PUBLICATION

Spotlight on Louisiana: New Governor Creates More Favorable Business Tax Environment

June 4, 2008

On March 14, 2008, the Louisiana Legislature concluded its Second Extraordinary Session of 2008. This Special Session was initiated by Louisiana Governor Bobby Jindal to consider proposed legislation that will create a more favorable business climate and strengthen economic development in the State of Louisiana. During this Special Session, legislation was enacted in part to accelerate the elimination of taxes on investments in manufacturing machinery and equipment, increase the elimination of franchise tax on business debt or borrowed capital, eliminate the tax on business utilities, expand the scope of the Louisiana New Markets Tax Credit Program, provide for an individual income tax deduction for certain elementary and secondary educational and tuition expenses, and exclude Federal income tax rebates under the President's economic stimulus package from Louisiana income tax.

Accelerated Phase-Out of Sales, Use and Lease Taxes on Manufacturing Machinery and Equipment (Act No. 12)

Act No. 12 of the Second Extraordinary Session accelerates the phase-out of Louisiana sales, use and lease tax on manufacturing machinery and equipment. This Act accomplishes such result by accelerating the phase-out by one year from July 1, 2010 to July 1, 2009 and thereafter. Under the current law, for the period beginning July 1, 2008 and ending on June 30, 2009, the Louisiana sales, use and lease tax on manufacturing machinery and equipment is reduced by 68%. Prior to this Act, for the period beginning July 1, 2009 and ending on June 30, 2010, the taxes on such machinery and equipment were scheduled to be reduced by 82%.

Under Act No. 12, the Louisiana sales, use and lease tax on the purchase, lease or rental of such manufacturing machinery and equipment will be completely phased out beginning July 1, 2009. Act No. 12 becomes effective on July 1, 2008.

Accelerated Phase-Out of "Borrowed Capital" From Corporate Franchise Tax Base (Act No. 10)

Act No. 10 accelerates the phase-out of borrowed capital, or debt with a maturity date of more than one year, from a corporation's taxable base for tax years beginning in 2011,instead of in 2012 and thereafter. The initial phase-out commenced in 2007 and was scheduled to be completely phased out by 2012. For example, in 2008, 58% of a corporation's "borrowed capital" will be included in the corporation's franchise tax base. In 2009 and 2010, the percentage will decrease to 44% and 30%, respectively, before being completely phased out for tax years beginning in 2011 and thereafter. Act No. 10 becomes effective on July 1, 2008.

Sales and Use Tax on Business Utilities (Acts Nos. 1 and 9)

Acts Nos. 1 and 9 reduce the Louisiana sales and use tax rate for sales of electricity and natural gasratewater and steam from 3.8% to 2.8%, for the taxable periods beginning on or after July 1, 2008. For the taxable periods beginning after July 1, 2009, sales and uses of electricity, natural gas, water and steam will be exempt from Louisiana sales and use tax. In addition, all purchases of butane and propane will be excluded from Louisiana sales and use tax beginning on July 1, 2008.

Act No. 9 also expands the definition of "manufacturer" for purposes of the manufacturing machinery and equipment exclusion from Louisiana sales and use tax discussed above. Retroactively from July 1, 2007, the definition of a "manufacturer" includes persons within NAISC Code Information Sector 511110, if they are required to register with the Department of Labor and are assigned such a sector number. As stated, this re-definition of the term "manufacturer" applies retroactively to July 1, 2007. The remaining portions of Acts 1 and 9 will become effective on July 1, 2008.

Extension and Expansion of Louisiana New Markets Tax Credits Program (Act No. 4)

Act No. 4 authorizes an additional $50 million of new markets tax credits (NMTC) after July 1, 2008 and reduces the amount of investments that can be issued by a single business from $15 million to $5 million; however, if the investments issued are "consistent" with certain "target industries," the limit remains at $15 million. This additional $50 million is allocated over the next three years as follows: $25 million in 2008, $12.5 million in 2009, and $12.5 million in 2010.

The Louisiana Department of Economic Development (DED) is required to promulgate rules and regulations to identify "target industries" that will qualify for the $15 million limit noted above. With its application to the Louisiana Department of Revenue, the taxpayer must include the DED's certification that qualified low-income investments are consistent with "target industries."

Act No. 4 also authorizes the Louisiana Department of Revenue to recapture credits if the issuer of the credit fails to maintain qualified low-income community investments at any time after issuing the credit. Prior to this new law, the Department of Revenue was authorized to recapture the credit only if the issuer failed to maintain qualified low-income community investments for a period of 6 years after issuing the credit. This Act became effective on March 24, 2008.

Income Tax Deduction for Certain School Tuition (Act No. 8)

Act No. 8 provides for a Louisiana income tax deduction for certain elementary and secondary educational school tuition and fees and home-school educational expenses beginning January 1, 2009. The deduction is limited to the lesser of either 50% of the actual amount of tuition and fees paid by the taxpayer per child, or $5,000 per child. Act No. 8 is applicable to amounts paid on and after January 1, 2009.

2008 Economic Stimulus Payments (Act No. 5)

Act No. 5 was enacted to provide that Louisiana's federal income tax deduction for individuals for the tax year 2008 is not reduced by the federal income tax rebates and credits received by the taxpayer under the Economic Stimulus Act of 2008, which was enacted by Congress and became effective February 13, 2008 (see our Tax Alerts dated February 13 and April 15, 2008). In essence, Act No. 5 protects taxpayers from incurring a Louisiana income tax liability on their economic stimulus payments received in 2008. Act 5 is effective for tax years beginning in calendar year 2008.

Revenue Information Bulletin No. 08-008 (May 6, 2008)

In a related recent development, the Louisiana Department of Revenue issued RIB No. 08-008 (May 6, 2008), which concluded that because Louisiana piggybacks onto the Federal income tax system for depreciation, the special 50% bonus depreciation allowance and the increase in the expense allowance for small businesses in the federal Economic Stimulus Act also will apply for Louisiana income tax purposes.