

LOUISIANA

DEPARTMENT *of* REVENUE

2016 Regular Legislative Session Summary

Policy Services Division

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Administrative

Act 335 (HB 978) [R.S. 47:302(K)(7)(b) and (W)(1), (2), and (4), 351, 351.1, 1403(C), 1418(4)(b), (c), and (7)(d) and (e), 1431(A), 1432(B), 1435(D), 1437(C), 1484(A) and (C)] provides for the administration, disposition, enforcement, and adjudication of state and local taxes under the jurisdiction of the Board of Tax Appeals. When the Board of Tax Appeals has approved a claim against the state for erroneous payments of corporate franchise tax and the claim is not paid within one year of the date the board's approval of the claim becomes final, the secretary and the claimant can agree that the payment of the claim can be taken as an offset against the claimant's state corporate income or franchise tax liability. Up to 25 percent of the total claim approved by the board will be allowed as an offset in each of the four taxable years immediately following the agreement between the secretary and the claimant. For each taxable year in which an offset is taken, the amount of the offset cannot exceed the amount of the state corporate income or franchise tax liability, after application of all income or corporation franchise tax credits. If payment of the amount of the total claim is not satisfied after four years, the secretary will authorize an extension of time, not to exceed two years, within which an offset can be taken. A party for which the secretary has approved an offset can transfer the offset to a member of the party's affiliated group, included in the federal consolidated return. Effective June 5, 2016.

Act 446 (HB 756) [R.S. 47:1520.2] requires the electronic filing of all schedules and invoices for all claims for refunds of \$25,000 or more or if the refund claim is made by a tax preparer on behalf of the taxpayer, regardless of the amount of the refund claim. The Act allows the secretary to exempt only the taxpayer from the electronic filing requirements if the taxpayer can prove electronic filing would create an undue hardship. The Act does not apply to the Louisiana Tax Free Shopping Program or cases of bad debt. Effective June 9, 2016; applicable to tax years beginning on and after January 1, 2016.

Act 461 (HB 1103) [R.S. 47:103(D)] provides that the secretary may accept a physical copy of a taxpayer's Internal Revenue Service form requesting an extension of time to file a federal income tax return as an extension of time to file a Louisiana income tax return without the necessity of an additional state form. Effective August 1, 2016.

Act 590 (HB 678) [R.S. 33:9109.1(A) through (D), (F), and (G) and 9109.2] provides for the assessment of a surcharge fee on prepaid 911 services. Effective October 1, 2016.

Act 654 (HB 81) [R.S. 44:33.1] "C.B. Forgotston Act" Provides that each public body that has a custodian of public records shall make the contact information of the custodian available to the public in a manner that will allow a member of the public to quickly determine the appropriate person to whom a public record request should be submitted, including by placing such information on the internet. Effective August 1, 2016.

Act 666 (HB 819) [R.S. 30:82, 83(F)(2), 83.1, 84(A)(1), 86(B), (C), (E)(1) and (2), and (F), 87(A), (E), and (F)(1), and 95(A)] provides definitions and authority for the issuance of bonds for certain purposes concerning the Oilfield Site Restoration Fund. This Act also changes the amount at which the secretary of the Department of Revenue will resume collecting the oilfield

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site restoration fee from \$6 million to \$10 million. The secretary will resume collecting the fee upon receipt of a certification from the treasurer that the Oilfield Site Restoration Fund has fallen below \$10 million and will continue to collect the fee until the balance in the fund equals or exceeds \$14 million. Effective June 17, 2016.

Alcohol & Tobacco Control

Act 63 (HB 692) [R.S. 26:80(C)] adds a federal identification number to the list of qualifications which the officers, directors and all stockholders owning at least five percent of membership interest in a corporation or limited liability corporation must possess and provide when applying for permits to possess and sell alcoholic beverages.

Exempts any officer, director, stockholder of a corporation and any manager or member of a limited liability corporation from the requirement that an applicant for alcoholic beverage permits be a citizen and resident of Louisiana. Effective May 10, 2016.

