

**Revenue Ruling
No. 04- 007
Administrative
October 18, 2004**

**Application of 2001 Amendment to La. R.S. 47:1580(C)
Regarding Interruption of Prescription**

2001 La. Acts 1167 and 103 amended La. R.S. 47:1580(C). The effect of these amendments is to apply the interruption of prescription to the nonfiling of any return as opposed to just those reporting income or corporate franchise tax as the law previously provided. The amendments do not set forth what periods are to be affected by the change. This ruling addresses what periods are affected by the amendments.

La. R.S. 47:1580(C), before being amended in 2001, provided that failure to file any return reporting any state income or corporate franchise tax required to be filed interrupted the running of prescription. After the 2001 amendments referred to above, the statute provides in pertinent part

“The failure to file *any* return required to be filed by this Subtitle shall interrupt the running of prescription, and prescription shall not commence to run again until the subsequent filing of such return. Once prescription commences to run, the tax, license, excise, interest, penalty, or other charge which is reported on such return shall prescribe in three years after the thirty-first day of December of the year of the filing of the return.” (Emphasis added.)

The amendments also provide that prescription is interrupted by the nonfiling of a use tax return when the amount due exceeds five hundred dollars.

Clearly, the change in the law does not apply to periods that had prescribed at the time the law became effective. Therefore, taxes, other than income and corporate franchise taxes, that were due in 1997, and prescribed December 31, 2000, are not affected. Income and corporate franchise taxes that were due in 1997 also prescribed December 31, 2000, unless a return was not filed or other agreements were reached with the Department. If a return was not filed for these taxes, prescription was interrupted by La. R.S. 47:1580(C) as it existed prior to the 2001 amendments.

Because the amendments became effective in 2001, the new law clearly applies to taxes that became due in 2002 and thereafter. Therefore, the nonfiling of any return for taxes due in 2002 and subsequent years interrupts the running of prescription. The question arises with regard to taxes that became due in 1998, 1999, 2000 and 2001, as taxes due in these years had not prescribed at the time the amendments became effective. Therefore, it must be determined whether the amendments may be applied retroactively to these periods.

La. C.C. Art. 6 provides that “[i]n the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary.” It is well settled in Louisiana that statutes of prescription are considered procedural and remedial in nature. As such, they are generally accorded retroactive application. *Lott v. Haley*, 370 So.2d 521 (La. 1979). Therefore, the amendments to La. R.S. 47:1580(C) apply to all taxes that became due in 1998 and thereafter, unless such application disturbs a pre-existing right of the taxpayer.

Taxpayers do not have a vested right to avoid tax liabilities. This was stated by the court in *Rocanova v. U.S. et al*, 522 U.S. 821 (1997). In this case, the statute of limitations applicable to tax collection actions was extended from six years to ten years. The petitioner therein argued unsuccessfully that this change was unconstitutional. The court stated that there is no “‘right’ to avoid tax liabilities after six years.” The Louisiana First Circuit Court of Appeal has held similarly. In *Splane v. Tubre*, 6 So.2d 361 (La. App. 1 Cir. 1942), the court stated that “[e]xtending or prolonging the period in which a suit may be brought to

assert a right pertains to the remedy and does not violate a vested property right, unless the right has become perfected and fixed by the completion of the prescription at the time the extension of the period becomes effective.” Since the tax years in question had not prescribed at the time of the amendments, the amendments apply to all taxes that became due in 1998 and thereafter.

Conclusion

The amendments to La. R.S. 47:1580(C) do not apply to taxes that became due in or before 1997. The amendments do apply to all taxes that became due in 1998 and thereafter. This is because prescription statutes are considered procedural and remedial in Louisiana. As such, they may be applied retroactively unless doing so violates a vested right. In the current situation, applying the amendments retroactively does not violate a vested right.

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