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LOUISIANA TAX REFORM UPDATE: DEALS CUT AND LINES DRAWN

Since our last update, two major industry groups in Louisiana have publicly taken positions on the Jindal administration's tax reform proposal. In addition, more details have been released on Louisiana Economic Development ("LED") incentive programs, the family assistance, retiree, and military rebate programs, and the change in burden on individuals.

The Louisiana Oil and Gas Association

First, the Louisiana Oil and Gas Association ("LOGA") announced an agreement with the Jindal administration on the elimination of tax exemptions for the oil and gas industry. As part of the larger tax reform package, exemptions on oil and gas extraction would be cut by half, or about $289 million. Even so, significant tax breaks in the form of severance tax exemptions will remain. However, under the deal between LOGA and the administration, oil field services would not be subject to the new state sales tax on services, the aspect of the tax reform proposal causing the most controversy. Don Briggs, President of LOGA, stated that the association "believe[s] the proposal we have discussed with the administration will create more jobs in the oil and gas industry for Louisianans."

In addition to removing oil field services from the sales tax base, the primary changes under the agreement between LOGA and the administration include grandfathering existing wells under the current sales tax law. Therefore, any changes only apply to future wells and does not affect existing production. Further, for natural gas, exemptions that will be repealed include: natural gas injection, consumed in the production of natural resources in Louisiana, and use in the manufacture of carbon black. With respect to current natural gas suspensions, severance tax rates will be reduced between 40 and 50 percent based on annual rates determined between 5 and 10 years of production by the Louisiana Department of Revenue (the "Department"). However, for ultra-deep gas, there is no severance tax for two years and no payout. Additionally, the oil deduction for trucking, barging, and pipeline will be capped at $75. Oil suspensions will see severance tax rates between 0 and 7.5 percent for the first 2 to 10 years of production. Finally, the legislation will remove the horizontal mining and drilling projects exemption. A copy of the LOGA announcement can be read here.

The Louisiana Association of Business and Industry

On the other hand, the Louisiana Association of Business and Industry ("LABI") came out strongly against the proposed legislation. In the President's column, LABI President Dan Juneau warned that "[i]f the tax swap proposal is introduced as a net increase in business taxes or is amended during the legislative process to take that form, LABI will oppose it."

In particular, LABI is most concerned with the potential for a $500 million or more shift in tax burden to Louisiana businesses. LABI is also wary of affects to local governments, who in an effort to lower the total sales tax rate, may push property taxes to raise revenues, a tax that businesses pay over 70 percent of the total collections.

Although willing to work with the Jindal administration on tax reform, as it has with other major reforms including workforce development, education, and employee retirement, LABI will only support the proposal if the new tax system does not increase the tax burden on Louisiana businesses. In fact, LABI applauded Jindal's separate proposal for a state and local government commission for consolidated sales tax collections that will be introduced during the 2013 legislative session, a reform that LABI finds "long past due." A copy of the LABI release can be read here.

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LED Incentive Program

As part of the overarching goal to simplify the Louisiana tax system and provide incentives for businesses to relocate to the state, the Jindal administration intends to retain a number of popular incentive programs. Most importantly, the Motion Picture Investor Tax Credit will be reformed as a rebate. However, because the credit is viewed as providing for substantial incentives with limited economic impact, qualifying "above the line" expenditures will be limited to approximately $1 million per person or entity per film production project. In addition, some expenditures will be fully excluded from the credit, such as airfare, finance fees, bond fees, insurance premiums, and loan interest. Nonetheless, the credits will remain transferable through a registry operated by the Department.

Another major credit program undergoing changes is the Enterprise Zone ("EZ"). The administration believes the program is no longer aligned with the original intent to target incentives in distressed areas. Therefore, under the reform proposal, only full-time jobs will count towards eligibility and incentives. In addition, the hiring threshold for targeted groups will increase to 50 percent of new jobs from 35 percent under the current law. Retail businesses with 100+ employees nationally will no longer be qualified, except for grocery stores and pharmacies located in an EZ. Finally, the investment tax credit will increase to 2.5 percent from 1.5 percent to account for sales tax changes while capital expenditure incentives will be maxed at $100,000 per new full-time job.

Similarly, the Louisiana Quality Jobs Program (the "QJ") and the Competitive Projects Payroll Incentive (the "CPPI") will be decoupled from EZ; that is, the QJ and the CPPI will fully integrate capital expenditure incentives. Further, health care requirements for the QJ and the CPPI will be tied to the federal standards for larger businesses, but will provide appropriate options for smaller businesses. With respect to the QJ, the investment tax credit will increase to 2.5 percent from 1.5 percent to account for sales tax changes.

The Research and Development Tax Credit ("R&D") will be restructured to piggy-back on the federal R&D tax credit. This new approach hopes to discourage ineligible businesses from backlogging the administration of the credit. In addition, LED will receive pre-certification and post-certification audit authority for all applicants, regardless of size.

The Sound Recording Investor Tax Credit sunset will be extended by four years from January 1, 2015, to January 1, 2019.

Finally, the remaining incentive programs managed by LED will mostly be retooled as a rebate on state sales tax. A copy of the overview of LED incentive programs under the tax reform proposal can be read here.

Additional Reading

In addition to the information above, details on the Louisiana Family Assistance Rebate Program and the Assistance for Retiree and Military Rebate Program can be read here. The individual impact charts distributed this week to the Louisiana House Ways and Means Committee can be read here.

— Justin B. Stone

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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