duty days" spent in Louisiana.

D. Due Date of Withholding Return and Payment. A withholding return and payment must be submitted for each game played in Louisiana. The withholding return and payment must be submitted on or before the last day of the month following the month in which the game was played.

E. Account Numbers

1. Each professional athletic team not domiciled in Louisiana will be issued an identification number by the department.

2. The professional athletic team filing the withholding return must be clearly identified by name, address and Louisiana revenue account identification number. The team's federal employer identification number will not be accepted as a substitute. The withholding return will not be considered complete unless the team's Louisiana revenue account identification number is on the return.

F. Annual Reconciliation Schedule

Miscellaneous Provisions

1. All professional athletic teams that pay compensation to a nonresident individual for services rendered to the team within Louisiana must submit an annual withholding reconciliation schedule that includes a list of all team members who received Louisiana source income during the year. The list must include the following information:

a. the name, social security number, and permanent physical address of all team members regardless of residency, and

b. for each nonresident team member:

i. the total number of duty days spent with the team during the taxable year;

ii. the number of duty days spent in Louisiana;

iii. the total amount of compensation for services rendered to the team;

iv. the amount of compensation for services rendered to the team in Louisiana; and

v. the total amount deducted and withheld under this Section.

2. The annual reconciliation schedule is due on or before the first business day following February 27 of each year for the preceding calendar year. The secretary may grant a reasonable extension of time, not exceeding thirty days for the filing of the annual reconciliation schedule. The annual reconciliation schedule is not considered to be remitted until it is complete.

3. The permanent address listed on the annual reconciliation schedule will be presumed to be the residence of the team member for purposes of administering the Sports Facility Assistance Fund.

G. Penalty for Failure to Timely Remit Schedules and Payments

1. The following penalties will be imposed for failure to timely remit these returns, schedules, and payments.

a. In the case of failure to timely remit any return or schedule required by this Section, the penalty shall be five hundred dollars for the first such failure, one thousand dollars for the second such failure within the three-year period beginning on the due date of the first delinquent return or schedule, and two thousand five hundred dollars for each subsequent failure within the three-year period beginning on the due date of the first delinquent return or schedule.

b. In the case of failure to timely remit any payment required by this Section, the penalty shall be five percent of the total payment due if the delinquency is for not more than thirty days, with an additional five percent for each additional thirty days or fraction thereof during which the delinquency continues, not to exceed fifty percent of the amount due.

H. Exception to Withholding Requirement under this Section

1. The secretary may grant an exception to withholding requirements under this Section to any professional athletic team not domiciled in Louisiana that agrees in writing to file team composite returns and remit composite payments as provided in LAC 61:I.1304(J).

2. The composite return and composite payment will be considered to be a return and payment required by the secretary to administer the provisions of the Sports Facility Assistance Fund.

3. This agreement will be binding on the secretary and the professional athletic team until it is revoked. Either party may revoke this agreement.

AUTHORITY NOTE: Adopted in accordance with R.S. 39:100.1, R.S. 47:164(D), R.S. 47:295, R.S. 47:1511, and R.S. 47:1602.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 30:0000 (January 2004).

Motion Picture Incentive Act

R.S. 47:1121. Citation

The provisions of this Chapter shall be known and cited as the "Louisiana Motion Picture Incentive Act".

Added by Acts 1990, No. 480, § 1, eff. July 18, 1990.

R.S. 47:1122. Findings and purpose

A. It is hereby found and determined that the natural beauty, diverse topography, and architectural heritage of the state, the wilderness qualities and ecological regimen of its scenic rivers system, and the profusion of subtropical plants and wildlife provide a variety of excellent settings from which the motion picture industry might choose a location for filming a motion picture or television program, and together with those natural settings, the availability of labor, materials, climate, and hospitality of its people have been instrumental in the filming of several successful motion pictures.

B. It is recognized that the motion picture industry brings with it a much needed infusion of capital into areas of the state which may be economically depressed and the multiplier effect of the infusion of capital resulting from the filming of a motion picture or television program serves to stimulate economic activity beyond that immediately apparent on the film set.

Miscellaneous Provisions

- C. Since a significant portion of the cost of a motion picture or television production will not be eligible for existing tax incentives due to the fact that portions of the production are carried out in another state, it is the purpose of this Chapter to provide a financial incentive to the film industry in order that the state might compete with other states for filming locations.

Added by Acts 1990, No. 480, § 1, eff. July 18, 1990.

R.S. 47:1123. Definitions

The following words and phrases as used in this Chapter shall have the following meanings unless the context of use clearly indicates otherwise:

- (1) "Company" means a corporation, partnership, limited liability company, or other business entity.
- (2) "Department" means the Louisiana Department of Economic Development.
- (3) "Financial institution" or "institution" means any bank or savings and loan in the state which is insured by the FDIC or FSLIC.
- (4) "Motion picture" means a nationally distributed feature-length film, video, television series, or commercial made in Louisiana, in whole or in part for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include the production of television coverage of news and athletic events.
- (5) "Motion picture production company" means a company engaged in the business of producing nationally distributed motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. Motion picture production company shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the state or a loan guaranteed by the state.
- (6) Repealed by Acts 2001, No. 9, § 10, eff. July 1, 2001.
- (7) "Payroll" means salary, wages, or other compensation including related benefits.
- (8) "Resident" or "resident of Louisiana" means a natural person, and for the purpose of determining eligibility for the tax incentives provided by this Chapter, any person domiciled in the state of Louisiana and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of

each year within the state.

- (9) "Secretary" means the secretary of the Louisiana Department of Economic Development.

Added by Acts 1990, No. 480, § 1, eff. July 18, 1990. Amended by Acts 1998, No. 55, § 1, eff. July 1, 1998; Acts 2001, No. 9, § 7, eff. July 1, 2001, Acts 2002, 1st Ex. Sess., No. 1, § 1, eff. July 1, 2002.

R.S. 47:1124. Sales and use tax reimbursement

Any motion picture production company which expends in the aggregate one million dollars or more in connection with the filming and/or production of one or more motion pictures in the state of Louisiana within any consecutive twelve-month period, shall, upon making application for and meeting the requirements as provided in this Chapter, be entitled to a refund of state sales and use taxes paid on funds so expended in Louisiana in connection with the filming and/or production of a motion picture or pictures or commercials. The production of television coverage of news and athletic events is specifically excluded from the provisions of this Chapter. The provisions of this Chapter shall not apply to any sales and use tax levied by any local governmental subdivision.

Added by Acts 1990, No. 480, § 1, eff. July 18, 1990.

R.S. 47:1125. Application for tax refund

- A. A motion picture production company shall be entitled to a tax credit for the employment of residents of Louisiana in connection with production of a motion picture. The credit shall be equal to ten percent of the total aggregate payroll for residents employed in connection with such production when total production costs in Louisiana equal or exceed three hundred thousand dollars but total less than one million dollars during the taxable year. The credit shall be equal to twenty percent of the total aggregate payroll for residents employed in connection with such production when total production costs in Louisiana equal or exceed one million dollars during the taxable year. For purposes of this Section, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than one million dollars.
- B. The credit may be applied to any income tax or corporation franchise tax liability applicable to the motion picture production company or to which items of expense or income flow from a corporation, partnership, limited liability company, or other entity. The

Miscellaneous Provisions

credit may be applied to any corporation income or franchise tax liability of any entity taxed as a corporation for federal income tax purposes. The credit shall be limited to the tax liability of the motion picture production company for the taxable year in which such company applies for the credit.

- C. The secretary of the Department of Revenue shall promulgate such rules and regulations as may be necessary to administer this Section.

Added by Acts 1990, No. 480, § 1, eff. July 18, 1990. Amended by Acts 2001, No. 9, § 7, eff. July 1, 2001, Acts 2002, 1st Ex. Sess., No. 1, § 1, eff. July 1, 2002.

R.S. 47:1125.1. Employment tax credit

Note: In the event of a conflict between the provisions of R.S. 47:1125.1 as enacted by Acts 2002, No. 6 of the First Extraordinary Session and the provisions of R.S. 47:1125.1 enacted by Act 2002, No. 1 of the First Extraordinary Session, regardless of which Act is adopted later or signed later by the governor, the provisions of Acts 2002, No. 6 of the First Extraordinary Session shall prevail.

- A. A motion picture production company shall be entitled to a tax credit for the employment of residents of Louisiana in connection with production of a motion picture. The credit shall be equal to ten percent of the total aggregate payroll for residents employed in connection with such production when total production costs in Louisiana equal or exceed three hundred thousand dollars but total less than one million dollars during the taxable year. The credit shall be equal to twenty percent of the total aggregate payroll for residents employed in connection with such production when total production costs in Louisiana equal or exceed one million dollars during the taxable year. For purposes of this Section, the term “total aggregate payroll” shall not include the salary of any employee whose salary is equal to or greater than one million dollars.
- B. The credit may be applied to any income tax or corporation franchise tax liability applicable to the motion picture production company or to which items of expense or income flow from a corporation, partnership, limited liability company, or other entity. The credit may be applied to any corporation income or franchise tax liability of any entity taxed as a corporation for federal income tax purposes. The credit shall be limited to the tax liability of the motion picture production company for the taxable year in which such company applies for the credit.

- C. The secretary of the Department of Revenue shall promulgate such rules and regulations as may be necessary to administer this Section.

Added by Acts 2002, 1st Ex. Sess., No. 1, § 1, eff. July 1, 2002.

R.S. 47:1125.1. Employment tax credit

- A. Until July 1, 2006, a motion picture production company shall be entitled to a tax credit for the employment of residents of Louisiana in connection with production of a motion picture. The credit shall be equal to ten percent of the total aggregate payroll for residents employed in connection with such production when total production costs in Louisiana equal or exceed three hundred thousand dollars but total less than one million dollars during the taxable year. The credit shall be equal to twenty percent of the total aggregate payroll for residents employed in connection with such production when total production costs in Louisiana equal or exceed one million dollars during the taxable year. For purposes of this Section, the term “total aggregate payroll” shall not include the salary of any employee whose salary is equal to or greater than one million dollars.
- B. The credit may be applied to any income tax or corporation franchise tax liability applicable to the motion picture production company.
- C. If the motion picture production company is an entity not subject to income or franchise tax, the credit shall flow through to its partners or members as follows:
- (1) Corporate partners or members shall claim their share of the credit on their corporation income or corporation franchise tax returns.
 - (2) Individual partners or members shall claim their share of the credit on their individual income tax returns.
 - (3) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.
- D. Any unused credit may be carried forward no more than ten years from the date the credit was earned.
- E. The secretary of the Department of Revenue shall promulgate such rules and regulations as may be necessary to administer this Section.
- Acts 2002, 1st Ex. Sess., No. 6, § 2, eff. July 1, 2002.

Miscellaneous Provisions

R.S. 47:1126. Disclaimer

The state of Louisiana reserves the right to refuse the use of Louisiana's name in the credits of any motion picture filmed and/or produced in the state.

Added by Acts 1990, No. 480, § 1, eff. July 18, 1990.

R.S. 47:1127. Audit

The Department of Revenue may require that reported expenditures and the application for a tax incentive from the motion picture production company be subjected to an audit by the department to verify expenditures.

Added by Acts 1990, No. 480, § 1, eff. July 18, 1990.

R.S. 47:1128. Rules and regulations

The Department of Economic Development shall promulgate rules and regulations to carry out the intent and purposes of this Chapter.

Added by Acts 1990, No. 480, § 1, eff. July 18, 1990.

R.S. 47:1675. General administrative provisions for credits against income and corporation franchise tax

A. Unless specifically provided for herein or in the statute granting the credit against income or corporation franchise tax:

- (1) The tax credit is not refundable.
- (2) The tax credit does not carry forward or carry back.
- (3) The tax credit cannot be used for taxes that became due in a tax year prior to the year in which the credit was initially earned or granted.
- (4) The tax credit is not transferable.
- (5) The tax credit cannot be used to reduce interest or penalty.

B. Priority of credits. Unless otherwise provided in the statute granting the

credit, the department will apply credits against income and corporation franchise tax in the following order:

- (1) Current year nonrefundable credits with no carry forward.
- (2) Any carry forward amount from a tax credit earned, granted, or received in a prior year, in

the order of the length of the carry forward period remaining, beginning with the shortest carry forward period.

- (3) Current year nonrefundable credits with a carry forward, in the order of the length of the carry forward period, beginning with the credit with the shortest carry forward period.
- (4) Tax credits that are transferable, but that are not refundable that the taxpayer elects to apply against the tax.
- (5) Refundable tax credits.
- (6) Estimated payments, the credit for withholding, and other payments of tax.

C. Definitions.

- (1) When used in a statute granting a credit against income or corporation franchise tax, the term "carryover" shall mean carry forward.
- (2) Value of donations of property or services. When a credit is available for the donation of property or services, unless otherwise provided in the statute granting the credit:
 - (a) The value of any donated property shall mean the fair market value of that property.
 - (b) The value of any service donated shall mean the fair market value of that service in the community in which the service was performed.

D. Unless otherwise provided in the statute granting the credit, credits against income or corporation franchise tax are earned in the tax year in which the person has completed all requirements set forth in the statute granting the credit.

E. Unless otherwise provided in the statute granting the credit, if two or more taxpayers share in costs that would be eligible for any of the following credits, each taxpayer may take the credit in proportion to that taxpayer's respective share of the costs paid or incurred:

- (1) Credit for neighborhood assistance, R.S. 47:34 and 287.749.
- (2) Credit for donations to assist qualified playgrounds, R.S. 47:6008.
- (3) Credit for donations to public schools, R.S. 47:6013.

Miscellaneous Provisions

- (4) Credit for rehabilitation of historic structures, R.S. 47:6019.
- (5) Any credit for which the statute granting the credit specifically provides for a credit in proportion to that taxpayer's respective share of the costs paid or incurred.
- (6) Any other credit listed in regulations promulgated by the secretary.

F. Credits granted, allocated, or transferred to entities not subject to Louisiana income tax or corporation franchise tax.

- (1) Unless otherwise provided in the statute granting the credit, if an entity not subject to Louisiana income tax or corporation franchise tax acquires an income or franchise tax credit, the credit shall flow through to partners or members as provided in the operating agreement of the entity. In the absence of an operating agreement, the credit shall flow through to each partner or member in accordance to the partner or member's ownership interest in the entity.
- (2) Unless flow through of the credit is prohibited by the statute granting the credit, if an entity not subject to Louisiana income tax or corporation franchise tax earns a credit and has a tax year-end different from that of a partner or member, the credit is available in the same tax year in which the partner or member is required to report any income or loss from that entity.
- (3) An entity not subject to Louisiana income tax or corporation franchise tax must prepare and distribute to each partner or member a schedule detailing the partner or member's share of each credit earned and any recapture that is required. Copies of these schedules must be attached to each return on which the credit is **claimed**.

