

NOTICE OF INTENT

Department of Revenue Policy Services Division

Imposition of Tax; Determination of Taxable Capital;
Newly Taxable Corporations
(LAC: 61:I.301, 302, and 311)

Under the authority of R.S. 47:601, R.S. 47:602, and R.S. 47:611 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.301, 302, and 311.

The primary purpose of these proposed amendments is to implement Act 12 of the 2016 First Extraordinary Session of the Louisiana Legislature.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 3. Corporation Franchise Tax

§301. Imposition of Tax

A. General. 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 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, owns or uses any part of its capital, plant, or any other property in this state, whether owned directly or indirectly by or through a partnership, joint venture, or any other business organization of which the domestic or foreign corporation is a related party as defined in R.S. 47:605.1, 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.

1. The term *domestic corporation* shall include any of the following:

a. 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.

b. all entities taxed as corporations pursuant to 26 U.S.C. Subtitle A, Chapter 1, Subchapter C, for federal income tax purposes, notwithstanding any provisions of law to the contrary. Such entities will be treated and taxed in the same manner that such entities are treated and taxed for federal income tax purposes.

2. Exclusions

a. Nothing in this subsection shall extend franchise tax liability to any limited liability company qualified and eligible to be taxed in accordance with the provisions of 26 U.S.C. Subtitle A, Chapter 1, Subchapter S on the first day of its fiscal or annual year or to any other entity that was acquired before January 1, 2014, but not earlier than January

1, 2012, by an entity that was taxed pursuant to 26 U.S.C. Subtitle A, Chapter 1, Subchapter S.

b. Examples

i. Other than through its ownership in Partnership B, Corporation A is not subject to Louisiana corporation franchise tax. Corporation A owns an interest in Partnership B, which is doing business in Louisiana. Corporation A would be subject to Louisiana corporation franchise tax.

ii. Other than through its ownership in Limited Liability Company B, Corporation A is not subject to Louisiana corporation franchise tax. Corporation A owns an interest in Limited Liability Company B, which is taxed as a partnership and is doing business in Louisiana or owns property located in Louisiana. Corporation A would be subject to Louisiana corporation franchise tax.

iii. Subsidiary is a domestic corporation doing business in Louisiana and is a one hundred percent owned subsidiary of Parent. Parent is a domestic limited liability company doing business in Louisiana and elects to be taxed as an S corporation pursuant to I.R.C. § 1362 for federal income tax purposes. Subsidiary is a QSub, as provided for in I.R.C. §1361(b)(3). For Louisiana corporation franchise tax purposes, Parent would not be subject to the franchise tax, because Parent is a limited liability company, eligible to be taxed as an S corporation. Subsidiary would be subject to the franchise tax, because Subsidiary is a corporation.

B. ...

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 the Business Corporation Act, as found in R.S. 12:1-101 through 1-1704, are subject to and liable for the payment of the franchise tax imposed by this Section.

D. - G. ...

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), repromulgated by the Department of Revenue, Policy Services Division, LR 30:448 (March 2004), amended LR 44:

§302. Determination of Taxable Capital

A. ...

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. Any corporation, as defined in R.S. 47:601(C), that is subject to the franchise tax imposed by R.S. 47:601(A) and that is not subject to R.S. 47:602(B), (C), (D), (E), or (F), that has one or more subsidiaries, will be entitled to deduct from its taxable capital its investments in and advances to one or more subsidiaries, whether made directly or indirectly, when computing its franchise tax.

1. The term *subsidiaries* shall include any corporation, as provided for in R.S. 47:601(C), that is subject to the

franchise tax imposed by R.S. 47:601(A), and in which at least 80 percent of the voting and nonvoting power of all classes of their stock, membership, partnership, or other ownership interests are owned, directly or indirectly, by a corporation subject to the franchise tax imposed by R.S. 47:601(A).

2. The amount of deduction allowed will be the sum of the amounts determined by multiplying the parent corporation's investments in and advances to each subsidiary by each subsidiary's average ratio, as determined pursuant to R.S. 47:606.