Act 354 (HB 182) [R.S. 14:12(B)(1) and (2)] repeals law that provided a penalty of up to six months of imprisonment for persons found guilty of violating the provisions of law that prohibit persons younger than twenty-one years of age from possessing alcoholic beverages. Further provides that citations issued for violations of such provision shall not be included on a person's criminal history record. Effective August 1, 2016.

Act 380 (SB 205) [R.S. 26:901(34)] extends the definition of "wholesale dealer" of tobacco to provide that in order to meet the legal definition for "bona fide wholesale dealer," at least fifty percent of a wholesale dealer's tobacco sales must be to retail dealers who are neither subsidiaries of the wholesale dealer nor subsidiaries of any parent company of the wholesale dealer. Effective June 5, 2016.

Act 386 (SB 255) [R.S. 26:802(A)(4), (15) and 813)] provides a definition for "successor" of a supplier, importer, broker, or wholesaler of beer or light wine. Obligates successors to the same terms and conditions of the agreement in effect at the time of the succession; further provides the successor with the right to enforce any rights held by the importer, broker, or wholesaler at the time of the succession. Effective August 1, 2016.

Act 477 (SB 215) [R.S. 26:920(B) and (C)] reduces to ten days the time period in which a person subject to a permit denial, suspension, or revocation by the commissioner of the office of alcohol and tobacco control may seek a suspensive or devolutive appeal in district court; provides for a fine of up to \$5,000 in the event that the court finds the appeal frivolous and declines to reverse the commissioner's permit denial, suspension, or withdrawal.

Reduces to ten days the time period in which the commissioner may seek a suspensive or devolutive appeal of a district court ruling. Effective June 13, 2016.

Act 637 (HB 667) [R.S. 26:75(C)(1), 275(B)(1), and 359(B)(1)(h)-(i) and (2)-(4) and (C)-(F)] authorizes the direct shipment of wine from an out-of-state manufacturer or producer to a Louisiana consumer in either of the following circumstances:

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- (1) The Louisiana consumer perfected the sale on the manufacturer or producer's premises.
- (2) The wine bears a properly registered label that the manufacturer or producer has not assigned to a Louisiana wine wholesaler.

Provides for a permit application and creates an annual permit fee for manufacturers, producers, and retailers. Annual permit fees for manufacturers shall be \$1,000; annual permit fees for producers and manufacturers shall be \$250.

Further requires out-of-state wine retailers, producers, and manufacturers to remit monthly statements indicating the amount of wine shipped into the state. Effective July 1, 2016.

Act 640 (HB 710) [R.S. 47:843(D)(1), 847(A), (D)(1), 849(B)-(C) and 851(D)] modifies stamping requirements for tobacco dealers with stamping agent designation. Whereas prior law required dealers to cause unstamped cigarettes to be stamped immediately upon receipt, such dealers must now stamp any unstamped cigarettes prior to selling or offering the cigarettes for sale.

Requires tobacco dealers with an exporter license to stamp, within 72 hours of receipt, any unstamped cigarettes with the tax stamp of the state into which the cigarettes will be imported. In the event that the state does not issue tax stamps, alternately requires exporting dealers to pay that state's excise tax prior to selling cigarettes or roll-your-own tobacco into that state. Effective August 1, 2016.

Collections

Act 76 (SB 469) (Substitute for SB 290) [C.C. Art. 3367] mandates the recorder of mortgages, upon receipt of a written signed application, to cancel the recordation of a mortgage, pledge, or privilege that has prescribed by lapse of time under R.S. 9:5685. Effective August 1, 2016.

Act 607 (HB 1134) (Substitute for HB 433) [R.S. 32:414(R)(3)] authorizes the Department of Public Safety and Corrections, Office of Motor Vehicles, to issue an economic hardship license to an individual whose driver's license has been suspended and not renewed for failure to pay delinquent taxes, interest, penalties, and costs owed to the Department of Revenue. The license may be issued for a period of one year or until the individual pays or makes arrangements to pay the delinquent taxes, interest, penalties, and all costs owed, whichever occurs first. Effective August 1, 2016.

