

Louisiana Department of Revenue 1999 Regular Legislative Session Legislative Summary

ADMINISTRATIVE

Act 411 (SB 263) recreates the Department of Revenue and all statutory agencies made a part of the Department for four years. Under the Act, a termination date of July 1, 2004 is effective unless legislative action is taken prior to July 1, 2003. Effective June 18, 1999.

Act 416 (SB 391) amends R.S. 49:956(5)(b) relative to service of subpoenas in adjudication proceedings. Also, R.S. 49:999.1 was enacted authorizing the Division of Administrative Law to provide administrative law judges on a contractual basis to certain governmental agencies. Effective August 15, 1999.

Act 1183 (HB 2259) requires that before any state agency adopts, amends, or repeals a rule, the agency must provide a written family impact statement to be included in the notice of intent to adopt rules published in the Louisiana Register and provided to the legislative oversight committees. The family impact statement will describe the impact the proposed rule will have on family formation, stability, and autonomy. Effective August 15, 1999.

Act 1214 (SB 672) enacts R.S. 49:316.1 which authorizes state departments, agencies, boards, and commissions to accept credit, debit or similar cards in payment of obligations. The treasurer is to contract with providers for the card services and is to promulgate rules and guidelines for the processing of the card transactions. Effective August 15, 1999.

Act 1332 (HB 2206) amends R.S. 49:964(A) and 992(B)(3) relative to administrative procedures to provide that certain governmental agencies, officials, or other persons acting on behalf of the agency or official shall not be entitled to judicial review of adjudication hearing decisions. Effective July 12, 1999.

House Concurrent Resolution 38 requests the governor, elected officials, and the legislature and their agencies to use plain language to the extent possible in drafting laws, rules, and regulations and in all communications with the public.

House Resolution 99 requests boards, commissions, departments, divisions, agencies, offices, or other entities within the executive, judicial, or legislative branches of state government when using voice mail to require their staff to employ courteous practices, to have an employee answer the telephone when possible, and to provide for a method by which a caller can "opt out" of the voice mail system and reach the operator when an employee is not able to answer the telephone.

CHARITABLE GAMING

Act 568 (HB 1365) creates the Office of Charitable Gaming within the Louisiana Department of Revenue and transfers regulatory and statutory authority from the Division of Charitable Gaming Control, Office of State Police, Department of Public Safety and Corrections. This Act also enacts

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Chapter 11 of Title 4 of the Louisiana Revised Statutes to be comprised of R.S. 4:701 through 739 and repeals R.S. 33:4861.1 through 4861.28 and R.S. 44:1485.1 through 1485.11, all relative to the conducting and regulation of charitable gaming. The transfer is to be completed no later than January 1, 2000. Effective June 30, 1999.

Act 1286 (HB 1362) amends R.S. 4:705(2), created by Act 568 of the 1999 Regular Legislative Session, to increase the annual license fees for licensed organizations from \$50 to \$75 and for commercial lessors from \$200 to \$500. Effective August 15, 1999.

House Concurrent Resolution 6 amends certain rules associated with charitable gaming; specifically LAC 42:I.1731(C), 1742(B)(1), 1757(A), 1787(A)(2), and 2215. HCR 6 also repeals LAC 42:I.1725(D)(1)(d), which provided that a bingo caller was a position of managerial capacity. The Louisiana Register was directed to print the amendments in the Louisiana Administrative Code.

EXCISE TAXES

Act 202 (SB 260) amends R.S. 47:852 and 853 and enacts R.S. 26:143(C), 355(C) and (D) and R.S. 47:806(H) to provide for an alternative to producing invoice records when verifying taxes paid or requesting a refund. Alcoholic beverages manufacturers and wholesalers, special fuel suppliers and users, and tobacco wholesalers must maintain records of invoices for purchases of the respective products to produce as evidence of having paid the taxes. Industry's adoption of the various technological changes has resulted in many records being computerized and the required information appearing on a report rather than single sheet invoices. This Act allows the use of these automated records in lieu of the many single invoices currently required by law. Effective August 15, 1999 and applies to taxable periods beginning on or after July 1, 1999.

Act 304 (SB 766) amends R.S. 47:843(D), 864(A), and 865 relative to the types of cigarettes to which stamps may not be affixed. This act adds language that prohibits dealers from affixing tax stamps to the following products: to packages that do not comply with the Federal Cigarette Labeling and Advertising Act; packages that are labeled "For Export Only", "U.S. Tax Exempt", "For Use Outside the U.S." or other wording indicating the product was intended for markets outside the United States; whose packaging has been altered by changing of wording, labels, or warnings; packages that have been imported into the United States after January 1, 2000; or packages that in any way violate federal trademark or copyright laws. The Act also provides the selling of such items is deemed an unfair or deceptive act under the Unfair Trade Practices and Consumer Protection Law. Any dealer affixing stamps to these items is subject to penalties. Effective July 1, 1999.

