

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

# BDO KNOWS:

## SALT



### SUBJECT

## LOUISIANA ADOPTS SINGLE SALES FACTOR AND MARKET SOURCING FOR CORPORATION INCOME TAX

### SUMMARY

On June 28, 2016, John Bell Edwards (D) signed into law H.B. 20, 2016 2nd Extra. Sess. (La. 2016), which adopts single sales factor apportionment, market sourcing, and a throwout rule for purposes of the Corporation Income Tax. These provisions in H.B. 20 apply to taxable years beginning on or after January 1, 2016.

### DETAILS

#### *Single Sales Factor*

For taxable years beginning on or after January 1, 2016, Louisiana apportions the income of a corporation, except a corporation that derives net apportionable income primarily from the exploration, production, refining, or marketing of oil and gas, using a single sales factor. Oil and gas taxpayers apportion income based on a four factor formula comprised of property, payroll, and double-weighted sales.

#### *Market Sourcing*

Also for taxable years beginning on or after January 1, 2016, Louisiana adopts market sourcing for sales of services and licenses or sales of intangibles. In general, gross receipts from sales of services are sourced to Louisiana to the extent the service is delivered to a location in the state. Gross receipts from licenses of intangibles are sourced to Louisiana to the extent the intangible is used in the state. The following market sourcing framework is adopted for assigning a corporation's receipts from sales of other than tangible personal property held primarily for sale:

### CONTACT:

#### ATLANTIC:

JONATHAN LISS, Tax Senior Director  
215-636-5502 / jliiss@bdo.com

JEREMY MIGLIARA, Tax Senior Director  
703-770-0596 / jmigliara@bdo.com

#### CENTRAL:

ANGELA ACOSTA, Tax Senior Director  
248-688-3313 / aacosta@bdo.com

NICK BOEGEL, Tax Senior Director  
414-615-6773 / nboegel@bdo.com

JOE CARR, Tax Principal  
312-616-3946 / jcarr@bdo.com

MARIANO SORI, Tax Partner  
312-616-4654 / msori@bdo.com

RICHARD SPENGLER, Tax Senior Director  
616-776-3687 / rspengler@bdo.com

#### NORTHEAST:

JANET BERNIER, Tax Principal  
212-515-5405 / jbernier@bdo.com

MATTHEW DYMENT, Tax Principal  
617-239-4130 / mdyment@bdo.com

#### SOUTHEAST:

TONY MANNERS, STS Senior Director  
404-979-7274 / tmanners@bdo.com

ASHLEY MORRIS, Tax Senior Director  
919-278-1963 / amorris@bdo.com

SCOTT SMITH, Tax Senior Director  
615-493-5629 / ssmith@bdo.com

#### SOUTHWEST:

TOM SMITH, Tax Partner  
918-281-4080 / tsmith@bdo.com

GENE HEATLY, Tax Senior Director  
214-665-0716 / gheatly@bdo.com

#### WEST:

ROCKY CUMMINGS, Tax Partner  
415-490-3130 / rcummings@bdo.com

PAUL MCGOVERN, Tax Senior Director  
714-913-2592 / pmcgovern@bdo.com

RECEIPT FROM	PROPERTY/SERVICE TYPE	CUSTOMER TYPE	SOURCE TO LOUISIANA
Sale, rental, lease, or license	Immovable property	Not applicable	To the extent the property is located in the state
Rental, lease, or license	Tangible personal property	Not applicable	To the extent the property is located in the state
Lease or license	Intangible property	Not applicable	To the extent the intangible property is used in the state
Sale	Intangible property contingent upon productivity, use, or disposition	Not applicable	To the extent the intangible property is used in or otherwise associated with the state
Sale	Intangible property where property is <i>not</i> contingent upon productivity, use, or disposition of the property and the property sold is a contract right, government license, or similar intangible property	Not applicable	To the extent the intangible property is used in or otherwise associated with the state
Sale	Intangible property, other	Not applicable	Exclude from sales factor
Sale	Service, general	Not applicable	To the extent the service is delivered to a location in the state
Sale	Direct personal service	Natural person	To the extent the customer received the service in the state
Sale	Service that is not a direct personal service	Natural person	If the customer has a Louisiana billing address
Sale	Service with a substantial connection to geographic location	Unrelated entity	To the extent the service receipts have a substantial connection to a geographic location in the state
Sale	Service without a substantial connection to geographic location	Unrelated entity	Commercial domicile of the taxpayer is in the state

If one of the foregoing sourcing methodologies fails to clearly reflect the taxpayer's market in the state, the taxpayer may utilize, or the Department of Revenue may require, the use of an alternate methodology that reasonably approximates the taxpayer's market in the state. In such a case, the taxpayer is required to provide a detailed explanation of why it was unreasonable to utilize one of the prescribed methodologies.

H.B. 20 does not address the sourcing of receipts for services between related entities. However, the new law requires the Secretary of Revenue to promulgate regulations for this purpose.

### **Throwout**

If a taxpayer is not taxable in the state of receipt assignment, or the state of assignment cannot be reasonably determined under the market sourcing rules, Louisiana requires the taxpayer to exclude the sale from the apportionment factor.

## **BDO INSIGHTS**

- ▶ Louisiana becomes the 23<sup>rd</sup> state to adopt market-based sourcing; however, this apportionment change does not extend to Louisiana's franchise tax.
- ▶ Since the new law was enacted on June 28, 2016, but is effective retroactively to taxable periods beginning on or after January 1, 2016, Louisiana taxpayers should assess what, if any, impact these law changes may have on their existing deferred tax balances, and adjust accordingly as of the enactment date.
- ▶ Although H.B. 20 generally follows the Multistate Tax Commission's model market sourcing statute, we anticipate that the Department, like other states that have adopted market sourcing, will need to issue further administrative guidance regarding its interpretation for determining the extent a service is received or delivered, or intangible property is used, in the state.
- ▶ Louisiana taxpayers should note that the apportionment changes under the new law affect the Corporation Income Tax only, and when determining their Corporation Franchise Tax for taxable years beginning on or after January 1, 2016, should be careful to apply the apportionment provisions under that tax and not those under the Corporation Income Tax.

The Tax Practice at BDO is among the largest tax advisory practices in the United States. With 63 offices and more than 450 independent alliance firm locations in the United States, BDO has the bench strength and coverage to serve you.

BDO is the brand name for BDO USA, LLP, a U.S. professional services firm providing assurance, tax, advisory and consulting services to a wide range of publicly traded and privately held companies. For more than 100 years, BDO has provided quality service through the active involvement of experienced and committed professionals. The firm serves clients through more than 60 offices and over 500 independent alliance firm locations nationwide. As an independent Member Firm of BDO International Limited, BDO serves multi-national clients through a global network of 1,408 offices in 154 countries.

BDO USA, LLP, a Delaware limited liability partnership, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO Member Firms. For more information, please visit [www.bdo.com](http://www.bdo.com).

*Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.*