

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

DOCKET NUMBER: 636085

19th JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

ASSOCIATES FIRST CAPITAL
CORPORATION

STATE OF LOUISIANA

SEC. 26

.....

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 Associates First Capital Corporation (hereinafter referred to as "First Capital"), a foreign corporation not licensed to do business in the State of Louisiana.

2.

First Capital is an affiliate of Citigroup, Inc. First Capital's business activities include agricultural lending, automobile financing, commercial banking, consumer lending and mortgage banking.

3.

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.

4.

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.

5.

Pursuant to La. R.S. 47:601, et seq., the Department conducted an audit of First Capital's Louisiana corporate franchise tax returns for the years ending December 31, 2006 through December 31, 2008.

FILED
EAST BATON ROUGE PARISH, LA
2014 DEC 30 11 51:00
DEPUTY CLERK OF COURT

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 First Capital. 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.

Adjustments were made to increase the franchise tax base in order to include long-term debt omitted by First Capital. Louisiana Revised Statute 47:603(A)(1) defines "borrowed capital" as "all indebtedness of a corporation, subject to the provisions of this Chapter, excluding indebtedness classified as capital stock, surplus, and undivided profits under the provisions of R.S. 47:605.1, maturing more than one year from the date incurred, or which is not paid within one year from the date incurred regardless of maturity date." 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.

Adjustments were made to the franchise tax base in order to reflect the amount of intercompany debt reclassified as surplus in accordance with La. R.S. 47:605.1(A) which states: "If a corporation's total debt to all related parties exceeds the capital stock and surplus and undivided profits of the corporation as determined under R.S. 47:604 and 605, then fifty percent of the amount of the excess shall be included in the capital stock and surplus and undivided profits of the corporation and excluded from debt."

10.

Adjustments were made to the property ratio to include trade accounts and trade notes receivable based on the location in which the receivable arose, in accordance with La. R.S. 47:606(A)(2)(c) which states: "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 made to the property ratio to reclassify negative notes receivables from the asset side of the balance sheet to the liability side of the balance sheet.

12.

As a result of the audit, it was determined that First Capital is justly and truly indebted unto the Department in the amount of One Million, Nineteen Thousand, Twenty-nine and 17/100 Dollars (\$1,019,029.17), 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 Five Hundred Fifty Thousand, Four Hundred Sixty-five and 00/100 Dollars (\$550,465.00), interest calculated to December 31, 2014 in the amount of Three Hundred Ninety-eight Thousand, Nine Hundred Fifty-six and 17/100 Dollars (\$398,956.17) and penalties in the amount of Sixty-nine Thousand, Six Hundred Eight and 00/100 Dollars (\$69,608.00).

13.

On August 13, 2009, the Department issued a Notice of Proposed Tax Due. Despite amicable demand, First Capital has failed to pay the tax, interest and penalties 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.

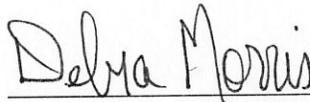
WHEREFORE, Timothy A. Barfield, in his capacity as the duly appointed Secretary of the Louisiana Department of Revenue, respectfully prays for the following:

1. That after due proceedings are conducted, there be judgment in favor of the Department and against Associates First Capital Corporation in the amount of

\$1,019,029.17, 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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INSTRUCTIONS FOR SERVICE

Please return a **Certified Copy of this Petition to Collect Tax and the Citation** to Plaintiff, Louisiana Department of Revenue, for service, under the Louisiana Long-Arm Statute, La. R.S. 13:3201, et seq., on the defendant:

Associates First Capital Corporation
Through its Registered Agent:
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801