

TIMOTHY A. BARFIELD, SECRETARY,  
DEPARTMENT OF REVENUE,  
STATE OF LOUISIANA

DOCKET NUMBER: 636086

19<sup>th</sup> JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

AMERICAN EXPRESS TRAVEL RELATED  
SERVICES COMPANY, INC.

STATE OF LOUISIANA



PETITION TO COLLECT TAX

The petition of Timothy A. Barfield, in his official capacity as the duly appointed Secretary of the Louisiana Department of Revenue, (hereinafter referred to as "Department"), respectfully submits the following:

1.

Made defendant herein is American Express Travel Related Services Company, Inc. (hereinafter referred to as "AMEX"), a foreign corporation licensed to do business in the State of Louisiana.

2.

Jurisdiction is proper pursuant to Article V, Section 16 of the Louisiana Constitution. Venue is proper pursuant to Article 42 of the Louisiana Code of Civil Procedure.

3.

This action is brought pursuant to La. R.S. 47:1561(3), which provides the Department with the authority to proceed to enforce the collection of any state tax due by means of ordinary suit under the provisions of the general laws regulating actions for the enforcement of obligations.

4.

AMEX provides financial and travel related services for consumers and companies. Each time a card holder uses the card to purchase goods and services AMEX charges a fee to the merchant. AMEX revenue is also generated from membership fees, interest on outstanding balances, insurance premiums, traveler's check fees and foreign exchange fees.

5.

Pursuant to La. R.S. 47:601, et seq., the Department conducted an audit of AMEX's Louisiana corporate franchise tax returns for the years ending December 31, 2009 through December 31, 2011.

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6.

Louisiana Revised Statute 47:601(A)(3) provides that the "...owning or using any part of its capital, plant or other property in this state in a corporate capacity..." shall create an incident that subjects a foreign corporation to the corporation franchise tax imposed by this state.

7.

Adjustments were made to the franchise tax base in order to include contingent liabilities previously excluded by AMEX. Louisiana Revised Statute 47:605(A) states: "in computing surplus and undivided profits there shall be included all reserves other than those for definitely fixed liabilities, reasonable depreciation, bad debts and established valuation reserves, such reserves in all cases to be made under rules and regulations to be prescribed by the collector."

8.

Louisiana Revised Statute 47:603(A)(1) states in part that, "With respect to amounts owed by a taxpayer corporation to an affiliate, all real and actual indebtedness, regardless of age, and which in fact represent capital substantially used to finance or carry on the taxpayer's business, shall be borrowed capital." Adjustments were made to increase the amount of AMEX's borrowed capital by the excess of the equally demandable and payable indebtedness of the same type between AMEX and its affiliates, pursuant to LAC 61:I.303(A)(9). The amount of borrowed capital included in the franchise tax base was reduced by the percentage allocated to each tax year during the 2005 – 2010 phase-out periods La. R.S. 47: 603(A)(2)(a) through (g).

9.

Louisiana Revised Statute 47:606(A) provides in part that, "For the purpose of ascertaining the tax imposed in this Chapter, every corporation subject to the tax is deemed to have employed in this state the proportion of its entire issued and outstanding capital stock, surplus, undivided profits and borrowed capital, computed on the basis of the ratio obtained by taking the arithmetical average of the following ratios: (1) The ratio that the net sales made to customers in the regular course of business and other revenue attributable to Louisiana bears to the total net sales made to customers in the regular course of business and other revenue." The sales and other revenues attributable to Louisiana are determined as provided in Sections (1)(a)

through (l) as well as in the related regulations LAC 61:I.306(A)(1)(a) through (j). Adjustments were made to the volume of business ratio for certain items that represent either reductions to expenses, sales not made in the regular course of business, negative revenue and other non-revenue items.

10.

Adjustments were made to the property ratio to attribute trade notes receivable in accordance with La. R.S. 47:606(A)(2)(c) which states that, "trade accounts and trade notes receivable shall be allocated by reference to the transactions from which the receivables arose, on the basis of the location at which delivery was made in the case of sale of merchandise or the location at which the services were performed in case of charges for services rendered."

11.

Adjustments were also made to the property ratio to reflect the un-netting of intercompany receivables and payables.

12.

As a result of the audit, it was determined that AMEX is justly and truly indebted unto the Department in the amount of Three Hundred Seventy-four Thousand, Six Hundred Seventy-nine and 97/100 Dollars (\$374,679.97), plus any additional interest which becomes due pursuant to La. R.S. 47:1601. The indebtedness consists of corporation franchise tax in the amount of Two Hundred Seventy-eight Thousand, Seven Hundred Twenty-seven and 00/100 Dollars (\$278,727.00), and interest calculated to December 31, 2014 in the amount of Ninety-five Thousand, Nine Hundred Fifty-two and 97/100 Dollars (\$95,952.97).

13.

On June 25, 2013, the Department issued a Notice of Proposed Tax Due. Despite amicable demand, AMEX has failed to pay the tax and interest due.

14.

The Department now seeks to collect the amount due through this lawsuit.

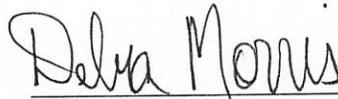
15.

This pleading is signed by a staff attorney employed by the Louisiana Department of Revenue. Pursuant to La. R.S. 47:1512, Timothy A. Barfield, Secretary of the Louisiana Department of Revenue, reserves the right to assign this case to private counsel to assist in the collection of the tax, interest and penalties herein alleged to be due.

**WHEREFORE**, Timothy A. Barfield, in his capacity as the duly appointed Secretary of the Louisiana Department of Revenue, respectfully prays for the following:

1. That after due proceedings are conducted, there be judgment in favor of the Department and against American Express Travel Related Services Company, Inc. in the amount of \$374,679.97, plus interest, which shall continue to accrue pursuant to La. R.S. 47:1601;
2. All court costs of this lawsuit; and
3. All other general and equitable relief to which the Department may be entitled under the facts and circumstances of this case.

Respectfully submitted by:



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