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Introduction

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The articles in this symposium address issues that have been of interest to members of the Louisiana Legislature in their efforts to reform Louisiana's tax law. In 1999, the Legislature authorized the formation of a Tax Study Committee under the aegis of the Louisiana Law Institute.[1] The Tax Study Committee considered several proposals, including a proposed amendment to the Louisiana Constitution that would have reduced the state sales tax on food and utilities and would have increased the state income tax by eliminating the deduction for federal income taxes paid by individuals.

During its 2000 Regular Session, the Louisiana Legislature enacted a bill (the "Stelly plan") giving Louisiana voters an opportunity to implement the Tax Study Committee's proposed constitutional amendment.[2] While the Stelly plan was defeated by voters in the November 2000 election, the Louisiana Legislature ensured that tax reform efforts would continue by authorizing the formation of a Select Committee on Tax Structures comprised of members of both the state House of Representatives and the Senate.[3]

The Select Committee has considered, among other proposals, adopting a combined unitary reporting system, which would ensure accurate apportionment of income between affiliated groups of corporations transacting business in Louisiana and other states. In states that require combined unitary reporting, each member of an affiliated group of corporations reports its share of the group's unitary business income, determined under a formula, to the state in which the income is deemed to be earned. The amount of the group's income that is allocated to a state is determined by multiplying the aggregate taxable income of the group by the group's apportionment percentage. The formulary apportionment percentage generally is determined by comparing the property, payroll, and sales of the group within the state with its property, payroll, and sales in all states. The percentage used and the factors comprising the percentage may vary from state to state.

Louisiana currently requires corporations to use formulary apportionment in determining the amount of their Louisiana income. However, corporations transacting business in Louisiana report their income on a separate reporting basis. Each member of an affiliated group of corporations is treated as a separate corporation, and no member of the group is liable for Louisiana corporate income tax unless that member has sufficient nexus with Louisiana. In their article, "Designing a Combined Reporting Regime for a State Corporate Income Tax: A Case Study of Louisiana," Professor Michael J. McIntyre, Paull Mines, and

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1. S. Con. Res. No. 88, 1999 Leg. Reg. Sess. (La. 1999).
2. 2000 La. Act No. 37.
3. The Select Committee on Tax Structures was created under the authority of La. S. Rule no. 13.20 (Apr. 10, 2000).

Professor Richard D. Pomp suggest that Louisiana change its corporate tax structure by requiring multistate corporations to use combined unitary reporting. The article offers practical suggestions for implementing a combined unitary business regime in Louisiana. It addresses such concerns as: the determination of whether an affiliated group is engaged in a unitary business; the proper method of applying the apportionment formula to allocate the group's income to the state in cases where the members of the group do not use the same accounting period; the selection of a starting date for combined reporting; adjustments to income for intra-group transactions; and transition issues that will arise in moving from a separate reporting system to a combined unitary reporting system.

During its 2000 Regular Session, the Louisiana Legislature also considered a bill that would have changed the way businesses are taxed in Louisiana by eliminating the corporate income tax and imposing a Louisiana Business Tax at a rate of 1.85 percent applicable to business activity, regardless of the form of business organization utilized to conduct the business.[4] The bill was defeated, in part because it would have raised approximately $1.8 billion in revenue, and because it was impossible to estimate the economic impact of such a large new tax. In their article, "Taxation of Louisiana Businesses: Two Alternate Proposals," Professors James A. Richardson and Susan Kalinka maintain that the disparity in taxation of capital intensive corporations in Louisiana and the taxation of other forms of business organization is inequitable because the amount of Louisiana tax a business is required to pay often depends on the form of business organization through which the business is operated. Corporations are the only form of business entity subject to the Louisiana franchise tax, and the amount of the franchise tax is particularly high if a corporation's income is derived from capital, rather than from services. The Louisiana corporation income tax rates also are higher than the rate of tax that applies to the income of flow-through entities such as S corporations, partnerships, and LLCs.

Professors Richardson and Kalinka propose eliminating the corporate franchise tax and reducing the corporate income tax rates to conform to the income tax rates paid by owners of flow-through entities. To replace the lost revenue, they suggest that Louisiana should impose a .025 percent value-added tax that would apply to all business activity in the state, regardless of the form of business organization or the type of business income earned. Alternatively, Professors Richardson and Kalinka suggest that Louisiana should replace the revenue lost from the elimination of the corporate franchise tax and the reduction in corporation income taxes by imposing an additional income tax on all business profits, regardless of the form of business organization that has been adopted.

During its 2000 session, the Louisiana Legislature added section 47:201.1 to the Revised Statutes.[5] Section 47:201.1 is designed to ensure that the Louisiana Department of Revenue will collect the Louisiana income tax due on a nonresident's share of Louisiana income earned by a partnership or LLC in which

4. H.B. No. 326, 2000 Leg., Reg. Sess. (2000).

5. 2000 La. Acts No. 21.

the nonresident owns an equity interest. In her article, "Louisiana Revised Statutes Section 47:201.1 Taxation of Nonresident Partners: An Alternate Proposal," Professor Susan Kalinka discusses some of the loopholes in the statute and suggests that section 47:201.1 should be replaced with statutes that would tax the income of a partnership or LLC in the same way that Louisiana taxes the income of an S corporation.

In 2000, the Louisiana Legislature considered a bill that would have repealed the severance tax imposed on the extraction of oil and gas in Louisiana and enacted a tax on the use of hydrocarbon processing facilities located in Louisiana.[6] While the Legislature rejected the hydrocarbon processing tax bill in 2000, it has considered similar measures in the past. It is likely that interest in such a tax will be renewed in a later legislative session. James C. Exnicios' article entitled, "The Louisiana Hydrocarbon Processing Tax" reviews the unsuccessful past similar measures and tests the hydrocarbon processing tax against the constraints on a state's taxing power under the United States Constitution. Mr. Exnicios determines that the tax is vulnerable to attack under the Due Process, Commerce, Supremacy, and Export-Import Clauses of the Constitution.

While Governor Murphy J. ("Mike") Foster has indicated that he does not plan to introduce tax reform bills during the Louisiana Legislature's 2002 session, others have called for such bills. Most taxpayers, academics, and business groups agree that there is need for tax reform in Louisiana. It is hoped that the Louisiana Legislature will continue to pay serious attention to tax reform proposals.

6. S.B. 1, 2000 Leg., Reg. Sess. (La. 2000).