G. Credits granted or allocated to Subchapter S Corporations.

- (1) Credits earned by, allocated to, or transferred to an S corporation during a year in which the corporation operated as a C corporation must be used at the corporation level.
- (2)(a) Unless otherwise provided in the statute

granting the credit, credits earned by, allocated to, or transferred to a corporation during a year in which the corporation operates as an S corporation do not flow through to the shareholders, but must be used at the corporation level unless the S corporation makes the annual election provided for in Subparagraph (b) of this Paragraph.

- (b) Flow through election for S corporations. An S corporation that earns or otherwise receives a tax credit through allocation or transfer during a year in which the corporation operates as an S corporation may annually elect to flow through the entire amount of the credit to its shareholders. The election may be made for each credit received by the S corporation and shall be made annually. The election shall be in writing and may not be revoked.

H. Transferable income or corporation franchise tax credits.

- (1) Unless otherwise provided in the statute granting the credit:
 - (a) A person is not required to apply a transferable credit against its own tax liability prior to transferring all or part of the credit.
 - (b) If a person either earns the credit or receives the credit by flow through, the credit will be treated as a tax item and can only be applied against tax.
 - (c) If a person acquires a credit through transfer, the credit is property and can be used to pay any outstanding tax liability for the tax against which the credit was originally granted and any related penalty and interest. Interest and penalties will continue to accrue at the statutory rates until the date the department receives a return on which the credit is claimed. The provisions of Paragraph (A)(3) and (5) will not apply to this Subparagraph.
- (2) Income from the transfer of a Louisiana transferable tax credit is income from Louisiana sources.

I. Repealed credits and credits with sunset provisions. Unless otherwise provided in the statute granting or repealing the credit, any remaining

Miscellaneous Provisions

carry forward from a credit that has been repealed or otherwise made inoperative shall continue to be applied and carried forward under the provisions of the statute granting the credit immediately before it expired or was repealed.

J. Documentation for tax credits.

- (1) Record retention.
 - (a) For credits with no carry forward provision, original records supporting any credit claimed must be maintained for four years following the date the return was filed claiming the credit.
 - (b) For credits with a carry forward provision, original records supporting the credit must be maintained for four years following the date on which the last return was filed claiming the credit.
- (2) Documentation supporting a tax credit shall be provided by a taxpayer claiming a tax credit as required by rule or on forms or instructions provided by the secretary.

Added by Acts 2005, No. 268 §1, eff. for income tax years beginning after December 31, 2004 and for franchise tax years beginning after December 31, 2005.

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 Family Independence Temporary Assistance Program (FITAP) payments participating in Family Independence Work Program, the Louisiana FIND Work 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 person and participant of Family Independence Work Program 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 Louisiana Employment Security Law 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 FIND Work 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.

Miscellaneous Provisions

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; Acts 1997, No. 1172, §8, eff. June 30, 1997.

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 non-hazardous 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.

- 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, 2000.
- (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.** (1) 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

Miscellaneous Provisions

forward to subsequent years until the credit is exhausted.

(2)(a) Notwithstanding any other provision of this Subsection to the contrary, steelworks and blast furnaces, including coke ovens and rolling mills, which are classified as SIC 3312 by the Standard Industrial Classification Code, may claim one hundred percent of any credit and the total amount of any credit carry-forward provided for in this Section as provided in this Paragraph. If the credit or credit carryforward claimed exceeds the amount of tax due by any such taxpayer, the amount of credit or credit-forward not used to offset taxes due shall be paid to the taxpayer from current collections of the taxes collected pursuant to Chapter 1 and Chapter 5 of Subtitle II of this Title.

(b) The provisions of this Paragraph are applicable solely for credits for qualified recycling equipment certified by the secretary of the Department of Environmental Quality as provided in this Chapter on or before April 1, 1999. Any credit claimed pursuant to this Paragraph must be claimed by the taxpayer prior to July 1, 2002 and shall be payable solely and exclusively from current collections attributable to the state fiscal year commencing on July 1, 2001.

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; Acts 1998, No. 8, § 1; Acts 2002, No. 38, § 1, eff. April 17, 2002.

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 any Louisiana income or corporation franchise tax for ad valorem taxes paid to political subdivisions on inventory held by manufacturers, distributors, and retailers and on natural gas held, used, or consumed in providing natural gas storage services or operating natural gas storage facilities.

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.¹ 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,

Miscellaneous Provisions

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; Acts 2002, No. 11, § 1 eff. for taxable periods beginning after December 31, 2002.

¹In sub sec. B, see R.S. 47:21 et seq. and 47:601 et seq.

LAC 61:I.1902. Inventory Tax Credits

A. *Tax Credits for Local Inventory Taxes Paid.* R.S. 47:6006 allows a credit for ad valorem taxes paid to local governments on inventory held by manufacturers, distributors, and retailers.

B. *Application to Corporations.* All entities taxed as corporations for Louisiana income or corporation franchise tax purposes shall claim any credit allowable for inventory taxes paid by them on their corporation income and corporation franchise tax return. This includes, but is not limited to:

1. *S corporations;*
2. *partnerships taxed as corporations for income tax purposes;*
3. *limited liability companies (LLC's) taxed as corporations for income tax purposes.*

C. *Application to Individuals, Estates, and Trusts*

1. *All individuals shall claim on their individual income tax returns any credit allowable for inventory taxes paid by them.*
2. *Estates or trusts shall claim on their fiduciary income tax returns any credit allowable for inventory taxes paid by them.*

D. *Application to Partnerships.* Any credit allowable for inventory taxes paid by partnerships not taxed as corporations shall be claimed on the returns of the partners as follows.

1. *Corporation partners shall claim the credit on their corporation income or corporation franchise tax returns.*
2. *Individual partners shall claim the credit on their individual income tax returns.*

3. *Partners that are estates or trusts shall claim the credit on their fiduciary income tax returns.*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6006 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 27:0000 (October 2001).

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 any Louisiana income or 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 this Title 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

Miscellaneous Provisions

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.

(6) The credit for taxes paid by an estate or trust shall be applied against the Louisiana income tax imposed on estates and trusts.

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. Amended by Acts 2002, No. 11, § 1, eff. for taxable periods beginning after December 31, 2002.

Miscellaneous Provisions

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 and infrastructure base for motion picture film, videotape, digital, and television program productions, in order to achieve an 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 in Louisiana.
 - (b) Develop a tax and capital infrastructure which encourages private investment. This infrastructure will provide for state participation in the form of tax credits to encourage investment in state-certified productions and infrastructure projects.
 - (c) Develop a tax infrastructure utilizing tax credits which encourage investments in multiple state-certified production and infrastructure projects.
- (2) Long-term objectives are to:
 - (a) Encourage increased employment opportunities within this sector and increased global 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 and digital production.
 - (c) Encourage development of a Louisiana film, video, television, and digital production and post-production infrastructure with state-of-the-art facilities.

B. Definitions. For the purposes of this Section:

- (1) "Base investment" shall mean the actual investment made and expended by:
 - (a) A state-certified production in the state as production expenditures incurred in this state that are directly used in a state-certified production or productions.

- (b) A person in the development of a state-certified infrastructure project.
- (2) "Expended in the state" in the case of tangible property shall mean property which is acquired from a source within the state, and in the case of services, shall mean services procured and performed in the state.
- (3) "Headquartered in Louisiana" shall mean a corporation incorporated in Louisiana or a partnership, limited liability company, or other business entity domiciled and headquartered in Louisiana for the purpose of producing nationally distributed motion pictures as defined in this Section.
- (4) "Motion picture" means a nationally distributed feature-length film, video, television series, or commercial made in Louisiana, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include the production of television coverage of news and athletic events.
- (5) "Motion picture production company" shall mean a company engaged in the business of producing nationally distributed motion pictures as defined in this Section. Motion picture production company shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the state or a loan guaranteed by the state, nor with any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.
- (6) "Payroll" shall include all salary, wages, and other compensation, including related benefits sourced or apportioned to Louisiana.
- (7) "Production expenditures" means preproduction, production, and postproduction expenditures directly incurred in this state that are directly used in a state-certified production, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of

Miscellaneous Provisions

facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfer of film to tape or digital format, sound mixing, special and visual effects; total aggregate payroll; music, if performed, composed, or recorded by a Louisiana musician, or released or published by a Louisiana-domiciled and headquartered company; airfare, if purchased through a Louisiana-based travel agency or travel company; insurance costs or bonding, if purchased through a Louisiana-based insurance agency; or other similar production expenditures as determined by rule. This term shall not include postproduction expenditures for marketing and distribution, any indirect costs, any amounts that are later reimbursed, any costs related to the transfer of tax credits, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production.

- (8) "Resident" or "resident of Louisiana" means a natural person and, for the purpose of determining eligibility for the tax incentives provided by this Chapter, any person domiciled in the state of Louisiana and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the state.
- (9) "State-certified infrastructure project" shall mean an infrastructure project approved by the Governor's Office of Film and Television Development and the Department of Economic Development. The term "infrastructure project" shall not include movie theaters or other commercial exhibition facilities.
- (10) "State-certified production" shall mean a production approved by the Governor's Office of Film and Television Development and the Department of Economic Development produced by a motion picture production company domiciled and headquartered in Louisiana which has a viable multi-market commercial distribution plan.

C. Investor tax credit; specific projects.

- (1) There is hereby authorized a tax credit against state income tax for Louisiana taxpayers, other than motion picture production companies. The tax credit shall be earned by investors at the time expenditures are made by a motion

picture production company in a state-certified production. However, credits cannot be applied against a tax or transferred until the expenditures are certified by the Governor's Office of Film and Television Development and the Department of Economic Development. For state-certified productions, expenditures shall be certified no more than twice during the duration of a state-certified production unless the motion picture production company agrees to reimburse the Governor's Office of Film and Television Development and the Department of Economic Development for the costs of any additional certifications. The tax credit shall be calculated as a percentage of the total base investment dollars certified per project.

- (a) For state-certified productions approved by the Governor's Office of Film and Television Development, on or after January 1, 2004:
 - (i) If the total base investment is greater than three hundred thousand dollars and less than or equal to eight million dollars, each taxpayer shall be allowed a tax credit of ten percent of the actual investment made by that taxpayer.
 - (ii) If the total base investment is greater than eight million dollars, each taxpayer shall be allowed a tax credit of fifteen percent of the actual investment made by that taxpayer.
- (b) For state-certified productions approved by the Governor's Office of Film and Television Development, on or after January 1, 2006, and for state-certified infrastructure projects approved by the Governor's Office of Film and Television Development, on or after July 1, 2005:
 - (i) If the total base investment is greater than three hundred thousand dollars, each investor shall be allowed a tax credit of twenty-five percent of the base investment made by that investor.
 - (ii) To the extent that base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, each investor shall be allowed an additional tax credit

Miscellaneous Provisions

- of ten percent of such payroll. However, if the payroll to any one person exceeds one million dollars, this additional credit shall exclude any salary for that person that exceeds one million dollars.
- (iii) Until January 1, 2008, if the total base investment is greater than three hundred thousand dollars, each taxpayer shall be allowed a tax credit of fifteen percent of the base investment made by that taxpayer that is expended in this state on a state-certified infrastructure project as certified by the Governor's Office of Film and Television Development, the Department of Economic Development, and approved by the division of administration.
 - (c) For state-certified productions approved by the Governor's Office of Film and Television Development and the Department of Economic Development, on or after July 1, 2010:
 - (i) If the total base investment is greater than three hundred thousand dollars, each investor shall be allowed a tax credit of twenty percent of the base investment made by that investor.
 - (ii) To the extent that base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, each investor shall be allowed an additional tax credit of ten percent of such payroll. However, if the payroll to any one person exceeds one million dollars, this additional credit shall exclude any salary for that person that exceeds one million dollars.
 - (d) For state-certified productions approved by the Governor's Office of Film and Television Development and the Department of Economic Development, on or after July 1, 2012:
 - (i) If the total base investment is greater than three hundred thousand dollars, each investor shall be allowed a tax credit of fifteen percent of the base investment made by that investor.
 - (ii) To the extent that base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, each investor shall be allowed an additional tax credit of ten percent of such payroll. However, if the payroll to any one person exceeds one million dollars, this additional credit shall exclude any salary for that person that exceeds one million dollars.
 - (e) Motion picture investor tax credits associated with a state-certified production shall never exceed the total base investment in that production.
- (2) The credit shall be allowed against the income tax for the taxable period in which the credit is earned. If the tax credit allowed pursuant to this Section exceeds the amount of such taxes due, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed ten years.
- (3) Application of the credit.
- (a) All entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this Section on their corporation income tax return.
 - (b) Individuals, estates, and trusts shall claim any credit allowed under this Section on their income tax return. (c) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:
 - (i) Corporate partners or members shall claim their share of the credit on their corporation income tax returns.
 - (ii) Individual partners or members shall claim their share of the credit on their individual income tax returns.
 - (iii) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.
- (4) Transferability of the credit. Any motion picture tax credits not previously claimed by any taxpayer against its income tax may be transferred or sold to another Louisiana taxpayer or to the Governor's Office of Film and Television Development, subject to the fol-

Miscellaneous Provisions

lowing conditions:

- (a) A single transfer or sale may involve one or more transferees. The transferee of the tax credits may transfer or sell such tax credits subject to the conditions of this Subsection.
- (b) Transferors and transferees shall submit to the Governor's Office of Film and Television Development, and to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter(s) issued by the Governor's Office of Film and Television Development and the Department of Economic Development, the name of the state certified production, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate, price paid by the transferee to the transferor, in the case when the transferor is a state-certified production or state certified infrastructure project, for the tax credits, and any other information required by the Governor's Office of Film and Television Development, or the Department of Revenue. For the purpose of reporting transfer prices, the term "transfer" shall include allocations pursuant to R.S. 47:6007(C)(3) as provided by rule. The Governor's Office of Film and Television Development may post on its website an average tax credit transfer value, as determined by the Governor's Office of Film and Television Development and the secretary of the Department of Economic Development to reflect adequately the current average tax credit transfer value. The tax credit transfer value means the percentage as determined by the price paid by the transferee to the transferor divided by the dollar value of the tax credits that were transferred in return. The notification submitted to the Governor's Office of Film and Television Development shall include a processing fee of up to two hundred dollars per transferee and any pricing information submitted by a transferor or transferee shall be treated by the Governor's Office of Film and Television Development, the Department of Economic Development, and the Department of Revenue as proprietary to the entity reporting such information and therefore confidential. However, this shall not prevent the publication of summary data that includes no fewer than three transactions.
- (c) Failure to comply with this Paragraph will result in the disallowance of the tax credit until the taxpayers are in full compliance.
- (d) The transfer or sale of this credit does not extend the time in which the credit can be used. The carry forward period for credit that is transferred or sold begins on the date on which the credit was originally earned. To the extent that the transferor did not have rights to claim or use the credit at the time of the transfer, the Department of Revenue shall either disallow the credit claimed by the transferee or recapture the credit from the transferee through any collection method authorized by R.S. 47:1561. The transferee's recourse is against the transferor.
- (f) Beginning on and after January 1, 2007, the investor who earned the motion picture investor tax credits may transfer the credits to the Governor's Office of Film and Television Development for seventy-two percent of the face value of the credits. Beginning January 1, 2009, and every second year thereafter, the percent of the face value of the tax credits allowed for transferring credits to the Governor's Office of Film and Television Development shall increase two percent until the percentage reaches eighty percent. Upon the transfer, the Department of Economic Development shall notify the Department of Revenue and shall provide it with a copy of the transfer documentation. The Department of Revenue may require the transferor to submit such additional information as may be necessary to administer the provisions of this Section. The secretary of the Department of Revenue shall make payment to the investor in the

Miscellaneous Provisions

amount to which he is entitled from the current collections of the taxes collected pursuant to Chapter 1 of such Subtitle II provided such credits are transferred to the Governor's Office of Film and Television Development within one calendar year of certification.

