

ADMIRALTY & MARITIME

ANTITRUST & TRADE REGULATION

APPELLATE LITIGATION

AVIATION

BANKING

BANKRUPTCY, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS

BUSINESS & COMMERCIAL LITIGATION

CLASS ACTION DEFENSE

COMMERCIAL LENDING & FINANCE

CONSTRUCTION

CORPORATE & SECURITIES

EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION

ENERGY

ENVIRONMENTAL & TOXIC TORTS

GAMING

GOVERNMENT RELATIONS

HEALTH CARE

INSURANCE & FINANCIAL SERVICES

INTELLECTUAL PROPERTY

INTERNATIONAL

LABOR RELATIONS & EMPLOYMENT

MERGERS & ACQUISITIONS

PRODUCTS LIABILITY

PROFESSIONAL LIABILITY

PROJECT DEVELOPMENT & FINANCE

PUBLIC FINANCE

REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE

TAX (INTERNATIONAL, FEDERAL AND STATE)

TELECOMMUNICATIONS & UTILITIES

TRUSTS, ESTATES & PERSONAL PLANNING

VENTURE CAPITAL & EMERGING COMPANIES

WHITE COLLAR CRIME

The Treatment of Capitalized Leases for Louisiana Income or Franchise Tax Purposes: *Now You See It / Now You Don't*

By

Louis S. Nunes, III

On June 28, 2005, the Louisiana Department of Revenue (the "Department") issued Revenue Ruling 05-003, which addresses the treatment of capitalized leases for Louisiana corporation income and franchise tax purposes. Capitalized leases of assets are common financing transactions. In a typical transaction, referred to as a sale-leaseback transaction, the owner of an asset "sells" the asset to a financing company and then leases the asset back. The tax question is whether the two transactions are respected as a separate sale and a separate lease, or whether the two transactions are treated as a financing transaction in which the original owner has simply borrowed money against the asset. The resolution of this issue determines who is the "tax owner" of the asset. If the two transactions are respected as separate, the financing company is treated as the "true owner" of the asset. If the transaction is treated as a financing device, the original owner remains the "true owner" of the asset.

These types of transactions have been analyzed thoroughly in federal income tax and accounting literature. Not so for state tax purposes. Revenue Ruling 05-003 reports the Department's position on the treatment of capitalized leases for corporation income tax purposes and reaffirms its position on the treatment of such leases for corporation franchise tax purposes. While the Department should be commended for its attempt to add some certainty to this area, the position taken in the Ruling could lead to some interesting positions on corporate tax returns. For instance, taxpayers may be in a situation where an asset is not treated as an asset of the taxpayer for corporation franchise tax purposes but is treated as an asset of the corporation for corporation income tax purposes. In other words, sometimes you see the asset, sometimes you don't.

This issue was first addressed by the Department in its Statement of Acquiescence No. 04-001. That Statement conceded the position that a capitalized lease is treated as a true lease for corporation franchise tax purposes, irrespective of how that capitalized lease is characterized under federal income tax principles. Thus, the asset is not treated as an asset of the taxpayer for franchise tax apportionment ratios. Ruling 05-003 reaffirms that position.

The Department then describes its position on capital leases for corporation income tax purposes. The Ruling holds that for Louisiana corporation income tax purposes, federal income tax principles must be applied to determine who is the true owner of the asset. If the taxpayer is the "true owner of the asset" under federal income tax principles, the taxpayer will be considered the owner of the property for corporation income tax purposes. The Department's conclusion is based on the fact that Louisiana's corporation income tax "piggybacks" the federal corporate income tax scheme.

ADMIRALTY & MARITIME

ANTITRUST & TRADE REGULATION

APPELLATE LITIGATION

AVIATION

BANKING

**BANKRUPTCY, RESTRUCTURING &
CREDITORS-DEBTORS RIGHTS**

BUSINESS & COMMERCIAL LITIGATION

CLASS ACTION DEFENSE

COMMERCIAL LENDING & FINANCE

CONSTRUCTION

CORPORATE & SECURITIES

**EMPLOYEE BENEFITS, ERISA, &
EXECUTIVE COMPENSATION**

ENERGY

ENVIRONMENTAL & TOXIC TORTS

GAMING

GOVERNMENT RELATIONS

HEALTH CARE

INSURANCE & FINANCIAL SERVICES

INTELLECTUAL PROPERTY

INTERNATIONAL

LABOR RELATIONS & EMPLOYMENT

MERGERS & ACQUISITIONS

PRODUCTS LIABILITY

PROFESSIONAL LIABILITY

PROJECT DEVELOPMENT & FINANCE

PUBLIC FINANCE

**REAL ESTATE: LAND USE,
DEVELOPMENT & FINANCE**

**TAX (INTERNATIONAL,
FEDERAL AND STATE)**

TELECOMMUNICATIONS & UTILITIES

**TRUSTS, ESTATES &
PERSONAL PLANNING**

**VENTURE CAPITAL &
EMERGING COMPANIES**

WHITE COLLAR CRIME

The determination of who is the “true owner” of property is a fact intensive exercise, which taxpayers will have to analyze for federal income tax purposes; therefore, the Department’s position should not create any additional analysis. However, a taxpayer may find itself reporting that it does not own the asset for Louisiana corporation franchise tax purposes, but does own the asset for Louisiana corporation income tax purposes. If you have capitalized leases on your books, you should pay close attention to how they are reported on your Louisiana returns. In addition, thought should be given as to whether the different treatment of the same asset presents you with any tax planning opportunities.

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- APPELLATE LITIGATION
- AVIATION
- BANKING
- BANKRUPTCY, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- CLASS ACTION DEFENSE
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE
- INSURANCE & FINANCIAL SERVICES
- INTELLECTUAL PROPERTY
- INTERNATIONAL
- LABOR RELATIONS & EMPLOYMENT
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESTATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES
- WHITE COLLAR CRIME

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:

Louis S. Nunes, III
Jones Walker
201 St. Charles Avenue, Suite 5100
New Orleans, Louisiana 70170-5100
Telephone: (504) 582-8354
Email: snunes@joneswalker.com

Tax (International, Federal, State, & Local)

WILLIAM M. BACKSTROM, JR.¹
ALTON E. BAYARD
EDWARD B. BENJAMIN, JR.
JOHN C. BLACKMAN
ROBERT R. CASEY
MARK T. HENNER

B. MICHAEL MAULDIN²
MICHAEL W. MCLOUGHLIN³
LOUIS S. NUNES, III
RUDOLPH R. RAMELLI
ALEX P. TROSTORFF³

¹ Also admitted in Mississippi

² Also admitted in Mississippi and Washington, DC

³ Also admitted in New York