3. Any direct or indirect subsidiary of a regulated company, as provided for in R.S. 47:602(C), that directly owns at least 80 percent of the voting power of the stock, membership, partnership, or other membership interests in a *public-utility company*, as defined by the Public Utility Holding Company Act of 1935 prior to its repeal, may use the holding corporation deduction with respect to investments in and advances to subsidiary corporations or subsidiary limited liability companies to calculate its taxable capital.

4. Example. Company A is a corporation owning one hundred percent of Company B. Company B is a non-Louisiana corporation qualified to do business in Louisiana. Company B is a one hundred percent member of XYZ LLC. XYZ LLC is an out of state limited liability company that owns property in Louisiana and has elected to be treated as a corporation pursuant to 26 U.S.C. Subtitle A, Chapter 1, Subchapter C, for federal income tax purposes. XYZ LLC would be subject to Louisiana corporation franchise tax. Company B would be subject to Louisiana corporation franchise tax as a one hundred percent member of XYZ LLC. Company A would not be subject to Louisiana corporation franchise tax. Company B would be eligible for the holding company deduction.

5. Nothing in this Subsection shall extend franchise tax liability to any limited liability company at least eighty percent owned, directly or indirectly, by any entity subject to the bank shares tax pursuant to R.S. 47:1967.

D. Public Utility Holding Corporation Deductions. Any corporation registered under the Public Utility Holding Company Act of 1935 that owns at least 80 percent of the voting power of all classes of the stock in another corporation (not including nonvoting stock which is limited and preferred as to dividends) may, after having determined its Louisiana taxable capital as provided in R.S. 47:602(A), R.S. 47:606, and R.S. 47:607, deduct therefrom the amount of investment in and advances to such corporation which was allocated to Louisiana under the provisions of R.S. 47:606(B). The only reduction for investment in and advances to subsidiaries allowed by this Subsection is with respect to those subsidiaries in which the registered public utility holding company owns at least 80 percent of all classes of stock described herein; the reduction is not allowable with respect to other subsidiaries in which the holding company owns less than 80 percent of the stock of the subsidiary, notwithstanding the fact that such investments in and advances to the subsidiary may have been attributed to Louisiana under the provisions of R.S. 47:606(B). In no case shall a reduction be allowed with respect to revenues from the subsidiary. Any repeal of the Public Utility Holding Company Act of 1935 shall not affect the entitlement to deductions under this Subsection of

corporations registered under the provisions of the Public Utility Holding Company Act of 1935 prior to its repeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:602.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:449 (March 2004), amended LR 44:

§311. Newly Taxable Corporations

A. Every corporation or other entity subject to the franchise tax 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. - C. ...

D. Notwithstanding the provisions of this Section, the initial tax of an entity in existence and actually conducting business in Louisiana, as reflected in the definition of *doing business* found in R.S. 47:601(A)(1), during its previous calendar or fiscal year shall be calculated pursuant to R.S. 47:609, based on its corporate books on the first day of the calendar or fiscal year in which the tax levied under this Chapter becomes due and shall be payable on or before the date otherwise required by this Section.

E. For entities previously determined not subject to corporate franchise taxation under the *Utelcom, Inc.* and *Ucom, Inc. v. Bridges*, 2010-0654 (La. App. 1 Cir. 9/12/11), 77 So. 3d 39, Writ Denied 2011-2632 (La. 3/2/12), 84 So. 3d 1046 decision, such entities shall be liable for the franchise tax pursuant to R.S. 47:611(B) for the 2017 franchise tax period based on the entities' corporate books on the first day of the 2017 calendar or fiscal year.

F. Examples.

1. On February 1, 2017, one hundred fifty natural persons organized Limited Liability Company A. Limited Liability Company A is a domestic limited liability company as defined by R.S. 12:1301(A)(10). Limited Liability Company A elected to be taxed as a corporation pursuant to 26 U.S.C. Subtitle A, Chapter 1, Subchapter C for federal income tax purposes and is ineligible to make an election to be taxed in accordance with the provisions of 26 U.S.C. Subtitle A, Chapter 1, Subchapter S for federal income tax purposes because its membership exceeds one hundred members. Therefore, Limited Liability Company A must file a corporate franchise tax return and remit an initial tax of one hundred ten dollars on or before May 15, 2017.