- (5) The transferee shall apply such credits in the same manner and against the same taxes as the taxpayer originally awarded the credit.
- (6) Notwithstanding any other provision of law, on or after January 1, 2006, a state-certified production which receives tax credits pursuant to the provisions of this Chapter shall not be eligible to receive the rebates provided for in R.S. 51:2451 through 2461 in connection with the activity for which the tax credits were received.

D. Certification and administration.

- (1) The secretary of the Department of Economic Development and the Governor's Office of Film and Television Development shall determine through the promulgation of rules what projects and expenses including amounts expended in this state on state-certified infrastructure projects qualify according to this Section. Prior to adoption, these rules shall be approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs. When determining what projects qualify, the Governor's Office of Film and Television Development and the Department of Economic Development shall take the following factors into consideration:
 - (a) The impact of the production on the immediate and long-term objectives of this Section.
 - (b) The impact of the production on the employment of Louisiana residents.
 - (c) The impact of the production on the overall economy of the state.
- (2)(a) Application. An applicant for the motion picture investor credit shall submit an application for initial certification to the Governor's Office of Film and Television Development that includes the following information:
 - (i) For state-certified productions the appli-

cation shall include:

- (aa) The distribution plan.
 - (bb) A preliminary budget including estimated Louisiana payroll and estimated base investment.
 - (cc) The script, including a synopsis.
 - (dd) A list of the principal creative elements including the cast, producer, and director.
 - (ee) A statement that the production will qualify as a state-certified production.
 - (ff) Estimated start and completion dates.
- (ii) For state-certified infrastructure projects the application shall include:
 - (aa) A detailed description of the infrastructure project.
 - (bb) A preliminary budget.
 - (cc) A statement that the project meets the definition of state-certified infrastructure project.
 - (dd) Estimated start and completion dates.
- (b) If the application is incomplete, additional information may be requested prior to further action by the Governor's Office of Film and Television Development and the Department of Economic Development. An application fee shall be submitted with the application based on the following:
 - (i) 0.2 percent times the estimated total incentive tax credits.
 - (ii) The minimum application fee is two hundred dollars, and the maximum application fee is five thousand dollars.
 - (c) The Governor's Office of Film and Television Development shall submit its initial certification of a project as a state-certified production to investors and to the secretary of the Department of Revenue. The initial certification shall include a unique identifying number for each state-certified production.
 - (d)(i) Prior to any certification of the state-certified production, the motion picture production company shall submit to the

Miscellaneous Provisions

Governor's Office of Film and Television Development a cost report of production expenditures audited and certified by an independent certified public accountant as determined by rule. The Governor's Office of Film and Television Development shall review the production expenses and will issue a tax credit certification letter indicating the amount of tax credits certified for the state-certified production or state-certified infrastructure project to the investors.

- (3) The secretary of the Department of Revenue, in consultation with the Department of Economic Development and the director of the Governor's Office of Film and Television Development, 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 Governor's Office of Film and Television Development and the Department of Economic Development for any audits required in relation to granting the credit.
- (5) A motion picture production company applying for the additional credit for the employment of Louisiana residents must remit a schedule to the Department of Revenue, in a machine-sensible format approved by the secretary of the Department of Revenue, that includes the following information: the names of all persons who received salary, wages, or other compensation for services performed in Louisiana in connection with the state-certified production, and the address, taxpayer identification number, permanent address of, and the amount of compensation for services performed in Louisiana received by each such person.
- (6) With input from the Legislative Fiscal Office, the Governor's Office of Film and Television Development and the Department of Economic Development shall prepare a written report to be submitted to the Senate Committee on Revenue and Fiscal Affairs and the House of Representatives Committee on Ways and Means no less than sixty days prior to the start of the Regular Session of the

Legislature in 2007, and every second year thereafter. The report shall include the overall impact of the tax credits, the amount of the tax credits issued, the number of net new jobs created, the amount of Louisiana payroll created, the economic impact of the tax credits and film industry, the amount of new infrastructure that has been developed in the state, and any other factors that describe the impact of the program.

- (7) Either the Department of Economic Development or the Department of Revenue may audit the cost report submitted by the motion picture production company.

E. Recapture of Credits. If the Governor's Office of Film and Television Development and the Department of Economic Development find that funds for which an investor received credits according to this Section are not invested in and expended with respect to a state-certified production within twenty-four months of the date that such credits are earned, then the investor's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by this Section.

F. Recovery of credits by Department or Revenue. (1) Credits previously granted to a taxpayer, but later disallowed, may be recovered by the secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December thirty-first of the year in which the twenty-four-month investment period specified in R.S. 47:6007(E) ends.

- (2) The only interest that may be assessed and collected on recovered credits is interest at a rate of three percentage points above the rate provided in Civil Code Article 2924(B)(1), which shall be computed from the original due date of the return on which the credit was taken.
- (3) The provisions of this Subsection are in addition to and shall not limit the authority of the secretary of the Department of Revenue to assess or to collect under any other provision of law.

Added by Acts 2003, No. 1240 §3, eff. July 1, 2003; Amended by Acts 2004, 1st Ex. Sess., No. 7 §1, eff. July 1, 2004; Amended by Acts 2005, No. 456 §1, eff. for taxable years beginning after December 31, 2005

Miscellaneous Provisions

and eff. for state-certified infrastructure projects beginning on or after July 1, 2005.

R.S. 47:6008. Tax credits for donations made to assist playgrounds in economically depressed areas

A. There shall be allowed a credit against any Louisiana income or 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 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. Amended by Acts 2002, No. 11, § 1, eff. for taxable periods beginning after December 31, 2002.

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 recog-

Miscellaneous Provisions

nized 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, 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

Miscellaneous Provisions

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 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.

Expiration of Credit

Section 2 of Acts 1996, No. 23 (§ 1 of which amended par. B(3)) provides:

Acts 1998, No. 68, § 1, effective June 24, 1998, amended Acts 1996, No. 23, § 2 to extend the expiration date to June 30, 2000.

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

Terminated eff. June 30, 2000 by Acts 1996, No. 10, § 2; Acts 1998, No. 16, § 1.

R.S. 47:6012. Employer tax credits for donations of materials, equipment, advisors, or instructors

A. The intent of this Section is to provide an incentive for employers within the state to donate materials, equipment, or instructors to public training providers, secondary and postsecondary vocational-technical schools, apprenticeship program registered with the Louisiana Department of Labor, or community colleges to assist in the development of training programs designed to meet industry needs.

B. There shall be a credit against the individual and corporate income tax and the corporation franchise tax for the donation of the latest technology available in materials, equipment, or instructors made to public training providers, secondary and postsecondary vocational-technical schools, apprenticeship program registered with the Louisiana Department of Labor, or community colleges within the state. The credit shall be an amount equal to one-half the value of the donated materials, equipment, or services rendered by the instructor. Any such credit shall be taken as a credit against the applicable tax or taxes in the taxable period in which the donation was made. This tax credit, when combined with all other applicable tax credits, shall not exceed twenty percent of the employer’s tax liability for any taxable year.

C. The Department of Revenue in consultation with the Department of Labor shall promulgate such rules and regulations as may be necessary to facilitate implementation of this Section in accordance with the Administrative Procedure Act.¹ Such rules and regulations shall include provisions regarding the defini-

Miscellaneous Provisions

tion of qualified donations and employers, the criteria for determining eligible public training providers, secondary and postsecondary vocational- technical schools, apprenticeship program registered with the Louisiana Department of Labor, and community colleges, and the maximum allowable tax credit. The House Committee on Ways and Means, the Senate Committee on Revenue and Fiscal Affairs, the House Committee on Labor and Industrial Relations, and the Senate Committee on Labor and Industrial Relations shall have joint legislative oversight over the promulgation of said rules and regulations. Such rules and regulations shall be promulgated no later than January 1, 1999.

- D. The provisions of this Section shall be effective for donations made after July 1, 1998.
- E. The tax credit granted by the provisions of this Section shall terminate on January 1, 2001, unless reestablished prior thereto.

Added by Acts 1998, No. 30, § 1, eff. June 24, 1998.

¹ Administrative Procedure Act, see R.S. 49:950 et seq.

R.S. 47:6013. Tax credits for donations made to public schools

- A. There shall be allowed a credit against the corporate income tax and the corporation franchise tax for qualified donations made to a public school. The credit shall be an amount equal to forty percent of the appraised value of the qualified donation. Any such credit shall be taken as a credit against the corporate income or corporation franchise tax for the taxable year in which the donation is made. The total of all such credits taken in a taxable year shall not exceed the total tax liability for that taxable year.
- B. For purposes of this Section the following words 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) "Public school" means a public elementary or secondary school.
 - (3) "Qualified donation" means a donation of immovable property purchased or otherwise acquired by a corporation and donated to a public school immediately adjacent or contiguous to such property.
- C. The secretary of the Department of Revenue shall

promulgate such rules and regulations as may be necessary to carry out the purposes of this Section.

Added by Acts 1998, No. 51, § 1, eff. July 1, 1998.

R.S. 47:6014. Credit for Property Taxes Paid by Certain Telephone Companies

- A. Pursuant to the provisions of this Section, there shall be allowed a credit against Louisiana income taxes and Louisiana corporation franchise tax for, and in an amount equal to, forty percent of the aggregate ad valorem taxes paid to political subdivisions of this state after December 31, 2000, by a telephone company, as defined in R.S. 47:1851(Q), with respect to such telephone company's public service properties, as defined in R.S. 47:1851(m), which are assessed by the Louisiana Tax Commission at twenty-five percent of fair market value pursuant to R.S. 47:1854.
- B. The credit allowed under this Section shall be applied against any Louisiana income or corporation franchise tax shown on a return filed by a person as defined in R.S. 47:2, entitled to such credit as determined under Subsection C of this Section for income or franchise tax years ending on or after December 31, 2001.
- C. Notwithstanding any provision of law to the contrary, the following provisions shall apply with respect to the application of the credit established in Subsection A of this Section:
 - (1) The credit for ad valorem taxes paid by or on behalf of a corporation shall be applied against Louisiana corporation 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 1986, as amended, shall be applied against Louisiana corporation 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 corporation income taxes or corporation franchise taxes.
 - (2) The credit for taxes paid by an individual shall be applied against the Louisiana individual income tax.
 - (3) The credit for taxes paid by or on behalf of a corporation classified under Subchapter S of the Internal Revenue Code of 1986, as amended, as an S corporation shall be applied first against any

Miscellaneous Provisions

Louisiana corporation 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 credit for taxes paid by or on behalf of a limited liability company shall be allocated to the members according to their distributive shares of such limited liability company's gross income and applied against any Louisiana income tax and corporation franchise tax liability of such members; however, the credit for taxes paid by or on behalf of a limited liability company treated as a corporation for Louisiana income tax purposes may be applied against the Louisiana corporation income taxes of such limited liability company.
 - (6) The character of the credit for taxes paid by or on behalf of a partnership, S corporation, or limited liability company not treated as a corporation for Louisiana income tax purposes and allocated to the partners, shareholders, or members, respectively, of such partnership, S corporation, or limited liability company, shall be determined as if such credit were incurred by such partners, shareholders, or members, in the same manner as incurred by such partnership, S corporation, or limited liability company.
 - (7) The credit for taxes paid by an estate or trust shall be applied against the Louisiana income tax imposed on estates and trusts.
- D. The excess, if any, of the credit allowed by this Section over the aggregate tax liabilities against which such allowable credit may 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 under Chapter 2 of Subtitle II of this Title, together with interest as provided in R.S. 47:1624. The right to a refund of any such overpayment shall not be subject to the requirements of R.S. 47:1621(B). Any such refund, together

with interest thereon, shall be paid by the secretary within ninety days of receipt by the secretary of the return on which the credit allowed by this Section is claimed. Failure of the secretary to pay such refund, in whole or in part, shall entitle the aggrieved taxpayer to proceed with the remedies provided in R.S. 47:1625.

- E.(1) The avails of sales and use taxes imposed pursuant to R.S. 47:302, 321, and 331 attributable to the furnishing of interstate telecommunication services, as defined in R.S. 47:301(14)(i)(iv)(ff), shall be credited to the Bond Security and Redemption Fund, and after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall deposit an amount equal to such avails into a special fund which is hereby created and established in the state treasury and known as the "Telephone Company Property Assessment Relief Fund", hereinafter the "fund".
 - (2) The monies in the fund shall be used solely and exclusively for the purpose of providing funds to pay the credits or refunds as provided in this Section. The treasurer shall annually transfer to the state general fund an amount equal to the credits taken and refunds issued pursuant to this Section.
 - (3) The monies in the fund shall be invested by the treasurer in the same manner as the monies in the state general fund. Interest earned on investment of monies in the fund shall be deposited in and credited to the fund. Unexpended and unencumbered monies in the fund at the close of each fiscal year shall remain in the fund.
 - (4) Notwithstanding any other provision of this Section to the contrary, in any fiscal year in which the balance in the fund which is available for appropriation, net of any credits previously allowed pursuant to this Section, does not equal or exceed the total amount of the credits taken for that fiscal year pursuant to this Section, the credits allowed in the succeeding fiscal year shall be proportionately reduced by the amount of the shortfall; however, any reduction may be carried forward to any succeeding fiscal year. The secretary shall determine the amount of any reductions required pursuant to this Subsection.

