



Revenue Ruling No. 07-010

December 11, 2007

Corporation Franchise Tax

Taxability of Industrial Revenue Bonds

Purpose

The purpose of this Revenue Ruling is to provide guidance to Revenue employees and taxpayers in determining whether or not long-term lease obligations associated with industrial revenue bonds are subject to Louisiana corporation franchise tax under La. R.S. 47:601.

Background and Facts

Louisiana Revised Statutes 47:601, enacted in 1958, imposes a tax on every domestic corporation and every foreign corporation exercising its charter or qualified to do business or actually doing business in Louisiana or owning or using any part or all of its capital, plant, or any other property in the state. The tax is equal to one dollar and fifty cents for each one thousand dollars, or major fraction thereof on the first three hundred thousand dollars of taxable capital. The rate is then increased to three dollars for each one thousand dollars over three hundred thousand dollars of taxable capital. Taxable capital is defined in La. R.S. 47:602 as the amount of a corporation's issued and outstanding capital stock, surplus and undivided profits and that portion of borrowed capital provided for in R.S. La. 47:603 until borrowed capital is no longer included in taxable capital.

Additionally, La. R.S. 39:991 et seq., contains Louisiana's Industrial Inducement Statute which was enacted to make industrial location in Louisiana more economically desirable. Specifically, La. R.S. 39:991, et seq. provides a special financing arrangement which, if followed, does not result in franchise tax liability to the lessee-industry which leases property from a municipality or other authorized local government issuing bonds.

In two separate cases, Louisiana courts have ruled that industrial revenue bonds are not subject to Louisiana franchise tax. In *Traigle v. Gulf Coast Aluminum Corporation, et al.*, 442 So.2d 1190, (La. App. 1st Cir., 1982), industrial revenue bonds were issued by the parish and the property constructed with the bond proceeds was leased to Gulf Coast Aluminum Corp. In this case the court held that the lease payments over the life of the lease were not included in the franchise tax base of Gulf Coast Aluminum Corp. The court based its decision on two premises: 1) Gulf Coast Aluminum was not the owner of the property in question and 2) the industrial inducement provisions would be greatly diminished if the bond sales were subject to franchise tax.

The second case that dealt with whether or not a company should include industrial revenue bonds in their corporation franchise tax base was *System Fuels, Inc. v. Kennedy*, 858 So.2d 585, (La. App. 5th Cir., 2003). In this case, System Fuels Inc. had five long-term lease agreements during the 1970's. Three of these long-term leases were leases of immovable property, specifically, leases for fuel oil storage facilities. The remaining two leases were bareboat charter agreements for the lease of water vessels to transport fuel or oil and were thus leases of movable property. The Department of Revenue contended that System Fuels' obligations to pay rent pursuant to these leases constituted borrowed capital and should have been included in the company's franchise tax base. The 5th Circuit held that a true or genuine lease, as opposed to a disguised credit sale, are not unconditional obligations to pay because a lease is a bilateral contract so that the obligation of each party is correlative to the obligation of the other. Finally

the court discussed how R.S. La. 47:603 defines borrowed capital as indebtedness maturing more than one year from the date the indebtedness is incurred or which is not paid within one year from the date incurred regardless of the maturity date. The court further stated that when periodic rental payments exist under a lease agreement, no debt is incurred until the payment becomes due. Due to this analysis, the court ruled that the industrial revenue bonds were not subject to Louisiana corporation franchise tax.

Ruling

After careful consideration of the statutes and cases mentioned above, it is the position of the Louisiana Department of Revenue that long-term lease obligations associated with industrial revenue bonds are not “borrowed capital” and as such are not subject to Louisiana franchise tax. In addition, the corresponding long-term lease obligation will not be considered an asset when computing the property factor since, following the reasoning of the courts in the above-mentioned cases, future use of the asset is a right contingent upon payment of the lease and the other party making the leased property available. The right does not exist any more than the debt exists and therefore should not be reflected as an asset on the balance sheet.

<p>A Revenue Ruling is issued under the authority of LAC 61III.101.C. A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.</p>
