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External Multistate Tax Alert
July 11, 2016

Louisiana 2nd Special Session: Legislative Update

Overview

In June 2016, Governor John Bel Edwards signed into law a number of tax bills which include the following changes to Louisiana corporate income tax law:

- Single sales factor apportionment regime for most industries
- Double-weighted sales factor apportionment for certain oil and gas taxpayers
- Market-based sourcing for services and certain other revenues
- Sales factor apportionment "throw-out" rule
- Limited refunds on the inventory tax credit
- Other administrative updates

In this Tax Alert we summarize these law changes that have various enactment dates and effective dates as specified in the discussion that follows.

Income tax apportionment factor changes

House Bill 20,[1] which was signed by Governor Edwards on June 28, 2016, modifies current corporate income tax apportionment law and is generally applicable to all tax years beginning on or after January 1, 2016.[2] This new law moves most corporate taxpayers, except certain oil and gas companies, to a single sales factor apportionment formula.[3] Included are taxpayers that operate in the following industries: aircraft transportation, pipeline transportation, other transportation, service, manufacturing and all other businesses (except certain oil and gas companies). The legislation mandates that certain corporate taxpayers in the oil and gas industry use a double-weighted sales factor apportionment formula, including integrated oil and gas companies and taxpayers whose income is primarily derived from the production and sale of unrefined oil and gas.[4]

House Bill 20 also adds market-based sourcing provisions for sales other than sales of tangible personal property.[5] The legislation lists several types of such sales and provides specific sourcing rules for each type.[6] More specifically, sales of services are sourced to the state where they are delivered.[7] When the taxpayer's service, provided to an unrelated entity, has a substantial connection to a specific geographical location, the sale of such service is sourced based on that geographic location; otherwise, the service is sourced to the taxpayer's commercial domicile.[8] Other rules apply when the taxpayer's customer is a natural person.[9] Also, if the sourcing methodology provided in the law does not clearly reflect the taxpayer's market, the taxpayer or the Louisiana Department of Revenue can use alternative methodologies that will reasonably approximate the taxpayer's market.[10]

Additionally, House Bill 20 provides for a sales factor "throw-out" rule, wherein sales sourced to a state in which the taxpayer is not taxable or sales where the proper state assignment cannot be determined or reasonably approximated under the law must be excluded from the sales factor.[11]

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[1] Act No. 8, 2016 Extra Sess. (2nd Extra. Sess.) HB 20 (June 28, 2016). A copy of HB 20 is available here.
[2] *Id.* at Sec. 2
[3] *Id.* at Sec. 1, amending La. Rev. Stat. § 47:287.95(A),(C),(D) and (F).
[4] *Id.* at Sec. 1, adding La. Rev. Stat. § 47:287.95(E).
[5] *Id.* at Sec. 1, adding La. Rev. Stat. § 47:287.95(L).
[6] *Id.* at Sec. 1, adding La. Rev. Stat. § 47:287.95(L)(1).
[7] *Id.* at Sec. 1, adding La. Rev. Stat. § 47:287.95(L)(1)(c).
[8] *Id.* at Sec. 1, adding La. Rev. Stat. § 47:287.95(L)(3)(a) and (b).
[9] *Id.* at Sec. 1, adding La. Rev. Stat. § 47:287.95(L)(1) and (2).
[10] *Id.* at Sec. 1, adding La. Rev. Stat. § 47:287.95(L)(2)(c) and (3)(c).
[11] *Id.* at Sec. 1, adding La. Rev. Stat. § 47:287.95(M).

Modifications to the inventory tax credit

Senate Bill 6,[12] which was signed by Governor Edwards on June 28, 2016, no longer necessarily permits full refunds on the portion of the tax credit for ad valorem taxes paid on inventory that exceeds the tax liability. Instead, the new law establishes three groupings of taxpayers, each with different refundability rules and limitations. Taxpayers whose inventory credit earned during the year is less than $500,000 may refund their entire excess credit. Taxpayers whose inventory credit earned during the year is more than $500,000 but less than $1,000,000 may refund 75% of their excess credit; the remainder is carried forward for up to five years. Taxpayers whose inventory credit earned during the year is more than $1,000,000 may refund 75% of their first $1,000,000 of excess credit; the remainder is carried forward for up to five years.[13] These law changes are effective for any return filed on or after July 1, 2016, regardless of the taxable year to which the return relates; additionally, the law will not apply to an amended return filed on or after July 1, 2016, for any claim for credit properly claimed on an original return filed prior to July 1, 2016.[14]