Added by Acts 2000, No. 22, § 6, eff. June 15, 2000.
Amended by Acts 2002, No. 11, § 1, eff. for taxable periods beginning after December 31, 2002.

Miscellaneous Provisions

R.S. 47:6015 Research and development tax credit

A. The Legislature of Louisiana hereby finds and declares that the health, safety, welfare of the people of this state are dependent upon the continued encouragement, development, growth, and expansion of the private sector within the state. Therefore, it is declared to be the purpose of this Section to encourage new and continuing efforts to conduct research and development activities within this state.

B.(1) Any taxpayer who claims for the taxable year a federal income tax credit under 26 U.S.C. §41(a) for increasing research activities shall be allowed a tax credit to be applied against income and corporation franchise taxes due.

(2) Each taxpayer seeking the credits authorized in this Section shall apply to the department for the credits. The taxpayer shall remit an application fee of two hundred fifty dollars with the application. The application shall include all of the following:

- (a) The taxpayer's federal income tax return and supporting documentation that shows the amount of the federal research credit for the same taxable year. If claiming the credit under Subsection D, the taxpayer shall also remit supporting documentation for the federal Small Business Innovation Research Grant.
- (b) The total amount of qualified research expenses and the qualified research expenses in this state.
- (c) The total number of Louisiana residents employed by the taxpayer and the number of those Louisiana residents directly engaged in research and development.
- (d) The average wages of the Louisiana resident employees not directly engaged in research and development and the average wages of the Louisiana resident employees directly engaged in research and development.
- (e) The average value of benefits received by all Louisiana resident employees.
- (f) The percentage of health insurance coverage offered to all Louisiana resident employees.

(g) Any other information required by the Department of Economic Development.

(2) The department shall approve or disapprove each application. No credits shall be granted to a taxpayer under this Section unless the credit is approved by the department.

C.(1) For income tax years beginning on or after January 1, 2003, and franchise tax years beginning on or after January 1, 2004, the amount of the credit authorized in this Section shall be equal to either:

(a) Eight percent of the state's apportioned share of the taxpayer's expenditures for increasing research activities.

(b) Twenty-five percent of the state's apportioned share of the federal research credit claimed for research expenditures in the state if the taxpayer claims the alternative incremental tax credit under 26 U.S.C. §41.

(2) For income tax years beginning on or after January 1, 2005, and franchise tax years beginning on or after January 1, 2006, the amount of the credit authorized in this Section shall be equal to either:

(a) Eight percent of the state's apportioned share of the taxpayer's expenditures for increasing research activities, if the taxpayer is an entity that employs five hundred or more Louisiana residents.

(b) Twenty percent of the state's apportioned share of the taxpayer's expenditures for increasing research activities, if the taxpayer is an entity that employs fewer than five hundred Louisiana residents.

(c) Twenty-five percent of the state's apportioned share of the federal research credit claimed for research expenditures in the state if the taxpayer claims the alternative incremental tax credit under 26 U.S.C. §41.

(3) The state's apportioned share of a taxpayer's expenditures for increasing research activities shall be the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under 26 U.S.C. §41, multiplied by a percentage equal to the ratio of the qualified research expenses in this state for the taxable year to the taxpayer's total qualified research expenses for the taxable

Miscellaneous Provisions

- year.
- (4) Credits awarded pursuant to this Section shall carry forward for no more than ten tax years from the date of the award.
- (5)(a) Taxpayers who are awarded tax credits in excess of their tax liabilities for a given year may elect to sell their unused tax credits to taxpayers with a Louisiana tax liability provided all of the following criteria are met:
- (i) The unused credits are sold for a minimum of seventy-five percent of the value of the tax benefits
 - (ii) The taxpayer seeking to sell the unused credits belongs to one of the traditional or seed clusters as defined by the department.
 - (iii) The taxpayer seeking to sell the unused credits employs no more than two hundred twenty-five employees, of which seventy-five percent must be Louisiana citizens.
 - (iv) The sale of the tax credit is approved by the department pursuant to procedures established by rules and regulations promulgated by the department.
- (b) The purchaser of unused credits shall apply such credits in the same manner and against the same taxes as the taxpayer originally awarded the credit
- (6)(a) All entities taxed as corporations for Louisiana income or corporation franchise tax purposes shall claim any credit allowed under this Section on their corporation income and corporation franchise tax return.
- (b) Individuals shall claim any credit allowed under this Section on their individual income tax return.
 - (c) Estates or trusts shall claim any credit allowed under this Section on their fiduciary income tax returns.
 - (d) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:
 - (i) Corporate partners or members shall claim their share of the credit on their individual income tax returns.
 - (ii) Individual partners or members shall claim their share of the credit on their individual income tax returns.
 - (iii) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.
- D.(1) A taxpayer who receives a federal Small Business Innovation Research Grant as created by the Small Business Innovation Development Act of 1982 (P.L. 97-219), reauthorized by the Small Business Research and Development Enhancement Act (P.L. 102-564), and reauthorized again by the Small Business Reauthorization Act of 2000 (P.L. 106-554), shall be allowed a credit in an amount equal to:
- a) For income tax years beginning on or after January 1, 2003, and franchise tax years beginning on or after January 1, 2004, eight percent of the award received during the tax year.
 - b) For income tax years beginning on or after January 1, 2005, and franchise tax years beginning on or after January 1, 2006, twenty percent of the award received during the tax year.
- (2) The credit shall be applied against any income and franchise tax and is subject to the same carry forward and sale provisions as the credit authorized in Subsections B and C of this Section.
- E. As used in this Section, the following terms shall have the meaning hereafter ascribed to them, unless the context clearly indicates otherwise:
- (1) "Department" shall mean the Department of Economic Development.
 - (2) The terms "base amounts", "qualified research expenditure", and "qualified research" shall have the same meaning as those terms are defined in Section 41 of Title 26 of the United States Code Annotated, as amended.
- F. The department shall administer the provisions of this Section relative to the sale of tax credits and shall have the following powers and duties in addition to those granted by other laws of this state:
- (1) To monitor the implementation and operation

Miscellaneous Provisions

of this Section and conduct a continuing evaluation of the program.

- (2) To assist any taxpayer in obtaining the benefits of any incentive or inducement program authorized by Louisiana law.
- (3) To promulgate rules and regulations regarding the sale of tax credits allowed by this Section, in consultation with the secretary of the Department of Revenue, in accordance with the Administrative Procedure Act.
- (4) To receive information from the Department of Revenue regarding the identity of the taxpayer and the amount of credit claimed for any credits claimed pursuant to this Section. Such information shall not be public record and shall be subject to the same prohibition of disclosure as in the possession of the Department of Revenue.

G.(1) Notwithstanding any other provision of this Section to the contrary, for the period beginning on January 1, 2003, and ending on December 31, 2003, the credit provided for in this Section shall be reduced by seventy-five percent.

(2) Notwithstanding any other provision of this Section to the contrary, for the period beginning on January 1, 2004, and ending on December 31, 2004, the credit provided for in this Section shall be reduced by fifty percent.

H.(1) Recovery of credits by Department of Revenue. Credits granted under this Section, but later disallowed in whole or in part, may be recovered by the secretary of the Department of Revenue from the taxpayer applicant through any collection remedy authorized by R.S. 47:1561 that is initiated within three years from December thirty-first of the year in which the credit was originally granted. The only interest that may be assessed and collected on these recovered credits is interest at a rate three percentage points above the rate provided in R. S. 9:3500(B)(1), which shall be computed from the original due date of the return on which the disallowed credit was taken.

(2) The provisions of this Subsection are in addition to and shall not limit the authority of the secretary of the Department of Revenue to assess or collect under any other provision of law. This includes the disallowance of any disallowed credit claimed by a taxpayer who

received the credit through purchase or through a distribution by an entity not taxed as a corporation.

I. No credit shall be allowed pursuant to this Section for research expenditures incurred or Small Business Innovation Research Grant funds received after December 31, 2009.

Added by Acts 2002, 1st Ex. Sess., No. 9 §1, eff. for all income tax years beginning on or after January 1, 2003, and franchise tax years beginning on or after January 1, 2004; Amended by Acts 2005, No. 402 §1, eff. Aug. 15, 2005.

R.S. 47:6016. New markets tax credit

A. The legislature hereby finds and declares that the health, safety, and welfare of the people of the state are dependent upon the continued encouragement, development, growth, and expansion of the private sector within the state, especially increased access to capital in certain disadvantaged areas of the state. Therefore, it is hereby declared that the purpose of this Section is to encourage and attract private sector capital investment to such areas within the state.

B. As used in this Section, the following terms shall have the following meanings:

(1) "Adjusted purchase price" shall mean the product of:

(a) The amount paid to the issuer of a qualified equity investment for such qualified equity investment and which, in turn, has been invested in qualified low-income community investments.

(b) A fraction, the numerator of which is the dollar amount of qualified low-income community investments held by the issuer of the qualified equity investment in the state, determined as of the immediately preceding credit allowance date, and the denominator of which is the total dollar amount of qualified low-income community investments made by the issuer, determined as of the immediately preceding credit allowance date.

(2) "Applicable percentage" means:

(a) One percent for the first three credit allowance dates.

(b) Two percent with respect to the remainder of the credit allowance dates.

Miscellaneous Provisions

- (3) “Credit allowance date” means with respect to any qualified equity investment:
- (a) The date on which such investment is initially made.
 - (b) Each of the six anniversary dates of such date thereafter.
- (4) “Qualified equity investment” and “qualified low-income community investments” shall have the same meaning given to them in Section 45D of the Internal Revenue Code.
- C. A natural or juridical person who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year may claim a credit against the person’s Louisiana income or corporation franchise tax for such taxable year equal to the applicable percentage of the adjusted purchase price paid to the issuer of such qualified equity investment for such investment which, in turn, has been invested in qualified low-income community investments for such credit allowance date.
- D. The total of all such credits taken by any person under this Section shall not exceed such person’s total combined income and corporation franchise tax liability for that taxable year. Any credits that are not used in the first taxable year eligible for use shall carry forward and be eligible for use in future taxable years.
- E. The aggregate amount of credits for all taxpayers during any taxable year shall not exceed five million dollars. An application for a tax credit pursuant to this Section shall be submitted to the secretary on forms established by the secretary prior to the use of the credit, and the allocation of tax credits under this Section shall be on a first-come, first-served basis.
- F. If any amount of the federal tax credit available with respect to a qualified equity investment which is eligible for a credit under this Section is recaptured pursuant to the provisions of Section 45D of the Internal Revenue Code, the Department of Revenue shall have the right to recapture a portion of the credit granted with respect to such qualified equity investment under this Section. The percentage of the credit granted pursuant to this Section that may be recaptured pursuant to this Section shall be equal to the percentage of the total federal credit earned with respect to such qualified equity investment that is recaptured pursuant to Section 45D of the Internal Revenue Code.
- G. The Department of Revenue shall promulgate such rules and regulations as may be necessary to carry out

the purposes of this Section, including rules to facilitate the transfer of credits earned pursuant to this Section.

- H. No tax credits shall be allowed for qualified equity investments made after August 31, 2013.

Added by Acts 2002, No. 66, § 1, eff. September 1, 2002. Amended by Acts 2005, No. 424 §1, eff. August 15, 2005.

R.S. 47:6017. Tax credits for certain expenses paid by economic development corporations

- A. There shall be allowed a credit against any Louisiana income or corporation franchise taxes for the filing fee paid to the Louisiana State Bond Commission that is incurred by an economic development corporation in the preparation and issuance of bonds, as provided for in Chapter 27 of Title 33 of the Louisiana Revised Statutes of 1950 (R.S. 33:9020 through 9037). The credit shall be an amount equal to the amount of the filing fee paid to the Louisiana State Bond Commission that is incurred by the corporation in the preparation and issuance of the bonds.
- B. Any such credit shall be taken as a credit against the applicable tax or taxes in the taxable period in which the expenses were incurred. The total of all such credits taken in a taxable year shall not exceed the total tax liability for that taxable year.

Added by Acts 2002, No. 78, § 1, eff. June 25, 2002.

R.S. 47:6018. Tax credits for purchasers from “PIE contractors”

- A. The legislature hereby finds that it is in the interest of the state to promote those businesses known as “PIE contractors.” Those businesses utilize inmate labor in producing items for sale and then pay thirty percent of the salary paid to such inmates back to the state. Promotion of such businesses thereby reduces the cost to the state of the incarceration of the working inmates while at the same time developing valuable skills and habits which will benefit the inmates upon their release, reducing future costs of incarceration. In addition, an incentive specifically directed toward promoting sales of specialty apparel items by a tax-paying seller located within the state will assure the collection of the state’s sales tax on those items which, in the usual course of business, are often purchased from out-of-state businesses without a Louisiana sales tax charge.

Miscellaneous Provisions

- B. There shall be allowed a credit in each tax year against the Louisiana income tax and the Louisiana corporate franchise tax for any individual or business which purchases specialty apparel items including, but not limited to industrial clothes, uniforms, and scrubs, from a contractor in a certified Private Sector/Prison Industry Enhancement Program which employs inmates of Louisiana correctional institutions to manufacture such apparel.
- C. The amount of the credit shall be equal to the state sales and use tax paid by the purchaser on each case or other unit of apparel during the purchaser's tax year as reflected on the books and records of the purchaser during his tax year.
- D. 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 provided for in this Section:
- (1) All entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this Section on their corporation income tax return.
 - (2) Individuals shall claim any credit allowed under this Section on their individual income tax return.
 - (3) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:
 - (a) Corporate partners or members shall claim their share of the credit on their corporation income tax returns.
 - (b) Individual partners or members shall claim their share of the credit on their individual income tax returns.
 - (c) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.
- E. Notwithstanding any other law to the contrary, any excess of allowable credit over aggregate tax liabilities against which such credit can be applied shall constitute an overpayment, as defined in R.S. 47:1621(A), and the secretary of the Department of Revenue may 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 overpay-

ment shall not be subject to the requirements of R.S. 47:1621(B). All credits and refunds, together with interest thereon, shall 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 the credit or refund in whole or in part shall entitle the aggrieved taxpayer to proceed with the remedies provided in R.S. 47:1625.

