

# ***Louisiana – Entities holding real property for investment are not subject to local occupation tax because they are not engaged in ‘business’***

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## ***In brief***

A Louisiana appellate court found that investing entities were not subject to local parish occupational license tax because owning real estate did not constitute being engaged in ‘business’ as required for imposition of the tax. Out-of-state investors in Louisiana property should review whether local occupational tax refunds may be available if their local activities do not satisfy local ‘doing business’ requirements consistent with the *First Lake Realty* ruling. [[\*Normand v. First Lake Realty, Inc., et al.\*](#), Court of Appeal of Louisiana, 5<sup>th</sup> Cir., No 12-CA-797 (5/23/13)].

## ***In detail***

### ***Facts***

During the 2003 to 2008 years at issue, a group of partnerships and limited liability corporations (Investing Entities) owned various apartment complexes located in Jefferson Parish. Each Investing Entity had a management contract with First Lake Realty, Inc. to manage the property or properties that the Investing Entity owned. The contracts delegated to First Lake all operational and managerial authority rights and duties regarding each property. The Investing Entities retained the

authority to be consulted on certain repairs in excess of a stated amount and the right to terminate the contract.

The Investing Entities were not involved in the management or operation of the properties. They owned the real estate, but did not have a place of business or have employees. They did not enter into leases with tenants, did not collect rent, and did not have keys to any of the on-site management offices. The Investing Entities functioned solely as investment vehicles holding legal title to various apartment complexes.

### ***Jefferson Parish occupational license tax***

Louisiana state law grants local parishes the authority to impose an occupational license tax under La. R.S. 47:341.A, which provides that any “municipality or parish shall have the right to impose a license tax on any person conducting any business” within the parish. Jefferson Parish enacted Ordinance Section 35-135 authorizing such a tax:

“there is hereby levied an annual occupational license tax upon each person, association of persons, partnerships, firms and

corporations **pursuing any trade, profession, vocation, calling or business** in the parish” (emphasis added)

Jefferson Parish argued that its local license tax applied to the Investing Entities because they were engaged in a ‘business’ within the Parish by virtue of their ownership of investment property. The Investing Entities prevailed before the trial court and the Parish appealed to the appellate court.

***Investment activity alone does not constitute ‘doing business’***

The appellate court (Court) recognized that the Investing Entities must be engaged in a ‘business’ in order to be subject to the Jefferson Parish local occupational tax. The Parish claimed that the Court should be aided by the definition of ‘business’ found in the imposition of the state-level sales and use tax, which provides that business includes “any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage.” The Parish asserted that to rule otherwise would create an inconsistent application of income tax at the state and local level.

The Court disagreed and instead looked to the language of the Parish ordinance, which defines ‘business’ as “any trade, profession, vocation, calling, or business.” Since the ordinance essentially defined ‘business’ as ‘business,’ the Court looked to the general definition of

‘business,’ which involves an activity that “requires a substantial amount of time and attention and some physical effort.”

The Court found that the trial court was not manifestly erroneous or clearly wrong in its holding that ‘investment’ activity does not fall within the definition of business. The Parish ordinance did not impose a tax on one who merely invests in rental property. Rather, it imposes a tax on a person actively managing and operating rental property. The Court found it significant that First Lake possessed all operational and managerial rights and that it paid the occupational license tax for engaging in the business of leasing and renting the respective properties.

***No attribution of activity from First Lake to the Investing Entities***

Jefferson Parish asserted that the conduct of First Lake should be attributed to the Investment Entities because First Lake acted as their agent. The Court disagreed because there was no support in Louisiana case law or local ordinances allowing for attributing the acts of an agent to another.

***The takeaway***

While Louisiana state corporation income tax is broadly applied to corporations with earned income in Louisiana or income derived from sources within Louisiana, local

occupation taxes may be imposed on a more narrow set of activities, as demonstrated in the *First Lake* decision. Every local ordinance is different, but to the extent parishes adopt a ‘doing business’ standard similar to Jefferson Parish, out-of-state investors may have refund opportunities in several localities (in addition to Jefferson Parish) to the extent that their local activities are limited to those reflected in *First Lake*.

For example, the City of New Orleans defines the term ‘business’ substantially similarly to that of Jefferson Parish. However, the City of New Orleans has further interpreted the term ‘business’ by way of promulgating a regulation that may affect the analysis. Accordingly, similar opportunities may exist in other local jurisdictions related to this case, but care should be taken to review each individual taxing jurisdiction on its own merits.

It is not clear how the ruling affects REITs and real estate funds that triple net lease property (when the lessee is responsible for all costs, including taxes and insurance, relating to the leased property) or that own real property. Such entities established to hold or lease real property should especially consider whether their activities in local jurisdictions would be considered doing ‘business.’

## **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact:

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