

NOTICE OF INTENT

Department of Revenue Policy Services Division

Computation of Net Allocable Income from Louisiana Sources (LAC 61:I.1131)

Under the authority of R.S. 47:287.81, R.S. 47:287.92, R.S. 47:287.93, R.S. 47:287.785, R.S. 47:1511, 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 adopt LAC 61:I.1131 relative to the computation of net allocable income from Louisiana sources.

The primary purpose of this regulation is to update the corporation income tax regulation relating to the allocation of items of income and expense, and to make the regulation easier to understand. The current regulation, LAC 61:I.1130, has not been revisited in depth since the corporate income tax statutes were enacted in 1986. This regulation will provide more guidance on the treatment of intangible assets than the current regulation. In addition, this regulation will clarify the numerical example in the current regulation, and add several examples that explain the allocation of certain items of income and expense, such as the allocation of profits or losses from sales of intangible assets. Once this regulation becomes final, the Department of Revenue will repeal the current regulation, LAC 61:I.1130.

Title 61

REVENUE AND TAXATION

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

Chapter 11. Income Corporation Income Tax

§1131. 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 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 regulations are that items of allocable income from the sale, exchange, or use of tangible assets are allocated to the location of the tangible asset at the time of the transaction; income from the sale, exchange, or use of intangible assets are 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. Abandonment, involuntary conversion, casualty loss, or the total write off of an asset are among the transactions that will be considered a sale or exchange.

1. Rents and Royalties from Immovable or Corporeal Moveable Property, and Profits or Losses from the Sales and Exchanges of Capital Assets Consisting of Immovable or Corporeal Moveable Property

a. Rents and royalties from immovable or corporeal moveable property, and profits or losses from the sales and exchanges of capital assets consisting of immovable or corporeal moveable property, shall be allocated to the state

where such property is located at the time the income is derived.

b. Capital assets means all property of the taxpayer, except:

i. land used in a trade or business of the taxpayer; and

ii. the following assets of the taxpayer, whether or not the assets are connected with the taxpayer's trade or business:

(a). stock in trade of the taxpayer; or

(b). other property of a kind which would be properly included in the inventory of the taxpayer if on hand at the close of the taxable year; or

(c). property held by the taxpayer primarily for sale to customers in the regular course of its trade or business; or

(d). property used in a trade or business of a character which is subject to depreciation.

c. 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 on Customers' Notes and Accounts

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

b. A customer is a person who the taxpayer sells merchandise to or performs services for in the regular course of the taxpayer's trade or business.

3. Profits from Sales or Exchanges of Property not Made in the Regular Course of Business, Other than Sales or Exchanges of Capital Assets Consisting of Incorporeal Property or Rights

a. Both profits and losses from such transactions must be included in income allocated directly to the state in which the property had its business situs at the time of the transaction. Property will acquire a business situs if it has become an integral part of some business within the state.

b. Whether a sale or exchange is a sale not made in the regular course of business is a factual determination required to be made with respect to each property sold that will take into consideration such factors as the frequency of sales of similar properties and the relationship of the particular sale to other business transacted by the taxpayer.

c. The sale of a mineral lease, royalty interest, oil payment, or other mineral interest is allocated to the state in which the property subject to the mineral interest is located.

4. Interest, Dividends, and Profits or Losses from Sales and Exchanges of Capital Assets Consisting of Incorporeal Property or Rights

a. General Rule. Except as otherwise provided herein, interest, dividends, and profits or losses from sales and exchanges of capital assets consisting of incorporeal property or rights are allocated as follows:

i. if the securities or credits that produced the income, profits or losses have been so employed as to acquire a business situs, the items of income, profit or loss will be allocated to that business situs. Securities or credits will acquire a business situs if they have become an integral part of some business within the state;

ii. securities or credits means any intangible property or right;

iii. if the securities and credits have not acquired a business situs, the items of income, profit or loss will be allocated to the corporation's commercial domicile;

iv. a security or credit may acquire a business situs in more than one state. The percentage of the profits or losses from the sale or exchange of an intangible asset that has more than one business situs that is to be allocated to Louisiana is a factual determination required to be made with respect to each property or right and will take into consideration such factors as:

(a). the number of locations at which the property or rights are used;

(b). the number of days during the tax year the property or rights were used within and without Louisiana;

(c). the amount of income the property or rights generated within and without Louisiana; and

(d). the earning power of the property or rights at the time of the sale or exchange;

(e). Example: Z 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. Z entered into an agreement with the ABC Corporation whereby ABC was given the exclusive right to use the patents at ABC's refineries in consideration for the payment of a royalty to Z based upon units of production. ABC used the patents in its refineries in Texas and Louisiana and paid Z for such use. Because the patents are used in both Louisiana and Texas and have become an integral part of a business in Texas and a business in Louisiana, the patents have acquired both a Texas business situs and a Louisiana business situs.

b. Profits from the sale or exchange of capital assets consisting of incorporeal property or rights shall be allocated to the state in which the securities or credits giving rise to the profits have their business situs.