Added by Acts 2002, No. 32, § 1, eff. for income and franchise tax becoming due on and after January 1, 2003.

R.S. 47:6019. Tax credit; rehabilitation of historic structures

- A.(1)(a) There shall be a credit against income and corporation franchise tax for the amount of eligible costs and expenses incurred during the rehabilitation of a historic structure located in a downtown development district. The credit shall not exceed twenty-five percent of the eligible costs and expenses of the rehabilitation. No taxpayer, or any entity affiliated with such taxpayer, shall receive more than five million dollars of credit for any number of structures rehabilitated within a particular downtown development district.
- (b) The tax credit for qualified rehabilitation expenditures is earned only in the year in which the property attributable to the expenditures is placed in service.
- (2)(a) In order to qualify for the credit, the historic structure located in the downtown development district shall also be listed on the National Register of Historic Places or be certified by the state historic preservation office as contributing to the historical significance of the district.
- (b) Eligible structures must be nonresidential real property or residential rental property.
 - (c) A fee shall be charged by the state historic preservation office of two hundred fifty dollars per application.
- (3)(a) The credit shall be allowed against the income tax for the taxable period in which the credit is earned and against the franchise tax for the taxable period following the taxable period in which the credit is earned. If the tax credit allowed pursuant to this Section exceeds the amount of such taxes due, any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed five years. This credit may be used in addition to the twenty percent federal tax credit for such purposes.

Miscellaneous Provisions

(b)(i)(aa) Persons who are awarded tax credits in excess of their tax liabilities for a given year may elect to sell their unused tax credits to taxpayers with a Louisiana tax liability. The tax credits may only be sold twice.

(bb) The transfer of the credit does not extend the carry forward period of the credit.

(cc) Transferors and transferees shall submit to the state historic preservation office and to the Department of Revenue in writing a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, the credit identification number assigned by the state historic preservation office, the remaining balance after transfer, all federal and Louisiana tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, and any other information required by the state historic preservation office or the Department of Revenue. Failure to comply with this notification provision will result in the disallowance of the tax credit until the parties are in full compliance.

(dd) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:

(I) Corporate partners or members shall claim their share of the credit on their corporation income or corporation franchise tax returns.

(II) Individual partners or members shall claim their share of the credit on their individual income tax returns.

(III) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

B.(1) Definitions. For purposes of this Section, the following words and phrases shall have the meanings ascribed to them in this Subsection:

(a) "Downtown development district" shall mean a downtown development district or central business development district created by law, pursuant to law, or by ordinance adopted prior

to January 1, 2002, in a home rule charter municipality.

(b) "Eligible costs and expenses" shall mean qualified rehabilitation expenditures as defined in Section 47c(2)(A) of the Internal Revenue Code of 1986, as amended, except that "substantially rehabilitated" shall mean that the qualified rehabilitation expenditures must exceed ten thousand dollars.

(2) Federal law terms. Except as otherwise provided or clearly appearing from the context, any term used in this Section shall have the same meaning as when used in a comparable context in federal law.

Added by Acts 2002, No. 60 §1, eff. for all taxable years beginning after December 31, 2002; Amended by Acts 2005, No. 439 §1, eff. Aug. 15, 2005 for all tax years ending prior to Jan. 1, 2009.

R.S. 47:6020. Legislative findings and purposes

A. The legislature finds that the welfare of the state is enhanced by a healthy entrepreneurial business environment and that ready sources of capital necessary to support this environment are not currently available.

B. This Act is intended to achieve the following purposes:

(1) To create the Angel Investor Tax Credit Program to encourage third parties to invest in early stage wealth-creating businesses in the state

(2) To expand the economy of the state by enlarging its base of wealth creating businesses.

(3) To enlarge the number of quality jobs available to retain the presence of young people educated in Louisiana.

Added by Acts 2005 No. 400 §1.

R.S.47:6020.1. Angel Investor Tax Credit Program; establishment; qualifications; administration

A. Qualifying individuals or entities that invest in a Louisiana Entrepreneurial Business as defined by R.S. 51:2303(5) may earn, apply for, and be granted a tax credit on any income or corporation franchise tax liability. Such credits shall be earned and granted for a period of five tax years as provided

Miscellaneous Provisions

in this Part. The administration of applications for these credits and the provision of these credits shall be called the Angel Investor Tax Credit Program.

B. (1) The Angel Investor Tax Credit Program shall be implemented and administered by the Department of Economic Development. In compliance with the Administrative Procedure Act and this Part, the department shall adopt and promulgate such rules as are necessary for the efficient and effective administration of this program in keeping with the purposes for which it is enacted.

(2) In providing for the implementation and administration of the program, the department shall work closely with the secretary of the Department of Revenue in order to promulgate rules. Such rules shall include provisions for:

(a) The Department of Economic Development to certify the eligibility of any taxpayer applicant for receipt of the tax credit provided for in this Part and the qualification of any taxpayer claimant to claim the credit against state tax liability.

(b) The presentation of a taxpayer's eligibility certification and any other documentation required to be applied for to earn or claim a credit.

(c) Provide for an annual report of the Louisiana Entrepreneurial Business regarding the use of proceeds, number of employees, amount of payroll, annual revenue, and any other information requested by the Department of Economic Development.

C. (1) To qualify for an angel investor tax credit for five tax years all of the following qualifications shall be required by each applicant:

(a) The investment in the Louisiana Entrepreneurial Business must be an investment that is at risk and not secured or guaranteed. "At risk" means that the repayment of the investment is entirely dependent on the success of the Louisiana Entrepreneurial Business.

(b) The funds invested by the applicant cannot have been raised as a result of other

Louisiana tax incentive programs, funds pooled or organized through capital placement agreements for the purpose of equity and venture capital investing unless approved by the Department of Economic Development, or as the result of illegal activity.

(c) For the purposes of this Angel Investor Tax Credit Program, an angel investor or investors cannot be the principal owner or owners of the business who are involved in the operation of the business as a full-time professional activity nor can their spouses and relatives within the third degree of consanguinity or affinity. A principal owner means one or more persons who own an aggregate of fifty percent or more of the Louisiana Entrepreneurial Business.

(d) The use of proceeds from the investment must be used for capital improvements, plant equipment, research and development, working capital for the business, or other business activity as may be approved by the Department of Economic Development. The proceeds cannot be used to pay dividends, repay shareholder's loans, redeem shares, or repay debt unless approved by the Department of Economic Development.

(e) The applicant shall meet the definition of accredited investor established by the Department of Economic Development.

(f) The investment in the Louisiana Entrepreneurial Business by the applicant must be maintained for three years unless otherwise approved by the Department of Economic Development.

(2) To qualify for an angel investor tax credit the Louisiana Entrepreneurial Business shall meet all the following requirements:

(a) The principal business operations of the business are located in Louisiana.

(b) Prior to the investment by the taxpayer, the business has received approval as qualified to receive angel investor tax credits by the Department of Economic Development.

(c) The Louisiana Entrepreneurial Business must demonstrate that it will be a wealth-

Miscellaneous Provisions

creating business for Louisiana by demonstrating in its business plan that it will have more than fifty percent of its sales from outside Louisiana.

- (d) The business is not a business engaged primarily in retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, or financial services including venture capital funds.

Added by Acts 2005, No. 400 §1.

R.S. 47:6020.2. Angel investor tax credit; amount; duration; forfeit

A. (1) Except as provided in Subsection B of this Section, the taxpayer may earn and apply for and, if qualified, be granted a credit on any income or corporation franchise tax liability owed to the state by the taxpayer seeking to claim the credit, in the amount approved by the secretary of the Department of Economic Development for the amount of money invested by the taxpayer in the Louisiana Entrepreneurial Business, which shall not exceed one million dollars per year per business and two million dollars total per business. Except as otherwise provided in this Paragraph, the credit shall be allowed against the income tax for the taxable period in which the credit is earned and the franchise tax for the taxable period following the period in which the credit is earned. However, credits earned on or before December 31, 2005, shall not be allowed until the income tax period beginning January 1, 2006, and the franchise tax due January 1, 2007.

- (2) (a) The credits approved by the Department of Economic Development shall be granted at the rate of fifty percent of the amount of money invested by the taxpayer in the Louisiana Entrepreneurial Business, with the credit divided in equal portions for five years, subject to the limitations provided for in Paragraph (1) of this Subsection.

(b) The total angel investor tax credits granted by the Department of Economic Development in any calendar year shall not exceed five million dollars.

(c) After certifying the eligibility of the Louisiana Entrepreneurial Business and the amount of the investment, the Department

of Economic Development shall issue a tax number, the amount of credit, the name of the qualifying business, and other credit certificate, a copy of which is to be attached to the tax return of the angel investor. The tax credit certificate shall contain the taxpayer's name, address, tax identification information required by the Department of Revenue. The tax credit certificate, unless rescinded by the Department of Economic Development, shall be accepted by the Department of Revenue as proof of the credit.

- (d) The Department of Economic Development shall maintain a list of the tax credit certificates issued.

(3) (a) All entities taxed as corporations for Louisiana income or corporation franchise tax purposes shall claim any credit allowed under this Section on their corporation income and corporation franchise tax return.

(b) Individuals shall claim any credit allowed under this Section on their individual income tax return.

(c) Estates or trusts shall claim any credit allowed under this Section on their fiduciary income tax returns.

(d) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:

(i) Corporate partners or members shall claim their share of the credit on their corporation income or corporation franchise tax returns.

(ii) Individual partners or members shall claim their share of the credit on their individual income tax returns.

(iii) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

B. A tax credit granted pursuant to the Angel Investor Tax Credit Program shall expire and have no value or effect on tax liability beginning with the eleventh tax year after the tax year in which it was originally granted.

Added by Acts 2005, No. 400, §1.

Miscellaneous Provisions

R.S. 47:6020.3. False or fraudulent information in making application, claim for credit, or other instrument; penalties

- A. Any person making an application, claim for an angel investor tax credit, or any report, return, statement, or other instrument or providing any other information pursuant to the provisions of the Angel Investor Tax Credit Program who willfully makes a false or fraudulent application, claim, report, return, statement, invoice, or other instrument or who willfully provides any false or fraudulent information, any person who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice, or other instrument, or any person who willfully aids or abets another in providing any false or fraudulent information, shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than one thousand dollars and not more than fifty thousand dollars or imprisoned for not less than two years and not more than five years, or both.
- B. Any person convicted of a violation of this Section shall be liable for the repayment of all credits which were granted to that person. Interest shall be due on such repayments at the rate of fifteen percent per annum.

Added by Acts 2005, No. 400 §1.

R.S. 47:6020.4. Angel investor tax credit; annual report to legislature

The secretary of the Department of Economic Development shall report to the House Committees on Commerce and Ways and Means and the Senate Committees on Commerce, Consumer Protection, and International Affairs and Revenue and Fiscal Affairs two months prior to each regular session of the legislature on the activities resulting from the Angel Investor Tax Credit Program with information provided to the secretary annually by the Louisiana Entrepreneurial Business. The report shall include but not be limited to the following:

- (1) The total amount of capital invested into Louisiana Entrepreneurial Businesses as a result of this program.
- (2) An estimate of the total direct and indirect economic impact on Louisiana for the Louisiana Entrepreneurial Businesses receiving an investment based upon the data collect-

ed in this Section.

- (3) The following information shall be reported to the Department of Economic Development by each Louisiana Entrepreneurial Business that received an investment from an angel investor. The information shall be reported annually for five years following the investment.
 - (a) The amount invested into the business by the angel investor or investors.
 - (b) The actual number of and gross payroll for the net new permanent full-time and part-time jobs created each year after the investment was received.
 - (c) The dollar amount of new capital investment by the company made in the state.
 - (d) The actual number and gross payroll of net jobs retained, if any, as compared to the number and payroll of jobs existing prior to the investment.
 - (e) Wage rates and benefits of the new permanent full-time and part-time jobs created, and those of the jobs retained.
 - (f) Gross sales and tax revenues generated by each company receiving an investment, as verified by the Department of Revenue.

Added by Acts 2005, No. 400 §1.

R.S. 47:6021. Brownfields Investor Tax Credit

A. (1) Purpose. --The primary objective of this Section is to stimulate environmental economic development in Louisiana by encouraging the cleanup, redevelopment, and productive reuse of brownfields sites in the state. The legislature hereby finds and declares that unknown environmental liabilities are preventing communities, developers, and investors from restoring brownfields properties to productive use and revitalizing impacted neighborhoods. Brownfields sites languish because developers, both public and private, face a daunting challenge in the form of exorbitant environmental site assessment study costs, followed by potentially even more expensive cleanup costs. Banks and other traditional financing sources have been and remain reluctant to finance the costs involved in the initial assessment of brownfields sites. These sites may have signifi-

Miscellaneous Provisions

cant contamination but nonetheless retain strong development or redevelopment potential. Properties that were once used for industrial, manufacturing, or commercial uses are lying abandoned or under used due to the suspicion or actual knowledge of hazardous substance contamination.

- (2) In furtherance of that purpose, there is hereby established a tax structure which encourages private investment. This structure will provide for state participation in the form of tax credits to encourage investment in state-certified brownfields site redevelopment.

B. Definitions. --The following terms shall have the following meanings for the purposes of this Section:

- (1) "Brownfields site" or "state-certified site" means an identified area of immovable property in the state for which a voluntary remediation action or a voluntary remedial investigation concerning the presence or potential presence of a hazardous substance or pollutant is authorized by the secretary pursuant to Part II of Chapter 12 of Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950.
- (2) "Investment" shall mean the expenditure for the voluntary remedial investigation or voluntary remediation of a brownfields site by any entity or individual.
- (3) "Responsible person" means responsible person or responsible landowner as those terms are defined in R.S. 30:2285.2.
- (4) "Voluntary remedial investigation" means the determination of the nature and extent of potential threats to human health and the environment through data collection and site characterization and the development of remedial action goals, all as authorized and approved by the secretary pursuant to Part II of Chapter 12 of Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950.
- (5) "Voluntary remediation action" means risk-based cleanup of a voluntary remediation site performed in accordance with a voluntary remedial action plan approved by the secretary pursuant to Part II of Chapter 12 of Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950.