Corporation Income and Franchise Tax

Act 187 (SB 40) [R.S. 47:120.37(B) and 120.131(D)] provides that the income tax checkoff for the Friends of Palmetto Island State Park, Inc. will remain on the individual income tax return through January 1, 2020, regardless of whether donations exceed \$10,000 for two consecutive years. Effective May 26, 2016.

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Act 661 (HB 735) [R.S. 47:103(A), 287.614(A)(1), 287.651(A)(1), 609(A), and 1675(H)(1)(e), (f), and (g)] changes the deadline for the payment and filing of corporation income tax returns, partnership tax returns, and partnership composite returns. Effective for income tax periods beginning on and after January 1, 2016 and corporation franchise tax periods beginning on and after January 1, 2017.

Act 662 (HB 737) [R.S. 47:114(E) and 164(D)(2)] changes the due date for filing annual returns from the first business day following February 27th of each year to January 31st of each year. The Act also provides that any individual receiving payments for the performance of services used directly in a production activity, which can be claimed as a production expenditure for purposes of certification for the motion picture investor tax credit are subject to the withholding requirements of state and federal law and regulations. Effective for all taxable years beginning on and after January 1, 2016.

Credits and Incentives

Act 663(HB 783) [R.S. 51:2456(B), 2457(A)(1), (B), and (C), and 2461 and to enact R.S. 51:2457(A)(5) and (6), (D), (E), and (F)] provides for the option of either a sales and use tax rebate for the purchases of materials used in the construction, addition or improvement of a building used to house the business or its equipment or a project facility expense rebate equal to 1.5% of the qualified capital expenditures for the facility when participating in the Louisiana Quality Jobs Program. Also, extends the termination date of the program to July 1, 2018. Effective July 1, 2016.

Act 664 (HB 794) [R.S. 51:3121(C)(3)(a)(ii) and (4)] provides for the option of a sales and use tax rebate for the purchases of materials used in the construction, addition or improvement of a building used to house the business or its equipment when participating in the Competitive Projects Payroll Incentive Program. Also, extends the termination date of the program to July 1, 2018. Effective July 1, 2016.

HCR 54 [R.S. 47:6007] provides for the legislative intent regarding the definition of a “broker” as provided in Act No. 451 of the 2015 Regular Session relative to the public registry of motion picture investor tax credit brokers. Provides that the term “broker” shall mean those persons who facilitate the sale of a tax credit issued pursuant to R.S. 47:6007 between a transferor and transferee in exchange for consideration. Further, the HCR provides that the term "broker" shall not include a tax return preparer, or an employee of or partner affiliated with the tax return preparer, who facilitates the sale of tax credits for the benefit of his or her client.

Local Taxes

Act 13 (SB 32) [R.S. 47:338.24.3] authorizes the City of Carencro to impose an additional one percent sales and use tax. Requires voter approval and subsequent city ordinance. Effective May 9, 2016.

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Act 198 (SB 99) [R.S. 47:360(H)] provides for an exemption from occupational license tax for minors engaging in business with sales of less than five hundred dollars per year. Effective August 1, 2016.

Act 555 (HB 880) [R.S. 47:338.138.1] authorizes the Lafourche Parish School Board to levy an additional sales and use tax not in excess of one percent. Requires voter approval and ordinance by the school board. This Act is effective July 1, 2016.

Sales Tax

Act 25 (HB 236) [R.S. 47:303(B)(1)(b), (B)(3)(b)(vi), and 502.3] provides an extended period of time for a person separating from active military service in the U.S. armed forces to secure a Louisiana motor vehicle license registration and remit the registration tax on a vehicle with a foreign registration. The military person or their spouse will have ninety days from the date of separation from the armed services in which to obtain the Louisiana registration and pay the sales tax. Further provides that interest and penalties will not accrue during this ninety day period.