Senate Bill 10,[15] which was signed by Governor Edwards on June 28, 2016, revises certain underlying confidentiality requirements so that the Louisiana Department of Revenue is able to confirm the inventory credit.[16] This legislation also makes the portion of the inventory tax credit that exceeds the tax liability non-refundable for manufacturers exempt from property taxation under Louisiana's "Industrial Tax Exemption Program" (ITEP). Instead, any excess credit may now be carried forward for up to five years to offset future tax liabilities.[17] These law changes are effective for any return filed on or after July 1, 2016, regardless of the taxable year to which the return relates; additionally, the law will not apply to an amended return filed on or after July 1, 2016, for any claim for credit properly claimed on an original return filed prior to July 1, 2016.[18]

Other administrative changes

House Bill 735,[19] which was signed by Governor Edwards on June 17, 2016, revises the due date for filing and paying Louisiana corporate income[20] and franchise tax[21] returns from April 15 to May 15 for calendar year filers, and from the 15th day of the fourth month to the 15th day of the fifth month following the close of the fiscal year for fiscal year filers. For filing non-composite partnership returns, this new law revises the date from May 15 to April 15 for calendar year filers, and from the 15th day of the fifth month to the 15th day of the fourth month following the close of the fiscal year for fiscal year filers.[22] These changes are applicable for corporate and partnership income tax periods beginning on and after January 1, 2016, and corporation franchise tax periods beginning on and after January 1, 2017.[23]

House Bill 47,[24] which was signed by Governor Edwards on June 22, 2016, clarifies that the state corporate income tax net operating loss deduction limitations from Act No. 123 of the 2015 Regular Session[25] and Act No. 6 of the 2016 First Extraordinary Session[26] do not apply to amended returns filed on or after July 1, 2015, relating to a claim for a net operating loss deduction properly claimed on an original return filed prior to July 1, 2015.[27] This law became effective upon signature by Governor Edwards on June 22, 2016.

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[12] Act No. 4, 2016 Extra Sess. (2nd Extra. Sess.) SB 6 (June 28, 2016). A copy of SB 6 is available here.
[13] *Id.* at Sec. 1, amending La. Rev. Stat. § 47:6006.
[14] *Id.* at Sec. 2.
[15] Act No. 5, 2016 Extra Sess. (2nd Extra. Sess.) SB 10 (June 28, 2016). A copy of SB 10 is available here.
[16] *Id.* at Sec. 1, amending La. Rev. Stat. § 47: 2327.
[17] *Id.* at Sec. 2, amending La. Rev. Stat. § 47:6006.
[18] *Id.* at Sec. 3.
[19] Act No. 661, 2016 Reg. Sess. (1st Reg. Sess.) HB 624 (Jun. 17, 2016). A copy of HB 735 is available here.
[20] *Id.* at Sec. 1, amending La. Rev. Stat. § 47:287.614(A)(1) and 651(A)(1).
[21] *Id.* at Sec. 1, amending La. Rev. Stat. § 47:609(A).
[22] *Id.* at Sec. 1, amending La. Rev. Stat. § 47:103(A).
[23] *Id.* at Sec. 3.
[24] Act No. 2, 2016 Extra Sess. (2nd Extra. Sess.) HB 47 (June 22, 2016). A copy of HB 47 is available here.
[25] Act No. 123, 2015 Reg. Sess. (1st Reg. Sess.) HB 624 (Jun. 19, 2015). A copy of HB 624 is available here.
[26] Act No. 6, 2016 Extra Sess. (1st Extra. Sess.) HB 20 (March 9, 2016). A copy of HB 20 is available here.
[27] Act No. 2, 2016 Extra Sess. (2nd Extra. Sess.) HB 47 (June 22, 2016) at Sec. 1 and Sec. 2.

House Bill 29,[28] which was signed by Governor Edwards on June 28, 2016, provides that interest on refunds be computed starting 90 days after the filing date of an original or amended return or the due date, which ever was later, for all tax types.

ASC 740 treatment

Pursuant to ASC 740, "Income Taxes," companies are required to account for the effect of a change in income tax law in the period that includes the enactment date. More specifically, the effect of a change in tax laws or rates on a deferred tax liability (DTL) or deferred tax asset (DTA) is recognized as a discrete item in the interim period that includes the enactment date. The tax effects of a change in tax laws or rates on taxes currently payable or refundable for the current year are reflected in the computation of the annual effective tax rate (AETR) after the effective dates prescribed in the statutes, beginning no earlier than the first interim period that includes the enactment date of the new legislation. However, any effects of a tax law or rate change on taxes payable or refundable for a prior year, such as when the change has retroactive effects, is recognized upon enactment as a discrete item of tax expense or benefit for the current year.

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[28] Act No. 10, 2016 Extra Sess. (2nd Extra. Sess.) HB 29 (June 28, 2016). A copy of HB 29 is available here.