C. Investor tax credit; specific projects.

- (1) There is hereby authorized a credit against state income tax for the investment by a taxpayer in a voluntary remediation action or a voluntary remedial investigation as provided for in this Section by any person who is not a responsible person, as follows: Except as provided for in Paragraph

2) of this Subsection:

- (a) Each taxpayer shall be allowed a tax credit of fifteen percent of the total investment made by that taxpayer upon the date of the issuance of completion by the secretary of the Department of Environmental Quality of a voluntary remedial investigation at a state-certified site as provided for in this Section.
 - (b) Each taxpayer shall be allowed a tax credit of twenty-five percent of the total investment made by that taxpayer upon the date of the issuance of completion by the secretary of the Department of Environmental Quality of a voluntary remediation action at a state-certified site as provided for in this Section.
- (2) Tax credits associated with a state-certified site shall never exceed the total investment in such site.
 - (3) The credit shall be allowed against the income tax for the taxable period in which the credit is earned as provided for in Paragraph (1) of this Subsection. If the tax credit allowed pursuant to this Section exceeds the amount of such taxes due, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed ten years. In no event shall the amount of the tax credit applied by a taxpayer in a taxable period exceed the amount of such taxes due from the taxpayer for that taxable period.

D. Review of applications; certification and administration.

- (1) Any voluntary remedial investigation application and voluntary remediation application for such tax credit shall be jointly submitted to the Department of Economic Development and the Department of Environmental Quality. Such applications shall be provided by the

Miscellaneous Provisions

Department of Environmental Quality pursuant to the provisions of Part II of Chapter 12 of Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950, and regulations adopted pursuant thereto, and shall include a requirement that the applicant provide a statement of the projected economic development benefits to the community in which the project is located. Upon receipt of such application, the Department of Environmental Quality shall issue a site specific identification number. Such site identification number shall then be forwarded to the Department of Economic Development and the Board of Commerce and Industry. The Department of Environmental Quality shall aid the Department of Economic Development and the Board of Commerce and Industry in determining whether the information furnished by the applicant is true and correct.

- (2) The Department of Environmental Quality shall within thirty days after receipt of the application file in writing with the Department of Economic Development any objections it has to a request for a credit. The Board of Commerce and Industry shall make its recommendations in writing to the governor for a final determination of the request for the tax credit authorized in Subsection (C) of this Section.
- (3) (a) (i) Upon approval by the governor of a voluntary remedial investigation tax credit application, the applicant may proceed with his voluntary remedial investigation. Any such investigation shall be conducted according to Department of Environmental Quality oversight.
 - (ii) After a satisfactory demonstration that the voluntary remedial investigation is complete, the Department of Environmental Quality shall approve the remedial investigation report and shall issue a certificate of completion to the taxpayer-applicant and forward it to the secretary of the Department of Economic Development, the Board of Commerce and Industry, and the secretary of the Department of Revenue.
 - (iii) The taxpayer shall be entitled to the tax credit authorized in Subsection (C) of

this Section upon certification of the Department of Environmental Quality that such investigation is complete.

- (b) (i) Upon approval by the governor of a voluntary remediation tax credit application, the applicant may proceed with his voluntary remediation action.
 - (ii) After satisfactory demonstration that the voluntary remedial action has been accomplished and the Department of Environmental Quality approves the voluntary remediation action report, the department shall issue a certificate of completion to the taxpayer-applicant and shall forward the same to the secretary of the Department of Economic Development and the secretary of the Department of Revenue.
 - (iii) The taxpayer shall be entitled to the tax credit authorized in Subsection (C) of this Section upon the issuance of such certification of completion of the voluntary remediation action by the Department of Environmental Quality.
- (4) The secretary of the Department of Environmental Quality shall notify the secretary of the Department of Economic Development, the Board of Commerce and Industry, and secretary of the Department of Revenue within fifteen days after notice from a taxpayer-applicant where either a voluntary remedial investigation or a voluntary remediation has been terminated. No tax credit shall be allowed if either a voluntary remedial investigation or a voluntary remediation is terminated.

E. Application of the credit..

- (1) (a) All entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this Section on their corporation income tax return.
 - (b) Individuals, estates, and trusts shall claim any credit allowed under this Section on their income tax returns.
- (2) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:

Miscellaneous Provisions

- (a) Corporate partners or members shall claim their share of the credit on their corporate income tax returns.
 - (b) Individual partners or members shall claim their share of the credit on their individual income tax returns.
 - (c) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.
- (3) Certification of completion shall be remitted with any income tax return on which a credit is claimed.
- (4) The secretary of the Department of Environmental Quality shall be responsible for the submission of the initial certification of a voluntary remedial investigation and the final certification of completion of voluntary remediation on a state-certified brownfields site together with the year of completion; taxpayer identification number; type of credit, either voluntary remedial investigation or voluntary remediation; and the certified total expenditures to the secretary of the Department of Revenue.
- (5) The Board of Commerce and Industry, in consultation with the Department of Environmental Quality, the Department of Economic Development, and the Department of Revenue 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.

F. Recapture of credits. --If the secretary of the Department of Environmental Quality or the secretary of the Department of Revenue find that funds for which a taxpayer received credits according to this Section are not invested in and expended with respect to a state-certified assessment or remediation then the investor's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by this Section. Any taxpayer applying for the credit shall be required to reimburse the Department of Environmental Quality for audits or recapture of credits.

G. Recovery of credits by the Department of Revenue.

- (1) Credits previously granted to a taxpayer may be recovered by the secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561.
- (2) The only interest that may be assessed and collected on recovered credits is interest at a rate three percentage points above the rate provided in R.S. 9:3500(B)(1), which shall be computed from the original due date of the return on which the credit was taken.

H. Ineligible participants. --No corporation or partnership including any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the state or a loan guaranteed by the state, or any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy shall be eligible to receive any tax incentive authorized under this Section. In addition, no responsible person shall be eligible to receive any tax incentive pursuant to this Section.

Added by Acts 2005, No. 156 §1, eff. July1, 2005

R.S. 47:6022 Digital interactive media producer tax credit

A. Short title. --This Section shall be known and may be referred to as the "Louisiana Digital Media Act."

B. Purpose. --The primary objective of this Section is to encourage development in Louisiana of a strong capital base for the production of digital interactive media 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 digital interactive media in this state.
 - (b) Develop a tax infrastructure which encourages private investment. This infrastructure will provide for state participation in the form of tax credits to encourage investment in state-certified productions.
 - (c) Develop a tax infrastructure utilizing tax credits which encourage investments in

Miscellaneous Provisions

multiple state-certified productions.

- (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 digital interactive media.
 - (b) Encourage new education curricula in order to provide a labor force trained in all aspects of digital interactive media.
 - (c) Encourage partnerships between digital interactive media developers and Louisiana educational institutions.

C. Definitions. --For the purposes of this Section:

- (1) "Base investment" means the actual funds expended in this state by a state-certified production as production-related costs.
- (2) "Component parts," with respect to digital interactive media, means all elements that are integral to the functioning or development of such products. Some examples of "component parts" are software, computer code, image files, music files, scripts and plays, concept mock-ups, software tools, and testing procedures.
- (3) "Department" means the Louisiana Department of Revenue.
- (4) "Digital interactive media" means products that are intended for commercial use or distribution and that are (a) produced for distribution on electronic media, including file downloads over the Internet, (b) a computer-controlled virtual universe with which users may interact in order to achieve a goal or set of goals, and (c) include an appreciable quantity of three of the following five types of data: text, sound, fixed images, animated images, and 3D geometry. Some examples of digital interactive media are computers and video games. "Digital interactive media" shall not include, however, products that are essentially interpersonal communication services, such as videoconferencing and text-based channels and chat rooms, nor products regulated under the Louisiana Gaming Control Law.
- (5) "Director" means the designee of the secretary of the Department of Economic

Development.

- (6) "Secretary" means the secretary of the Louisiana Department of Revenue.
- (7) "State-certified production" shall mean a digital interactive media production or a component part thereof approved by the director.
- (8) "Tax credit" means the digital interactive media producer tax credit authorized by this Section.

D. Producer tax credit; specific projects. --For projects certified prior to January 1, 2010, there is hereby authorized a tax credit against state income tax which shall be earned by producers at the time funds are expended in Louisiana on a state-certified production as follows:

- (1) For each of the first and second years following certification of the project as a state-certified production, the producer shall earn tax credits at the rate of twenty percent of the base investment for that year.
- (2) For each of the third and fourth years following certification of the project as a state-certified production, the producer shall earn tax credits at the rate of fifteen percent of the base investment for that year.
- (3) For each of the fifth and sixth years following certification of the project as a state-certified production, the producer shall earn tax credits at the rate of ten percent of the base investment for that year.
- (4) No tax credits may be earned under this Section after the sixth year following the certification of the project as a state-certified production.
- (5) The credit shall be allowed against the income tax due from a taxpayer for the taxable period in which the credit is earned as well as the immediately preceding period. If the tax credit allowed pursuant to this Section exceeds the amount of such taxes due from a taxpayer, then any unused credit may be carried forward by the taxpayer as a credit against subsequent tax liability for a period not to exceed ten years. However, in no event shall the amount of the tax credit applied by a taxpayer in a taxable period exceed the amount of such taxes due from the taxpayer for that taxable period.

Miscellaneous Provisions

- (6) Application of the credit.
- (a) All entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this Section on their corporation income tax return.
 - (b) Individuals shall claim any credit allowed under this Section on their individual income tax return.
 - (c) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:
 - (i) Corporate partners or members shall claim their share of the credit on their corporation income tax returns.
 - (ii) Individual partners or members shall claim their share of the credit on their individual income tax returns.
 - (iii) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.
- (7) Transferability of the credit. --Any tax credits allocated to a person and not previously claimed by any taxpayer against his income tax may be transferred or sold by such person to another Louisiana taxpayer, subject to the following conditions:
- (a) A single transfer or sale may involve one or more transferees. The transferee of the tax credits may transfer or sell such tax credits subject to the conditions of this Section.
 - (b) Transferors and transferees shall submit to the director in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, the state-certified production number, the name of the state-certified production, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate, and any other information required by the director or the department.
 - (c) Failure to comply with this Paragraph will result in the disallowance of the tax credit until the taxpayers are in full compliance.
- (d) The transfer or sale of this credit does not extend the time in which the credit can be used. The carry forward period for credit that is transferred or sold begins on the date on which the credit was originally earned.
- (8) The transferee shall apply such credits in the same manner and against the same taxes as the taxpayer originally awarded the credit.
- (9) (a) Any producer who has received the tax credit shall commit to continue business operations in this state for at least one year after the certification of any tax credit pursuant to this Section.
- (b) For purposes of this Paragraph, "continue business operations in this state" means that a producer's base investment in the year following certification of any tax credit is at least twenty-five percent of the amount of the previous year's base investment.
 - (c) If a producer who has received the tax credit should not continue business operations in this state for one year after certification of any tax credit pursuant to this Section, the producer shall either:
 - (i) Surrender all credits earned within one year of the date the producer does not continue business operations in this state.
 - (ii) Pay back to the department an amount equal to the face value of all credits earned within one year of the date the producer does not continue business operations in this state.
- E. Certification and administration.**
- (1) The director shall determine through the promulgation of rules (a) what projects qualify for state-certified productions and (b) any other matter necessary to carry out the intent and purposes of this Section. These rules shall not be adopted until they are approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Miscellaneous Provisions

- (2) (a) The director shall submit his initial certification of a project as a state-certified production to each producer and to the secretary. The initial certification shall include a unique identifying number for each state-certified production.
- (b) Upon completion of all or a portion of a state-certified production, the director shall review the production expenses and, if approved, issue a credit certification letter to the producer. The certification letter shall include the identifying number assigned to that state-certified production in the initial certification. Written approval of the secretary of the Department of Economic Development and the commissioner of administration shall be received prior to issuance of a credit certification letter.
- (3) Any taxpayer applying for the credit shall be required to reimburse the department for any audits required in relation to granting the credit.

F. Recapture of credits. --If the director finds that funds for which a producer received credits according to this Section are not actually expended in this state as a production-related cost of a state-certified production, then the producer's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by this Section.

G. Recovery of credits by department.

- (1) Credits previously granted to a taxpayer, but later disallowed, may be recovered by the secretary through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December thirty-first of the year in which the credits were earned.
- (2) The only interest that may be assessed and collected on recovered credits is interest at a rate of three percentage points above the rate provided in R.S. 9:3500(B) (1), which shall be computed from the original due date of the return on which the credit was taken.
- (3) The provisions of this Subsection are in addition to and shall not limit the authority of the secretary to assess or to collect under any other provision of law.

- H.** The provisions of this Section shall not apply to any investments or expenditures that qualify for tax credits under either R.S. 47:1125.1 or 6007.
- I.** The provisions of this Section shall be effective until January 1, 2010.
- J.** Any producer who earns tax credits under this Section shall pledge to continue business operations in the state of Louisiana until such time as such producer can demonstrate to the director that the net positive fiscal impact to the state resulting from such producer's operations in connection with the state-certified production has met or exceeded the value of any tax credits issued under this Section.

Added by Acts 2005, No. 346 §1, eff. June 30, 2005.

R.S. 47:6023 Sound Recording Investor Tax Credit

A. Purpose. The primary objective of this Section is to encourage development in Louisiana of a strong capital and infrastructure base for musical recording productions in order to achieve a more independent, self-supporting music 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 musical recordings or "sound recordings" in Louisiana.
 - (b) Develop a tax and capital infrastructure which encourages private investment. This tax infrastructure is to provide for state participation in the form of tax credits to encourage investment in state-certified musical recording productions and infrastructure.
 - (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 global competition in fully developing economic development options within the music and recording industries.
 - (b) Encourage new education curricula in order to provide a labor force trained in all

Miscellaneous Provisions

aspects of musical recording production.

- (c) Encourage the development of a Louisiana music recording production infrastructure with state-of-the-art facilities.

B. Definitions. For the purposes of this Section:

- (1) "Base investment" shall mean the actual investment made and expended by a state-certified production in the state as production-related costs and/or in a state-certified musical recording infrastructure project.
- (2) "Expended in the state" in the case of tangible property shall mean property which is acquired from a source within the state, and in the case of services, shall mean services procured and performed in the state.
- (3) "Sound recording" means a recording of music, poetry, or spoken-word performance made in Louisiana, in whole or in part. The term "sound recording" shall not include the audio portions of dialogue or words spoken and recorded as part of a motion picture, video, theatrical production, television news coverage, and athletic events.
- (4) "Sound recording production company" shall mean a company engaged in the business of producing sound recordings as defined in this Section. Sound recording production company shall not mean or include any person or company, or any company owned, affiliated, or controlled, in whole or in part, by any company or person, which is in default on a loan made by the state or a loan guaranteed by the state, nor which has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.
- (5) "State-certified production" means a sound recording production, or a series of productions occurring over the course of a twelve-month period, and costs related to such production or productions that are approved by the Louisiana Department of Economic Development, the commissioner of administration, and the office of the governor.
- (6) "State-certified musical recording infrastructure project" means a musical recording capital infrastructure project and costs related to such project that are approved by the Louisiana

Department of Economic Development, the commissioner of administration, and the office of the governor.