2. Corporation A was previously determined not subject to corporate franchise taxation under the *Utelcom, Inc.* and *Ucom, Inc. v. Bridges*, 2010-0654 (La. App. 1 Cir. 9/12/11), 77 So. 3d 39, Writ Denied 2011-2632 (La. 3/2/12), 84 So. 3d 1046 decision. Corporation A, a calendar year taxpayer, holds a limited partnership interest in Partnership B. Partnership B conducts business in Louisiana in 2016 and 2017. Because of Corporation A's partnership interest in Partnership B, which conducted business in Louisiana in 2016, Corporation A is deemed to have conducted business in Louisiana in 2016 and is subject to initial franchise tax pursuant to R.S. 47:611(B) for the 2017 franchise tax period.

The tax is based on Corporation A's corporate books on January 1, 2017 and is payable on or before April 15, 2017.

AUTHORITY NOTE: Promulgated in accordance with R.S. 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), repromulgated by the Department of Revenue, Policy Services Division, LR 30:469 (March 2004), amended LR 44:

Family Impact Statement

The proposed amendment of LAC 61:I.301, regarding the imposition of tax; LAC 61:I.302, regarding the determination of taxable capital; and LAC 61:I.311, regarding newly taxable corporations, should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Poverty Impact Statement

These proposed regulations will have no impact on poverty as described in R.S. 49:973.

Small Business Analysis

It is anticipated that these proposed amendments should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting these proposed amendments to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

The proposed regulation will have no known or foreseeable effect on:

1. the staffing levels requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the provider to provide the same level of service;
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Any interested person may submit written data, views, arguments, or comments regarding this proposed regulation to David M. Hansen, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4 p.m. on July 24, 2018.

Public Hearing

A public hearing will be held on July 25, 2018, at 2:30 p.m. in the LaBelle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly Lewis Robinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Imposition of Tax; Determination of Taxable Capital; Newly Taxable Corporations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Minor implementation costs to the Department of Revenue (LDR), related to taxpayer inquiries, are expected. These costs will be absorbed in LDR's budget allocation.

The purpose of the proposed rule amendments is to implement the provisions of Act 12 of the 2016 First Extraordinary Session of the Louisiana Legislature. The Act and these proposed rule changes expand corporate franchise tax applicability to also include partnerships, joint ventures, and limited liability companies (LLCs) electing to be treated as C-corporations for federal income tax purposes. An exception is provided for LLCs that qualify to elect to be treated as S-corporations. An exception is also provided for non-corporate entities acquired during the period January 1, 2012 through December 31, 2014 by an entity that was taxed as an S-corporation. A holding company deduction from taxable capital for debt to related parties is also added. The initial (first year) franchise tax is raised by \$100, from \$10 to \$110, but taxpayers becoming subject to the tax must pay the actual franchise tax if in existence and doing business in Louisiana during the year before becoming subject to the tax. Provisions of the Act are effective for taxable periods beginning on or after January 1, 2017. The franchise tax is due in advance, so the January 1, 2017 tax year beginning applicability caused the revenue impacts to begin during FY17. An analysis of the first year's filings under the new provisions indicates a revenue increase of approximately \$40.7 million annually.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes are expected to result in an estimated increase in corporate franchise tax receipts of approximately \$40.7 million in FY 19, \$40.7 million in FY 20, and \$40.7 million in FY21.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The franchise tax liabilities of the newly taxed entities are estimated to total approximately \$40.7 million in FY 19, \$40.7 million in FY 20, and \$40.7 million in FY 21. These taxpayers will also incur relatively small costs to prepare additional schedules on the corporate tax return. Furthermore, each entity becoming subject to the franchise tax, that did not exist or do business in Louisiana before becoming subject to the tax, will pay an additional \$100 for the initial (first year) tax. Taxpayers affected by the addition of the holding company tax base deduction will benefit by an indeterminable amount.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Extension of the franchise tax to various business structures not currently subject the tax may discourage these types relative to other structures currently subject to the tax. The aggregate amount of business activity, without regard to specific types of organizational structures, is not likely to be materially affected.

Kimberly Lewis Robinson
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