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. X entered into an agreement with the Y corporation whereby Y was given the exclusive right to use the patents at Y's refinery in consideration for the payment of a royalty to X based upon units of production. Y used the patents exclusively at its Louisiana refinery and paid X for such use. In 1997, X sold the patents to Z Company, Inc., also a Delaware corporation for a profit of \$7.5 million. Because the patents were used exclusively in Louisiana and have become an integral part of a Louisiana business, the patents have acquired a Louisiana business situs. Therefore, the profits from the sale are allocated entirely to Louisiana.

ii. Example: Z 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. Z entered into an agreement with the ABC Corporation whereby ABC was given the exclusive right to use the patents at ABC's refineries in consideration for the payment of a royalty to Z based upon units of production. ABC used the patents in its refineries in Texas and Louisiana and paid Z for such use. In 2000, the royalty from the Texas refinery was \$300,000 and the royalty from the Louisiana refinery was \$700,000. In 2001, Z sold the patents to New Company, Inc., also a Delaware corporation, for a profit of \$10 million.

The patents have acquired both a Texas business situs and a Louisiana business situs, therefore the profits from the sale will be allocated to both Louisiana and Texas. Without more facts, a reasonable method of determining how to allocate the profit between the states is to use the ratio of earnings in each state to total earnings. Using this method, 70 percent of the profits will be allocated to Louisiana, or \$7 million.

c. Exceptions

i. For special rules governing the taxable situs of stock canceled in corporate liquidations see R.S. 47:287.747.

ii. Dividends on stock that has a situs in Louisiana and that are received by a corporation from another corporation which is controlled by the former, through 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 income from which the dividends are paid is earned.

(a). The amount of such income to be allocated to Louisiana may be determined by applying a ratio of Louisiana net income to net income.

(b). If the taxpayer can demonstrate that this method of allocation is materially in error, the taxpayer may use any reasonable method to determine the actual amount of income from which dividends paid is earned in Louisiana. The method used by the taxpayer must reflect the general principles that the income from which dividends are paid is book income and that dividends are deemed paid from current earnings to the extent that there are current earnings and then are paid from the earnings of the preceding year.

iii. Interest on securities and credits that have a situs in Louisiana and that is received by a corporation from another corporation controlled by the former through the direct or indirect 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.

(a). Real and Tangible Personal Property. For the purposes of this Section, real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income which it produces.

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

(c). Value of Property to be Used

(i). 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 return filed for the tax year that begins the year after these regulations take effect. 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 to be used is cost to the taxpayer, so long as the property continues to be used in the taxpayer's trade or business.

(ii). Any reserves reflected on the books of the taxpayer shall be deemed to be reasonable, subject to the

right of the secretary to adjust the reserves when, in the secretary's opinion, an adjustment is necessary to reflect the fair value of the property.

(iii). The secretary may require a different method of valuation if the method elected by the taxpayer does not reflect the fair value of the property.

5. 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 patents, trademarks, copyrights, secret processes, and other similar intangible rights shall be allocated to the state or states in which such rights are used.

b. The use referred to is that of the licensee rather than that of the licensor.

c. 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 2000, the X Company, Inc. entered into an agreement with the Y Corporation whereby that company was given the right to use the patents at its refineries in consideration for the payment of a royalty based upon units of production. The Y Corporation used the patents exclusively at its Louisiana refinery and paid the X Company, Inc. the amount of \$100,000 for such use. The entire royalty income of \$100,000 is allocable to Louisiana.

d. Example: ABC Company, Inc. is a trademark holding company incorporated in Delaware that owns certain trademarks relating to the sale of retail goods. In 1997, 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 based on store sales. In 1998, XYZ used the trademark to promote the sale of retail goods in their stores in Louisiana. The royalty payment attributable to the Louisiana stores was \$250,000. ABC must allocate the royalty income of \$250,000 to Louisiana.

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

a. 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.

b. 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. From the total gross allocable income from all sources and from the gross allocable income allocated to Louisiana there shall be deducted all expenses, losses, and other deductions, except federal income taxes, allowable under the

Louisiana income tax law which are directly attributable to such income plus a ratable portion of the allowable deductions, except federal income taxes, which are not directly attributable to any item or class of gross income.