C. Investor tax credit; state-certified productions and infrastructure projects.

- (1) Until January 1, 2008, there is hereby authorized a credit against the state income tax for investments made in state-certified productions and state-certified musical recording infrastructure projects. The tax credit shall be earned by investors at the time expenditures are certified by the Louisiana Department of Economic Development according to the total base investment certified for the sound recording production company per calendar year. However, no credit shall be allowed under this Section for any expenditures for which a credit was granted under R.S. 47:6007. However, no sound recording production company shall earn a sound recording investor tax credit in more than three years out of any five year period.
 - (a) If the total base investment is greater than fifteen thousand dollars and less than or equal to one hundred fifty thousand dollars, each investor shall be allowed a tax credit of ten percent of the base investment made by that investor.
 - (b) If the total base investment is greater than one hundred fifty thousand dollars and less than or equal to one million dollars, each investor shall be allowed a tax credit of fifteen percent of the base investment made by that investor.
 - (c) If the total base investment is greater than one million dollars, each investor shall be allowed a tax credit of twenty percent of the base investment made by that investor.
- (2) Sound recording investor tax credits associated with a state-certified production shall never exceed the total base investment in that production or musical recording infrastructure project.
- (3) Except as otherwise provided in this Paragraph, the aggregate amount of credits certified for all investors pursuant to this Section during any calendar year shall not exceed three million dollars.

Miscellaneous Provisions

(a) An application for initial certification of a project shall be submitted to the Louisiana Department of Economic Development prior to the granting of the credit, and the granting of credits under this Section shall be on a first-come, first served basis. The secretary of the Louisiana Department of Economic Development shall determine through the promulgation of rules the administration of the annual aggregate maximum. Prior to adoption, these rules shall be approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

(b) If the total amount of credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess will be treated as having been applied for on the first day of the subsequent year.

D.(1) The credit shall be allowed against the individual or corporate income tax for the taxable period in which the credit is earned. Any excess of the credit over the income tax liability against which the credit can be applied 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 of Subtitle II of this Title, as amended. The right to a refund of any such overpayment shall not be subject to the requirements of R.S. 47:1621(B).

(2) Application of the credit. Individuals, estates, and trusts shall claim any credit allowed under this Section on their income tax return.

(a) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members.

(b) Corporate partners or members shall claim their share of the credit on their corporation income tax returns.

(c) Individual partners or members shall claim their share of the credit on their individual income tax returns.

(d) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

E. Certification and administration

(1) The secretary of the Department of Economic Development shall determine through the adoption and promulgation of rules which projects and expenditures, including amounts expended in this state on state-certified infrastructure projects, qualify according to this Section. Prior to adoption, these rules shall be approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs. When determining which projects qualify, the Louisiana Department of Economic Development shall take the following factors into consideration:

(a) The impact of the production on the immediate and long-term objectives of this Section.

(b) The impact of the production on the employment of Louisiana residents.

(c) The impact of the production on the overall economy of the state.

(d) The availability of similar infrastructure facilities within fifty miles of the proposed infrastructure project.

(2)(a) Application. An applicant for the sound recording investor tax credit shall submit an application for initial certification to the Louisiana Department of Economic Development that includes the following information:

(i) For state-certified productions the application shall include:

(aa) The distribution plan.

(bb) A preliminary budget including estimated Louisiana payroll and estimated base investment.

(cc) A description of the type of sound to be recorded.

(dd) A list of the principal creative elements including performing artist(s) and producer.

(ee) The name and address of the recording studio or other location where the recording production will take place.

(ff) A statement that the production will

Miscellaneous Provisions

- qualify as a state-certified production.
- (gg) Estimated start and completion dates.
- (ii) For state-certified musical recording infrastructure projects the application shall include:
- (aa) A detailed description of the infrastructure project.
- (bb) A preliminary budget.
- (cc) A statement that the project meets the definition of a state-certified infrastructure project.
- (dd) Estimated start and completion dates.
- (b) If the application is incomplete, additional information may be requested prior to further action by the Louisiana Department of Economic Development.
- (c) The Louisiana Department of Economic Development shall submit its initial certification of a project as a state-certified production or a state-certified musical recording infrastructure project to investors and to the secretary of the Department of Revenue. The initial certification shall include a unique identifying number for each state-certified production.
- (d) Prior to any certification of the state-certified production or infrastructure project, the sound recording production company shall submit to the Louisiana Department of Economic Development a cost report of production or project expenditures which the Louisiana Department of Economic Development may require to be prepared by an independent certified public accountant. The Louisiana Department of Economic Development shall review such expenditures and shall issue a tax credit certification letter to the investors indicating the amount of tax credits certified for the state-certified production or state-certified infrastructure project.
- (3) The secretary of the Louisiana Department of Economic Development, in consultation with the Department of Revenue, shall adopt and 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 Louisiana Department of Economic Development for any audits required in relation to granting the credit.
- (5) With input from the Legislative Fiscal Office, the Louisiana Department of Economic Development shall prepare a written report to be submitted to the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs no less than sixty days prior to the start of the Regular Session of the Legislature in 2007, and every second year thereafter. The report shall include the overall impact of the tax credits, the amount of the tax credits issued, the number of new jobs created, the amount of Louisiana payroll created, the economic impact of the tax credits and music industry, the amount of new infrastructure that has been developed in the state, and any other factors that describe the impact of the program.
- F. Recapture of credits.** If the Louisiana Music Commission and the Department of Economic Development find that funds for which an investor received credits according to this Section are not invested in and expended with respect to a state-certified production within twenty-four months of the date that such credits are earned, then the investor's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by this Section.
- G. Recovery of credits by Department of Revenue**
- (1) Credits previously granted to a taxpayer, but later disallowed, may be recovered by the secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December thirty-first of the year in which the twenty-four month investment period specified in Subsection F of this Section ends.
- (2) The only interest that may be assessed and collected on recovered credits is interest at a rate three percentage points above the rate provided in Civil Code Article 2924(B)(1), which shall be computed from the original

Miscellaneous Provisions

date of the return on which the credit was taken.

- (3) The provisions of this Subsection are in addition to and shall not limit the authority of the secretary of the Department of Revenue to assess or to collect under any other provision of law.

Added by Acts 2005, No. 485 §1, eff. July 12, 2005.

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 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 carry-over 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.

Miscellaneous Provisions

(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.

(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.

(10) "Commissioner" means the commissioner of the Office of Financial Institutions within the office of the governor.

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; Acts 2001, No. 8, § 17, eff. July 1, 2001; Acts 2001, No. 9, § 9, eff. July 1, 2001; Acts 2001, No. 1122, § 1, eff. July 1, 2001.

Supersedure

Acts 2001, No. 1122, § 1 amended sections in Chapter 26 relating to administration of the capital companies tax credit program. Section 2 of Acts 2001, No. 1122 provided:

"The provisions of this Act which amend and reenact R.S. 51:1923(3) and (7) and 1924(G) shall supersede the provisions of the Acts that originated as House Bills 1448 [Acts 2001, No. 8] and 1666 [Acts 2001, No. 9] of the 2001 Regular Session which amend and reenact R.S. 51:1923(3) and (7) and 1924(G)."

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 commissioner, pursuant to rules promulgated by

the secretary, to the Department of Insurance or the Department of Revenue.

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. (1) The total insurance premium tax credits granted pursuant to R.S. 22:1068(E) in any calendar year shall not result in an additional reduction of total premium tax revenues of greater than eight million dollars per year.

(2) During any calendar year in which this Subsection will limit the amount of certified capital for which insurance premium tax credits are allowed, certified capital for which insurance premium tax credits are allowed will be allocated among certified Louisiana capital companies. Requests for allocation shall be prepared for filing not later than October first on a form prescribed by the commissioner, which form shall include an affidavit by the insurance company investor pursuant to which such investor shall become legally bound and irrevocably committed to make an investment of certified capital in a certified Louisiana capital company subject only to receipt of an allocation pursuant to this Subsection. Any requests for allocation filed with the commissioner before October first of any calendar year shall be deemed to have been filed on October first of such year. Requests for allocation shall be allocated as follows:

(a) When aggregate requests for allocation by certified Louisiana capital company groups do not exceed seventy-two million seven hundred twenty-seven thousand two hundred seventy-two dollars, all requests for allocation shall be approved by the commissioner.

(b) When aggregate requests for allocation exceed seventy-two million seven hundred twenty-seven thousand two hundred seventy-two dollars, each certified Louisiana capital company group shall be entitled to receive an allocation to be calculated by dividing seventy-two million seven hundred twenty-seven thousand two hundred seventy-two dollars by the number of certified Louisiana capital company groups requesting an allocation. In the event that this

Miscellaneous Provisions

allocation results in one or more certified Louisiana capital company groups receiving an allocation in excess of the amount which was requested, the excess shall be reallocated to the remaining certified Louisiana capital company groups in proportion to the amount of their requests which exceeds the allocation previously afforded them.

- (3) No certified Louisiana capital company certified after October first of any year shall be entitled to receive an allocation pursuant to Paragraph (2) of this Subsection for the same calendar year in which it was certified.
 - (4) Annually within ten days of October first, the commissioner shall review all requests for allocation of insurance premium tax credits and notify the certified Louisiana capital companies of the amount of certified capital for which insurance premium tax credits are allowed to the investors in such company.
 - (5) In the event a certified Louisiana capital company does not receive an investment of certified capital equaling the amount of the allocation made pursuant to Paragraph (4) of this Subsection within ten days of its receipt of notice of such allocation, that portion of the allocation will be forfeited and reallocated to the remaining certified Louisiana capital company groups in proportion to the amount of their requests which exceeds the allocation previously afforded them.
- 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 or the Office of Financial Institutions."

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; Acts 1998, No. 70, § 2, eff. Oct. 1, 1998; Acts 2001, No. 8, § 17, eff. July 1, 2001; Acts 2001, No. 9, § 9, eff. July 1, 2001; Acts 2001, No. 1122, § 1, eff. July 1, 2001.

Supersedure

Acts 2001, No. 1122, § 1 amended sections in Chapter 26 relating to administration of the capital companies tax credit program. Section 2 of Acts 2001, No. 1122 provided:

"The provisions of this Act which amend and reenact R.S. 51:1923(3) and (7) and 1924(G) shall supersede the provisions of the Acts that originated as House Bills 1448 [Acts 2001, No. 8] and 1666 [Acts 2001, No. 9] of the 2001 Regular Session which amend and reenact R.S. 51:1923(3) and (7) and 1924(G)."

R.S. 51:1924.1 [Blank]

R.S. 51:1925. Certification of a capital company

- A. The commissioner 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 commissioner 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 commissioner shall issue the certification and notify the Department of Revenue 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 commissioner shall furnish a list of persons or businesses who may claim the tax credit to the Department of Revenue 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).

Miscellaneous Provisions

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; Acts 2001, No. 1122, § 1, eff. July 1, 2001.

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, plus, upon written submission to and approval of the commissioner, any reserved leverage resulting from either the receipt by the certified capital company of a written commitment letter from the United States Small Business Administration or the United States Department of Agriculture Business and Industrial Loan Guarantee Program, or both, issued prior to refunding of the investment, 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 commissioner. 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 Commissioner 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

Miscellaneous Provisions

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 commissioner, 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 commissioner 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 commissioner'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 commissioner's refusal of the certification.
- (3) Willfully violate any provision of this Chapter any rule or regulation promulgated thereunder, or any order of the commissioner.

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; Acts 2001, No. 1122, § 1 eff. July 1, 2001.

R.S. 51:1927. Decertification

A. The commissioner 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.¹

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 non-complying investment pool in accordance with Subsection C of this Section. If the commissioner 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 commissioner 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 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 cer-

Miscellaneous Provisions

tified 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 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 insurance premium tax 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 insurance premium tax 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 insurance premium tax credits shall be forfeited.
- (4) When a certified capital company meets all requirements for continued certification of any investment pools, including R.S. 51:1926(A)(1) and (2), no insurance premium tax credits or income tax credits relating to such pools shall be subject to recapture, repayment, retaliation, or forfeiture.
- (5) The secretary may promulgate rules and regula-

tions regarding the recapture or forfeiture of income tax credits associated with pools which are certified on or after January 1, 1999, and which fail to meet the continuing certification requirements of R.S. 51:1926.

- D. The Department of Revenue 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; Acts 1998, No. 70, § 2, eff. Oct. 1, 1998; Acts 2001, No. 1122, § 1, eff. July 1, 2001.

¹In subsec A. R.S. 49:950 et seq.

R.S. 51:1927.1. Annual audit; annual rate of return; appreciation excess; remittance to Louisiana Economic Development Fund

- A. In each certified capital company's annual audit, the auditor shall determine whether the aggregate cumulative appreciation of each of the certified capital pools that were certified on or after January 1, 1999, and for which insurance premium tax credits were granted, has resulted in an annual rate of return of at least fifteen percent, computed on the sum of the total original certified capital. This amount shall be stated in the audit report.
- B. In an audit following a decertification of a pool that was certified on or after January 1, 1999, and for which insurance premium tax credits were granted, the auditor shall determine the appreciation in excess of the amount required to produce an annual internal rate of return of fifteen percent. Within thirty days following the issuance of the audit report, the certified capital company shall remit to the Louisiana Economic Development Fund twenty-five percent of all appreciation in excess of the amount required to produce an annual internal rate of return of fifteen percent. The maximum amount which shall be paid to the Louisiana Economic Development Fund will not¹ exceed the amount of tax credits granted for the pool. The calculation of internal rate of return shall include all cash distributions to equity investors out of the certified capital company, except for tax distributions and management fees. Management fees shall not exceed two and one-half percent of the total certified capital of the pool without the prior approval of the

Miscellaneous Provisions

secretary.

Added by Acts 1998, No. 70, § 2, eff. Oct. 1, 1998.

¹As appears in enrolled bill (Acts 1998, No. 70).

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. With respect to any investment pool certified on or before December 31, 1998, 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 commissioner, 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.

(2) With respect to any investment pools certified after December 31, 1998, when a certified Louisiana capital company has invested one hundred percent of any investment pool in qualified investments, the 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 commissioner, 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.

