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Louisiana enacts single sales factor for eligible businesses

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On May 31, 2012, Governor Bobby Jindal signed into law H.B. 729, allowing a business to participate in the Corporate Tax Apportionment Program ("Program"), under which a qualified business may utilize single sales factor apportionment. The apportionment formula applies to corporate income tax periods beginning on or after January 1, 2013, and for corporation franchise tax periods beginning on or after January 1, 2014. [H.B. 729, signed 5/31/12]

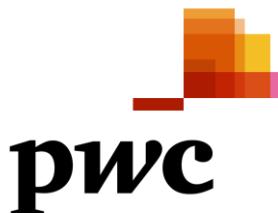
Background

Under Louisiana law, corporations must generally apportion their income using a three-factor formula. However, several special apportionment formulas exist for certain businesses or industries, including single sales factor apportionment for taxpayers whose net apportionable income is derived primarily from the business of manufacturing or merchandising.

Eligibility requirements

Under the new law, businesses that meet all of the eligibility requirements of the Program may apportion their income using a single sales factor following application to and approval of the Secretary of the Louisiana Department of Economic Development ("DED"). The requirements are as follows:

1. At least fifty percent of the total annual sales of the business from a Louisiana site or sites is to out-of-state customers or buyers, or to in-state customers or buyers who resell the product or service to an out-of-state customer or buyer for ultimate use, or to the federal government, or any combination thereof.



2. The activities of the business at a Louisiana site or sites include corporate headquarters, logistics, warehousing, data center, clean technology, destination health care, research and development, renewable energy, digital media and software development, or other business sector targeted by the secretary as a focus of the department's economic development efforts.

The Secretary may include sales by affiliates of the business in determining the percentage of sales requirement. Further, the new law provides that businesses primarily engaged in retail sales, real estate, professional services, natural resource extraction or exploration, financial services, or venture capital funds are not eligible for the Program, unless such business provides at least twenty-five new headquarter or shared service center jobs.

Program administration

At invitation of the Secretary of the DED, a business may apply for participation in the program by submitting to DED certified statements and documents as the DED may require. The Secretary is authorized to certify the eligibility of a business and request approval of a contract by the Board of Commerce and Industry, if the Secretary determines that the business meets the eligibility requirements of the program, that participation in the program is needed in a highly competitive site selection situation, and that securing the project will result in a significant positive economic benefit to the state.

Contracts are authorized for an initial period of up to 20 years, renewable for up to an additional 20 years. Upon approval of the Board of Commerce and Industry, the business may utilize the single- sales factor for calculation of corporate income and franchise tax apportionment. Prior to utilization of the single sales factor for a particular tax year, the business shall certify to DED that it met the eligibility requirements for participation in the program for that year. Failure of a business to maintain its eligibility for participation in the program or failure to meet all performance obligations of the contract may result in suspension or termination of its participation in the program. No new contracts may be approved after July 1, 2017.

PwC Observes

"Taxpayers should be cautioned that eligibility for single factor apportionment appears to be rather restrictive," explains Robin Sigur, SALT Director with PwC in Houston.

"Not only does the statute provide clear thresholds, only taxpayers *invited* by the Secretary can participate. There has not been any indication how generous the Secretary will be with invitations and what other business sectors will be targeted for the single factor election. In addition, certain categories of businesses, such as businesses primarily engaged in retail sales, are excluded. Businesses that otherwise qualify under the statute should pay attention to any statements by the Secretary regarding the invitation process, specifically whether any steps can be taken to ensure, or increase the likelihood, of receiving an invitation."

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