1. Interest Expense

a. The approach set forth in these regulations for the allocation and apportionment of interest expense is based upon the concept of the fungibility of money and requires that interest expense ordinarily be allocated to all of the taxpayer's income-producing activities and properties, regardless of the specific purpose for which the borrowing was incurred; it does not directly require allocation of interest deductions to income. It is appropriate to associate part of the cost of money borrowed for a specific purpose to other purposes as well based on the following assumptions:

i. money is fungible in that all of the taxpayer's activities and properties need funds;

ii. the taxpayer's management has substantial flexibility in the source and use of its funds;

iii. 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;

iv. the use of money for one purpose frees funds for other purposes.

b. Interest Expense Applicable to Total Allocable Income

i. Interest expense which is applicable to assets which produce or which are held for the production of allocable income within and without Louisiana, shall be an item of deduction in determining net allocable income or loss.

ii. For purposes of this Section, assets which produce or which are held for the production of allocable income include but are not limited to investments in and advances or loans to affiliated corporations (other than normal trade accounts receivable) whether or not such investments, advances, or loans produce any income.

(a) The amount of interest which is applicable to such assets shall be determined by multiplying the total amount of interest expense by a ratio, the numerator of which is the average value of assets which produce or which are held for the production of allocable income, and the denominator of which is the average value of all assets of the taxpayer.

(b). Although income exempt from Louisiana income tax, such as interest on U.S. government bonds and notes, 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.

(i). For convenience of computation such assets are grouped with assets producing or held for the production of allocable income.

(ii). Whenever interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments determined as provided above, exceeds the amount of income derived from such investments, the interest expense which is attributable to such investments shall be limited to the amount of income derived from such investments.

(iii). The amount of interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments, determined without

reference to the income therefrom, is that portion of the interest expense applicable to assets which produce or which are held for the production of allocable income, which the ratio of the average value of U.S. government bonds and notes held as temporary cash investments bears to the average value of all assets which produce or which are held for the production of allocable income.

c. Interest Expense Applicable to Louisiana Allocable Income. Interest expense which is applicable to assets which produce or which are held for the production of Louisiana allocable income shall be an item of deduction in determining net allocable income or loss from Louisiana.

i. Except as otherwise provided, the amount of interest which is applicable to such assets shall be determined by multiplying the amount of interest expense allocated 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 which produce or which are held for the production of Louisiana allocable income and the denominator of which is the average value of assets which produce or which 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 §1132.C.1 for rules pertaining to the determination of the amount of interest expense applicable to Louisiana allocable income.

d. Louisiana Commercial Domicile

i. Investments in Stock of Controlled Corporations. When a corporation has a Louisiana commercial domicile and holds stock in corporations controlled by direct ownership of 50 percent or 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.

(a). This stock is to be attributed as Louisiana assets on the basis of the proportion of the respective amounts of income earned within Louisiana to the income earned everywhere of the controlled corporation.

(b). Stock held in corporations exempt from Louisiana income tax shall not be included as a Louisiana asset for the purpose of this computation.

ii. Advances to Controlled Corporations. When a corporation has a Louisiana commercial domicile and advances interest-bearing funds to corporations controlled by direct or indirect ownership of 50 percent or more of the voting stock of the latter, 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 which it produces.

e. Receivables Resulting from Advances of Non-Interest Bearing Funds

i. Receivables resulting from advances of non-interest bearing funds 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 which produce or which are held for the production of allocable income from sources within and without Louisiana.

ii. When receivables resulting from advances of non-interest bearing funds 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 §1131.B.1.c, unless the secretary, in order to clearly reflect Louisiana apportionable and allocable net income, imputes interest income on such receivables.

f. Average Value

i. The value of Louisiana real and tangible property and real and tangible property within and without the state shall be the average of such property at the beginning and close of the year, determined on a comparable basis.

ii. 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 the number of months in the tax period.

g. Value of Property to be Used

i. 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 return filed for the tax year that begins the year after these regulations take effect. 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 to be used 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 to be used is the value reflected on the taxpayer's books, so long as the value is not below zero.

ii. Any reserves reflected on the books of the taxpayer shall be deemed to be reasonable, subject to the right of the secretary to adjust the reserves when, in the secretary's opinion, an adjustment is necessary to reflect the fair value of the property.

iii. The secretary may require a different method of valuation if the method elected by the taxpayer does not reflect the fair value of the property.

iv. 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 tax year 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.

h. Example: The XYZ Corporation has incurred interest expense in the amount of \$150,000 during the year 2001. During 2001 it derived total allocable income and Louisiana allocable income as follows.

