

# Louisiana Tax Institute

## Meeting Minutes

May 19, 2017

### I. Call to Order

The meeting of the Louisiana Tax Institute was called to order at approximately 10:30 a.m. on May 19, 2017 in the Mardi Gras Room located on the ground floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

### II. Roll Call

A) The following Members were confirmed as present:

- Kimberly L. Robinson
- Cade Cole
- Jaye Calhoun
- Dr. Steven M. Sheffrin
- Philip Hackney
- Dr. James R. Alm (via phone)
- Brandon DeCuir

B) Approval of Meeting Minutes from April 28, 2017 meeting: Dr. Sheffrin moved that the minutes be approved as distributed. This motion was seconded by Mr. Hackney. The minutes were approved as distributed without opposition.

### III. Agenda Topics

A) Combined Reporting Round-Table Discussion with Ferdinand S. Hogroian, Senior Tax & Legislative Counsel, COST (Council On State Taxation) and Michael Mazerov, Senior Fellow, Center on Budget and Policy Priorities

1. Mr. Hogroian presented an overview of combined reporting basics and the positions of COST included in his May 17, 2017 letter to the Members of the Louisiana Tax Institute. He also presented issues specific to Louisiana regarding combined reporting such as:

- Louisiana already has an addback statute, and when a state has an addback statute in place, rarely do they see an increase in revenues when combined reporting is adopted. Louisiana may even see a loss in revenue. Louisiana is only at the inception stage of implementing the addback statute and has yet to issue regulations. It would be more prudent to see if the addback statute achieves the desired results before adopting combined reporting. To adopt combined reporting so soon would result in multiple changes rendering Louisiana's tax structure even more uncertain and deterring economic development.

- Also, Louisiana currently has the ability to demand combined reporting when necessary, so with the current regulatory structure, financial reporting rules and an addback statute, there has been a reduction in the use of old structures and planning to avoid taxes.
- If Louisiana were to adopt combined reporting, it would be a regional outlier. All of the Southern States and the Mid-Atlantic States require separate entity reporting and it does not seem that combined reporting will be a new trend.
- Combined reporting is complex to administer and would be an administrative burden on the Louisiana Department of Revenue through the need for additional auditors with specific expertise and additional litigation. Combined reporting would also be more burdensome on the Board of Tax Appeals.
- The Unitary determination is particularly burdensome to both the regulatory agency and taxpayer as it is fact intensive, subjective and constantly changing and varies state to state.
- The revenue impact of combined reporting is uncertain. Revenue may increase, but there have also been states that have seen a decrease in revenue after adopting combined reporting.
- Also, combined reporting is arbitrary and may cause distortions in income due to the impact of the performance of out of state affiliates. This, along with the other preceding reasons may cause a reduction in business investment.

2. Mr. Maserov presented the following ideas in support of adoption of Combined Reporting:

- The use of combined reporting has increased by 50% in the past decade and is used by Louisiana's neighboring state, Texas. Combined reporting has been easily administered by small states with small revenue departments, as well as states that are viewed as pro-business.
- Additional revenue is not the goal of combined reporting. The long term goal is to reduce the erosion of the corporate income tax base by minimizing tax planning strategies and leveling the playing field for smaller businesses.
- Not using combined reporting is at odds with the theory of using the apportionment method, which focuses not on geography, but where the income was actually earned. To use the apportionment method and then use separate entity reporting nullifies the benefits of apportionment.
- The Louisiana addback statute is fundamentally flawed because of the broad exception included that disallows the addback of income such as royalties and expenses with a legitimate business purpose done at arm's length. It is easy to argue business purpose. Most state addback statutes do not contain such a broad exception. Plus addback statutes address only method of tax avoidance.. For example, they do not address captive REIT's or transfer pricing. Combined reporting, with the Finnigan method, can reduce the use of captive REIT, transfer pricing and entity isolation. An addback statute alone can't do all of this.
- Multi-state employers may not like combined reporting, but they still do business in combined reporting states.

- The Fox and Luna study cited by COST is not reliable because the authors came to an opposite conclusion in another study, with the same questions. The distinctions have never been explained.
- Louisiana should just go ahead and adopt combined reporting instead of using pro forma returns before adoption. If pro forma returns are used, these should be audited along with the traditional return.
- Litigation over unitary inclusion has decreased, with only one major case per year.

3. In response to the two presentations, the Members discussed a variety of topics such as:

- Whether combined reporting makes the repeal of a corporate franchise tax easier
- Louisiana's anti-business tax structure
- The reasons for the expansion of combined reporting
- The stability of combined reporting

4. Public Comment

When the floor was opened for public comment, there was discussion of the dilutive effect felt with combined reporting and the apportionment method, but Mr. Maserov stated the dilutive effect is really an argument against the apportionment method, not combined reporting. Mr. Maserov stated if states were serious about enforcing arm's length transactions with separate entity reporting, there would be the same amount of litigation that is seen with combined reporting. Dr. Shefferin stated he thought litigation over the determination of a unitary group has died down. Also, Deputy Secretary of the Louisiana Department of Revenue, Kevin Richard asked if an addback statute could ever be expanded to fight the tax planning Mr. Maserov listed. Mr. Maserov stated targeted legislation would be needed to target REITS and the other factors could not be fought with an addback statute unless states were serious about enforcement.

#### **IV. Other Business**

A) Upcoming Meeting Dates:

- Next meeting previously scheduled for June 23, 2017
- There will be no July meeting
- In August, Johnette Martin will give an updated on the sales tax re-codification.
- There has been no date set for the August meeting

#### **V. Adjournment**

The meeting was adjourned at approximately 12:30 p.m.