Deloitte.

Deloitte Tax LLP | January 27, 2021

US Multistate Tax Alert

Louisiana appellate court holds gains from sale of LLC interest included in sales factor denominator

Overview

On December 30, 2020, the Louisiana First Circuit Court of Appeal (the "Court") held gains derived from the sale of a limited liability company ("LLC") interest should be included within the denominator of a taxpayer's Louisiana corporate income tax sales factor under La. Rev. Stat. Ann. § 47.287.95(F) (hereinafter referred to as "L.R.S. § 47.287.95(F)"). This Tax Alert summarizes the Court's opinion and considers the potential impact on taxpayers filing Louisiana corporate income tax returns.

Background

As outlined in the Court's decision, the taxpayer ("Taxpayer"), a C corporation, was the sole owner of an LLC formed in Texas that was also qualified to do business in Louisiana.[i] The single-member LLC ("SMLLC") primarily manufactured cementing and float equipment ultimately sold to both Louisiana and non-Louisiana oil drilling businesses.[ii] In 2011, Taxpayer sold its entire interest in the SMLLC and recognized a gain for both federal and Louisiana income tax purposes. Taxpayer conceded the sale was deemed to be an activity outside of Taxpayer's ordinary course of business based on its historical operations.[iii] As such, it was undisputed the gain derived from the sale should be treated as apportionable income under La. Rev. Stat. Ann. § 47.287.92(C).

As a result, Taxpayer included the gain on its 2011 Louisiana Corporate Income Tax Return (Form CIFT-620) ("2011 Return") in the denominator of the Louisiana revenue ratio as "other apportionable income."[iv] Following an audit of the 2011 Return, the Louisiana Department of Revenue ("DOR") removed the gain from the revenue ratio denominator in accordance with La. Admin Code. tit. 61, § 1134(D) (hereinafter referred to as "L.A.C. § 1134(D)"), which states: "[T]he revenue ratio consists of the ratio of net sales made in the regular course of business and other gross apportionable income attributable to this state to the total net sales made in the regular course of business and other gross apportionment income of the taxpayer. Sales not made in the regular course of business are not included in the [revenue ratio] provided by [the statute]."[v] Taxpayer appealed the audit assessment arguing L.A.C. § 1134(D) as relied on by the DOR "exceed[ed] the scope of [L.R.S. § 47.287.95(F)]."[vi]

Summary of the decision

Pursuant to L.R.S. § 47.287.95(F), the Court found "other gross apportionable income" should include the gain from the sale of the SMLLC; specifically, the Court emphasized the legislative history of the statute plainly stated the legislature "did not intend to exclude sales not made in the regular course of business."[vii] Further, the Court found the provision included in L.A.C. § 1134(D) that excluded "[s]ales not made in the regular course of business" from the Louisiana revenue ratio was contrary to L.R.S. § 47.287.95(F).[viii] As a result, the Court vacated the DOR's assessment and held in favor of Taxpayer.[ix]

Taxpayer considerations

Based on this decision, taxpayers should consider whether to include within the revenue ratio gains derived from sales made during the regular course of business along with sales not made in the regular course of business for Louisiana tax purposes. However, notable exceptions may apply for taxpayers who elect or are required to use the separate accounting method for apportioning income to Louisiana.[x]

Contacts

Robert Topp
Michael Matthys
Grace Taylor

---

[i] *Davis-Lynch Holding Co. v. Robinson*, 2019-1574, 2020 La. App. LEXIS 1932, 2020 WL 7766314 (La. App. – 1st Cir., Dec. 30, 2020). A copy of the Court's decision is available here.; *see also* La. Rev. Stat. Ann. § 47:287.95(F) (outlines general apportionment formula for multistate corporations with Louisiana activity); La. Admin. Code tit. 61, § 1134(D) (defines categories of income that comprise "gross apportionable income" for Louisiana purposes).
[ii] *Id*.
[iii] *Id*.
[iv] *Id*. at *4.
[v] *Id*. at *5.
[vi] *Id*.
[vii] *Id*. at *18.
[viii] *Id*. at *22 (*quoting* La. Admin. Code tit. 61, § 1134(D)).
[ix] *Id*. Under La. Sup. Ct. R. X, Section 5, an application seeking to review the judgment of the Court of Appeals must be filed with the Louisiana Supreme Court within 30 days of the appellate court's judgment (i.e., application required to be filed on or before January 29, 2021), unless a motion for

rehearing is filed with the appellate court to the extent permitted. Thus, the appellate court's decision in this case is not yet final.

[x] *See* La. Rev. Stat. Ann. § 47:287.94(H)(2) (explaining treatment of specific types of gains for separate accounting purposes). Generally, in the context of separate accounting, gains from the sale of partnership or corporation interests made outside the ordinary course of the business are included in the numerator of the electing entity's sales factor "to the extent the assets of the [entity sold] are located in Louisiana at the time of the sale or exchange." *Id*.