	Louisiana	Total
*Interest on U.S. Treasury notes	\$0	\$ 10,000
Interest (interest bearing checking)	\$0	\$ 0
Dividends	\$0	\$ 5,000
Net rent income	\$10,000	\$10,000
Trademark royalty income	<u>\$ 4,000</u>	<u>\$ 10,000</u>
Total	<u>\$14,000</u>	<u>\$40,000</u>

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

i. Its assets, liabilities, and net worth as of January 1, 2001, and December 31, 2001, were as follows.

	1-1-01	12-31-01
Assets:		
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	\$ 100,000	\$ 100,000
Trademark	\$ 80,000	\$ 80,000
U.S. Treasury Notes	\$ 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	<u>\$3,920,000</u>	<u>\$ 3,825,000</u>
Total Assets	<u>\$6,080,000</u>	<u>\$ 6,680,000</u>
Liabilities and Net Worth:		
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	<u>\$2,680,000</u>	<u>\$ 2,680,000</u>
Total Liabilities and Net Worth	<u>\$6,080,000</u>	<u>\$ 6,680,000</u>

ii. The amount of interest which is applicable to the assets which produce or are held for the production of

allocable income within and without Louisiana is \$18,633, determined as follows.

	Allocable Assets		Total Assets	
	1-1-01	12-31-01	1-1-01	12-31-01
U.S. Treasury Notes	\$ 310,000	\$ 430,000	\$ 310,000	\$ 430,000
Cash (interest bearing checking)	\$ 110,000	\$ 220,000	\$ 110,000	\$ 220,000
Rental property (net)	\$ 80,000	\$ 75,000	\$ 80,000	\$ 75,000
Stock	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
Trademark asset	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000
Other assets	\$ 0	\$ 0	<u>\$5,400,000</u>	<u>\$ 5,775,000</u>
Totals	\$ 680,000	\$ 905,000	\$6,080,000	\$ 6,680,000
1-1-01 totals		<u>\$ 680,000</u>		<u>\$ 6,080,000</u>
Totals		<u>\$1,585,000</u>		<u>\$12,760,000</u>
Average		<u>\$ 792,500</u>		<u>\$ 6,380,000</u>
Ratio				.12422
Interest expense allocated to total allocable assets (.12422 X \$150,000)				<u>\$ 18,633.00</u>

iii. The amount of interest expense which is applicable to the assets which produce or are held for the production of Louisiana allocable income is \$2,668.62, determined as follows.

Ratio of Louisiana average to total average allocable assets	.14322
Interest expense allocated to total allocable assets	\$18,633.00
Interest expense allocated to Louisiana allocable assets (.14322 x \$18,633.00)	<u>\$ 2,668.62</u>

**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 2000, Louisiana trademark royalties were \$480 and total trademark royalties were

Louisiana Allocable Assets	
January 1, 2001 – Rental property	\$ 80,000
**January 1, 2001 – Trademark asset	\$ 32,000
December 31, 2001 – Rental property	\$ 75,000
**December 31, 2001 – Trademark Asset	<u>\$ 40,000</u>
Total	<u>\$ 227,000</u>
Average Louisiana allocable assets	\$ 113,500
Average total allocable assets	\$ 792,500

\$1,200. In December 2001, Louisiana trademark royalties were \$550 and total trademark royalties were \$1,100.

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.

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

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

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

ii. 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.

b. Overhead Expense Attributable to All Other Items of Gross Allocable Income

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

ii. In attributing overhead expense to items of gross allocable income that are passive in nature, including but not limited to dividends and investment interest, the taxpayer or the Secretary may estimate the actual expenses

attributable to such income by multiplying the passive income by two percent. Either the secretary or the taxpayer may require the use of actual overhead if this estimate is materially in error.

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 Louisiana income.

AUTHORITY NOTE: Adopted 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 29:

Family Impact Statement

The proposed adoption of LAC 61:I.1131, regarding the computation of net allocable income from Louisiana sources 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. 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 budgets.;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be submitted no later than 4:30 p.m., November 25, 2002. A public hearing will be held on November 26, 2002, at 2:30 p.m. in the River Room located on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Computation of Net Allocable Income from Louisiana Sources**

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

The implementation of this proposed regulation, which updates the corporation income tax regulation relating to the allocation of items of income and expense, will have no impact on the agency's costs.

The implementation of this proposed regulation will have no impact upon any local governmental units.

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

There should be no effect on revenue collections for the state as a result of this proposed regulation.

There should be no effect on revenue collections of local governmental units as a result of this proposed regulation.

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

There should be no costs or economic benefits that directly affect persons or non-governmental groups as a result of this proposed regulation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
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