Provides that neither the extension, nor the waiver of interest and penalties shall apply when the foreign license plate or registration on the vehicle expired prior to or during the 90 day period following the service person's separation from active service. Effective May 9, 2016.

Act 443 (HB 722) [R.S. 47:306.4] provides that the secretary of the Department of Revenue shall promulgate rules and regulations in accordance with the Administrative Procedures Act to provide for registration with the department by dealers as defined in R.S. 47:301(4)(f)(ii), when the transactions giving rise to the dealer's obligation to collect state sales and use tax for occupancy at a residential location is facilitated through an online forum. Louisiana Revised Statute 47:301(4)(f)(ii) defines dealer to include a person engaged in collecting the amount required to be paid by a transient guest as a condition of occupancy at a residential location as provided in La. R.S. 47:301(6)(a)(ii), which is the definition of "hotel". This Act is effective July 1, 2016.

Act 569 (HB 1121) [R.S. 47:302(U) and 309.1] requires certain notifications regarding use tax to be provided to purchasers of property and services sold by remote retailers. Revised Statute 47:309.1(B)(2) provides that a remote retailer means a retailer which has purposefully availed itself of the benefits of the economic markets in Louisiana, or who has any other minimum contacts with the state, and is not required to register as a dealer in Louisiana and thus is not required to collect Louisiana sales and use taxes. The remote retailer must make retail sales of tangible personal property or taxable services and the property is delivered into Louisiana or the beneficial use of the service occurs in Louisiana. The cumulative annual gross receipts for the remote retailer and its affiliates from sales of tangible personal property and services must exceed \$50,000 per calendar year.

At the time of sale, the remote retailer must notify the Louisiana purchaser that the purchase is subject to Louisiana use tax, unless specifically exempt and that the item is not exempt because it was purchased over the internet, by catalog or other remote means. The sales notice must include

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a statement that Louisiana law requires that the use tax liability be paid annually on the individual income tax return or through other means as may be required by administrative rule promulgated in accordance with the Administrative Procedure Act.

By January 31st of each, a remote retailer is required to send each Louisiana purchaser who has purchased property or services from the retailer in the immediately preceding calendar year an annual notice containing the total amount paid by the purchaser for purchases in the preceding calendar year. If available, the notice shall include a listing of dates and amount of purchases and whether the property itself is exempt or not, if the retailers has this information. The annual notice shall disclose the name of the retailer and shall state that Louisiana use tax may be due upon the purchases made from the retailers and that Louisiana use tax may be due on the purchases made from the retailer and that the use tax must be paid either on the individual's income tax return or through other means. This notice must be sent via first class mail, certified mail, or electronically at the purchaser's choice. The notice cannot be included with any other shipment or mailing from the retailer. The envelope in which the notice is sent shall include the words "IMPORTANT TAX DOCUMENT ENCLOSED".

By March 1st of each year, a remote retailer who has made retail sales of tangible personal property or taxable services to Louisiana purchasers in the preceding calendar year shall file an annual statement for each purchaser with the department. The annual statement must include the total amount paid by the purchaser to that retailer in the preceding calendar year. The statement shall not contain detail as to the specific property or services purchased but it will include the total amount paid. The statement shall be submitted on forms to be developed and provided by the secretary. The secretary is authorized to require the electronic filing of statements by a remote retailer who had sales in Louisiana in excess of \$100,000 in the immediately preceding calendar year.

The Secretary may by subpoena, compel witnesses and the production of documents for purposes of enforcement of the requirements relative to the required notices and annual statements concerning taxable transactions occurring in Louisiana involving a remote retailer. The Secretary may request that the subpoena be enforced by court order. Any dealer or remote retailer selling property or services to a Louisiana resident is considered to have consented to the jurisdiction of the courts of Louisiana and the Board of Tax Appeals. This Act shall become effective July 1, 2017.