C. No distributions to equity owners shall be made from the certified capital contained within a pool prior to decertification other than for any of the following:

- (1) Debt service.
- (2) Tax payments or distributions to the equity owners of a certified Louisiana capital company in an amount equal to any projected increase in tax liability to the extent such increase is related to the ownership, management, or operation of the certified Louisiana capital company.
- (3) A management fee which does not exceed two and one-half percent of the pool's certified capital unless otherwise approved by the secretary.

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; Acts 1998, No. 70, § 2, eff. Oct. 1, 1998; Acts 2001, No. 1122, § 1, eff. July 1, 2001.

R.S. 51:1929. Rules and regulations

The secretary or the commissioner 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 commissioner.
- (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; Acts 2001, No. 1122, § 1, eff. July 1, 2001.

R.S. 51:1929.1. Guidance by commissioner; advisory opinions

A. Advisory opinions and interpretations of the commissioner shall not be considered rules requiring compliance with the rulemaking process under the Louisiana Administrative Procedure Act.¹

Miscellaneous Provisions

B. This Section shall only have prospective application.

Added by Acts 1997, No. 58, § 4.

Amended by Acts 2001, No. 1122, § 1, eff. July 1, 2001.

¹Louisiana Administrative Procedure Act, see R.S. 49:950 et seq.

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 commissioner shall not certify a capital company to begin the program later than December 31, 1999. The secretary shall not certify capital later than December 31, 2000.

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; Acts 1998, No. 70, § 2, eff. Oct. 1, 1998; Acts 2001, No. 1122, § 1, eff.

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 the corporation income tax shall commence with the taxable period in which the capital company is certified by the commissioner. The exemption from the 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 commissioner.

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; Acts 2001, No. 1122, § 1, eff. July 1, 2001.

R.S. 51:1933. Administration matters

All investments of certified capital in a certified Louisiana capital company prior to June 27, 1996 shall be one investment pool; the investment date of such investment pool shall be the date of certification or recertification, as the case may be, of the certified Louisiana capital company.

Added by Acts 1996, No. 21, § 2, eff. June 27, 1996.

R.S. 51:1934. Confidentiality of records

A. The provisions of R.S. 51:2389(G)(5) shall apply to all records of certified Louisiana capital companies provided to or generated by the Office of Financial Institutions.

B. In conjunction with the execution of their respective duties and responsibilities, the department and the commissioner may share with one another documents and other materials submitted by certified Louisiana capital companies or by Louisiana businesses. All information exchanged by the department and the commissioner shall be kept strictly confidential within the respective agencies. Such information shall not be subject to subpoena or other legal process, except as set forth in R.S. 9:3518.1(D).

Added by Acts 1997, No. 366, § 5. Amended by Acts 2001, No. 1122, § 1, eff. July 1, 2001.

R.S. 51:1935. Investment in approved funds

A. (1) On or before December 31, 1998, any certified Louisiana capital company that will have capital certified pursuant to R.S. 51:1931 and which qualifies for credits pursuant to R.S. 22:1068(E) shall enter into an agreement with the secretary wherein the certified Louisiana capital company invests a specified amount, not to exceed five percent as determined by the secretary, of all certified capital investment pools

Miscellaneous Provisions

for which insurance premium tax credits were granted and that have not been decertified into:

- (a) One or more capital management funds as approved by the secretary whose primary investment objectives include pre-seed, seed, and early stage business ventures, and whose investment in any such business and its affiliates is limited to one million dollars or less.
- (b) Any certified Louisiana capital company whose primary investment objectives include investing in certified disadvantaged businesses, business ventures operating in economically distressed areas, or Louisiana businesses and affiliates in an amount not exceeding one million dollars.
- (2) Beginning on January 1, 2000, the secretary shall annually determine the amount of additional investment required to be invested by each certified Louisiana capital company. Such amount required to be invested by each certified Louisiana capital company shall not exceed ten percent of all capital certified in the previous calendar year that are eligible for credits pursuant to R.S. 22:1068(E) from insurance tax credit investors.
- (3) Any investment made pursuant to this Section by a certified Louisiana capital company shall be considered a qualified Louisiana investment.
- B. The department may promulgate rules and regulations in accordance with the Administrative Procedure Act to provide for the governance, administration, and operation of any such capital management fund, including a requirement that any approved capital management fund be managed by a qualified individual and a requirement that each certified Louisiana capital company be eligible for equal representation on any body formed for the governance of the management fund.

Added by Acts 1998, No. 70, § 2, eff. Oct. 1, 1998.

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

Miscellaneous Provisions

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. 51:2205. Administration of funds; bylaws; rules and regulations; program guidelines

- A. The Dedicated Research Investment Fund shall be

administered by the Board of Regents.

- B. The board shall adopt bylaws governing its use of this fund and shall adopt rules and regulations governing any program or funding action that it implements prior to the initiation of the program or funding action. Specifically, rules and regulations shall establish a maximum amount or percentage of total funds that may be awarded to any individual project recipient or that may be utilized by the board for administrative expenses. Such bylaws, rules, and regulations shall be adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.
- C. The board shall strive to clearly delineate the programs that are to be implemented and the functions that each program fulfills. The board shall apply the following guidelines to any program funded:
- (1) When appropriate to the commercial nature of a program, a program receiving funding shall be financed in a manner that will provide recovery of part or all of the investment based on the degree of commercial success realized by the program.
 - (2) In every case possible, the board shall design its funding to consist of joint or cooperative ventures with other private or public institutions, organizations, or persons in order to reduce the size of each investment by the board, and thereby allowing the funding of a larger number of program initiatives overall.
 - (3) Proposal solicitation, review, selection, and monitoring processes should be established which will ensure efficient operations and the attainment of objectives, including:
 - (a) A proposal solicitation process involving widespread publicizing of board programs among academic and research institutions and within the renewable resources industries.
 - (b) A proposal review process which assures complete, competent, and objective review of all proposals.
 - (c) A selection process which assures that funding will be on a competitive basis through use of a request for proposals mechanism. All awards shall be made by the board based on recommendations from independent consultants, researchers, and educators, including minority representation, as selected by the Academic Affairs and Research Division of the Board of Regents in conjunction with the staff of the

Miscellaneous Provisions

Department of Economic Development. A request for proposals shall be established by the board after seeking input from knowledgeable and interested persons.

- (d) A project monitoring process which assures that each project is carried out according to plan and budget.

Added by Acts 1987, No. 300, § 1.

Technology Commercialization Credit Program

R.S. 51:2351. Legislative findings and purposes

A. The legislature finds that:

- (1) The state is making investments in university research, but has no strategy for commercializing the resulting technologies.
- (2) University professors often take their research and leave the state to create new companies and new jobs elsewhere, robbing the university of a creative and valued faculty member and the state of the ability to benefit from homegrown economic development potential.

B. This Part is intended to achieve the following purposes:

- (1) To induce companies purchasing the rights to commercialize technology produced at a Louisiana university to locate and grow their businesses in Louisiana.
- (2) To expand the economy of the state by enlarging its base of technology and research-based businesses.
- (3) To enlarge the number of quality jobs available to an educated workforce to retain the presence of young people educated in Louisiana colleges and universities.
- (4) To attract and retain the finest research faculty to Louisiana universities.

R.S. 51:2352. Definitions

In this Part, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise:

- (1) "Commercialization costs" means investment in machinery and equipment and all expenditures associated with obtaining the rights to use or the use of technology, including fees related to patents, copyrights, and licenses.
- (2) "Machinery and equipment" means machinery or

equipment that is a capital asset used in a trade or business subject to depreciation under federal tax law that is placed in service and used in Louisiana.

- (3)(a) "Taxpayer" means a natural person, business, corporation, or other business entity that seeks to or has become qualified to claim a credit on any income or corporation franchise tax liability against taxes owed to Louisiana.

(b) "Taxpayer applicant" means the taxpayer who earns, applied for, and is awarded tax credits based on investment in machinery and equipment as provided in this Part.

(c) "Taxpayer claimant" means the taxpayer who claims the tax credit granted pursuant to this Part against tax liability.

- (4) "Technology" means the product or intellectual property owned or research sponsored by a regionally accredited college, technical school, or university located in Louisiana or any product or intellectual property to which significant development or enhancement occurred at a regionally accredited college, technical school, or university located in Louisiana.

R.S. 51:2353. Technology Commercialization Credit Program; establishment; qualifications; administration

A. Qualifying individuals or businesses that invest in the commercialization of Louisiana technology in Louisiana may earn, apply for, and be granted a tax credit on any income or corporation franchise tax liability. Such credits shall be earned and granted for a period of not less than four tax years as provided in this Part. The administration of applications for these credits and the provision of these credits shall be called the Technology Commercialization Credit Program.

B.(1) The Technology Commercialization Credit Program shall be implemented and administered by the Department of Economic Development. In compliance with the Administrative Procedure Act and this Part, the department shall adopt and promulgate such rules as are necessary for the efficient and effective administration of this program in keeping with the purposes for which it is enacted.

- (2) In providing for the implementation and administration of the program, the department shall work closely with the secretary of the Department of Revenue.

Miscellaneous Provisions

- (3) Such rules shall include provisions for:
- (a) The Department of Economic Development to certify the eligibility of any taxpayer applicant for receipt of the tax credit provided for in this Part and the qualification of any taxpayer claimant to claim the credit against state tax liability.
 - (b) The presentation of a taxpayer's eligibility certification and any other documentation required to be applied for and earn or claim a credit.
 - (c) The sale of certified technology commercialization credits to other taxpayers.
- C.(1) To qualify for a Technology Commercialization Credit for four tax years all of the following qualifications shall be required by each applicant:
- (a) The investment in commercialization costs, including investment by purchase or lease of machinery and equipment which is placed into and maintained in service in Louisiana that is directly related to the production of technology or is used to produce resources essential to the production of technology.
 - (b) An investment, pursuant to Subparagraph (a) of this Paragraph that equals not less than two hundred fifty thousand dollars in the first taxable year the machinery and equipment is placed in service in Louisiana.
 - (c) An investment, pursuant to Subparagraph (a) of this Paragraph, of not less than two million dollars by the end of the fourth tax year after the first tax year in which the machinery and equipment is placed in service in Louisiana.
- (2) To qualify for a Technology Commercialization Credit for four additional years immediately succeeding the first four years as provided in Paragraph (1) of this Subsection, the applicant shall invest not less than two hundred fifty thousand dollars in each succeeding tax year in commercialization costs for the production of technology or the production of resources essential to the production of technology.
- D.(1) No Technology Commercialization Credit shall be earned, applied for, and granted for more than eight consecutive tax years with regard to the same business location.
- (2) No Technology Commercialization Credit shall be earned, applied for, and granted in a year in which the machinery and equipment in which an investment was made is not in regular service in Louisiana. The interruption of such service, as determined pursuant to rule, shall terminate the eligibility for any further credit pursuant to this Paragraph in any subsequent tax year.
- (3) No Technology Commercialization Credit shall be earned, applied for, and granted in a tax year for an investment for which any other tax credit based on research and development, as defined pursuant to rule, is provided by the state.
- E.(1) A taxpayer who earns, applies for, and is granted a credit pursuant to Paragraph (C)(1) of this Section who fails to meet the requirement of not less than two million dollars in investment in commercialization costs, including machinery and equipment by the end of the fourth tax year after the first year in which the machinery and equipment is placed in service shall repay to Louisiana the amount of all Technology Commercialization Credits claimed and credited against tax liability, shall forfeit all other Technology Commercialization Credits earned and retained for future use, and shall be liable to the state for the price obtained for any such credits sold.
- (2) A taxpayer who earns, applies for, and is granted a credit pursuant to Paragraph (C)(2) of this Section who fails to meet the requirement of not less than two hundred fifty thousand dollars of investment by the end of each year in which a tax credit is granted shall not be eligible for any tax credit in that taxable year, shall repay any amounts allowed as a credit for that year, and shall cease to qualify for any further such credit for investment in that location.
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- R.S. 51:2354. Technology commercialization credit; amount; duration; forfeit**
- A.(1) Except as provided in Subsection B of this Section, the taxpayer may earn and apply for and, if qualified, be granted a credit on any income or corporation franchise tax liability owed to the state by the taxpayer seeking to claim the credit, equal in value to fifteen percent of the amount of money invested by the taxpayer applicant in commercialization costs for one business location.
- (2)(a) Credits once earned and granted may be claimed by the taxpayer applicant against tax liability in the tax year earned or retained for use in future tax years.

Miscellaneous Provisions

(b) Taxpayer applicants who meet all of the following qualifications as certified by the Department of Economic Development may sell all or any unused portion of its technology commercialization credits to other taxpayers for present or future use:

- (i) Is identified as a business in one of the traditional or seed clusters established by the department as part of its organizational structure.
- (ii) Has no more than two hundred twenty-five employees.
- (iii) Not less than seventy-five percent of all employees in the business are Louisiana residents.

(c) In selling tax credits granted to them, the taxpayer applicants shall sell them for no less than seventy-five percent of the value of the tax credit.

(d) The purchaser of unused credits shall apply such credits in the same manner and against the same taxes as the taxpayer applicant.

(3)(a) All entities taxed as corporations for Louisiana income or corporation franchise tax purposes shall claim any credit allowed under this Section on their corporation income and corporation franchise tax return.

(b) Individuals shall claim any credit allowed under this Section on their fiduciary income tax return.

(c) Estates or trusts shall claim any credit allowed under this Section on their fiduciary income tax returns.

(d) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:

- (i) Corporate partners or members shall claim their share of the credit on their corporation income or corporation franchise tax returns.
- (ii) Individual partners or members shall claim their share of the credit on their individual income tax returns.
- (iii) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

B.(1) Whenever a tax credit is claimed against taxes,

whether by the taxpayer applicant or by a subsequent taxpayer claimant, the total of all credits applied in any tax year may not exceed fifty percent of the total of all Louisiana income and corporation franchise taxes due by such taxpayer in that year after reduction of the amount by the sum of all other credits allowed against the tax, except any tax payments made by or on behalf of the taxpayer.

(2) A tax credit granted pursuant to this Part shall expire and have no value or effect on tax liability beginning with the twenty-first tax year after the tax year in which it was originally earned, applied for, and granted.

Added by Acts 2002, 1st Ex. Sess., No 8, § 1, eff. for income tax years beginning on or after January 1, 2003, and franchise tax years beginning on or after January 1, 2004.

R.S. 51:2771. Louisiana Capital Investment Tax Credit

Terminated effective June 30, 2000 by Acts 1996, 1st Ex. Sess., No. 42, § 1 and Acts 1998.36 § 1.

Miscellaneous Provisions