Act 430 (SB 960) amends R.S. 51:421(G)(2)(b) and (d) and enacts R.S. 51:421(G)(2)(e) in the Unfair Sales Law. The definition of "cost to the wholesaler" has been revised to include any motor fuel excise taxes in the calculations. Effective August 15, 1999.

Act 548 (HB 990) amends R.S. 51:423 to double the fine for violation of the Unfair Sales Law. As a result of this act, violators shall be fined not less than \$500 nor more than \$1,000 for each offense. Effective August 15, 1999.

Act 721 (HB 1007) establishes requirements for tobacco product manufacturers who were not part of the Master Settlement Agreement to deposit funds into an escrow account based on the amount of product sold in Louisiana by the respective manufacturer. The funds will come from a surcharge that is adjusted annually for inflation. For the year 1999, the surcharge is specified at 19 cents per pack of 20 cigarettes and is applicable for products sold since July 1, 1999. The escrow fund is to be used to pay health claims. Effective July 1, 1999.

Act 893 (HB 1626) amends R.S. 47:806(C)(2) to provide that the owner or operator of a motor vehicle, truck or truck-tractor, owned and operated by a business domiciled within this state exclusively for commercial use within this state, shall not be required to maintain special fuel invoices in the vehicle. Effective August 15, 1999.

Act 1265 (HB 886) amends R.S. 26:911(C) and R.S. 47:843(A) to provide that no individual packages of cigarettes shall be sold or distributed in individual packages containing fewer than 20 cigarettes nor shall smoking tobacco intended for use as roll-your-own smoking tobacco for cigarettes be sold or distributed in packages containing less than six-tenths of one ounce (.6 oz.) of smoking tobacco. Effective July 12, 1999.

Senate Study Request 1 requests the Senate Committee on Insurance to study all aspects of the costs and effects of payment of insurance premiums through a tax on gasoline.

LEGAL

Act 201 (SB 259) enacts R.S. 47:1522 to authorize the secretary to arbitrate certain issues when alternative dispute resolution procedures are in the best interest of the state. Arbitration may be preferable to litigation when the parties wish to avoid binding precedent or when cost is an issue. Under the new Act, arbitration agreements must be approved by the attorney general and the disputed amount including taxes, penalties, and interest may not exceed \$1 million. Although R.S. 47:1502 authorizes the secretary to use appropriate measures to enforce the collection of taxes, penalties, and interest, this Act clearly confirms the validity of arbitration as a means to settle tax disputes. Effective June 11, 1999.

Act 219 (SB 941) amends R.S. 47:1565(C)(2) and R.S. 47:2419(B), which reference the authority of the Department's assistant secretary of the Office of Legal Affairs, to grant the same authority to the deputy assistant secretary of the Office of Legal Affairs. R.S. 47:1565(C)(2), as amended, extends to the deputy assistant secretary the authority to approve and sign reduced assessments based on manifest errors of fact or in the application of the law made by the secretary in an assessment. R.S. 47:2419(B), as amended, specifies that the assistant secretary or the deputy assistant secretary of the Office of Legal Affairs is charged with advising, assisting, and representing the secretary and agents assigned in regional offices. Effective June 11, 1999.

Act 1059 (HB 862) appropriates funds to pay certain judgments of the Board of Tax Appeals. The bill appropriates \$1,194,669.90 from the state general fund for Fiscal Year 1998-1999 to pay the following judgments rendered by the Board of Tax Appeals, State of Louisiana:

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- (1) *Payless Shoesource, Inc. v. John N. Kennedy, Secretary, Department of Revenue, State of Louisiana, and State of Louisiana*, bearing No. 4929, for \$67,940.
- (2) *Payless Shoesource, Inc. v. John N. Kennedy, Secretary, Department of Revenue, State of Louisiana, and State of Louisiana*, bearing No. 4859, for \$55,410.
- (3) *The May Department Stores Company v. John N. Kennedy, Secretary, Department of Revenue, State of Louisiana, and State of Louisiana*, bearing No. 4870, for \$26,255.
- (4) *Shore Oil Company v. State of Louisiana*, bearing No. 5071, for \$48,997.
- (5) *Cytec Industries v. State of Louisiana*, bearing No. 5002, for \$539,934.
- (6) *John W. Stone Oil Distributors, Inc. v. State of Louisiana*, bearing No. 4319, for \$283,726.90.
- (7) *Ohmeda, Inc. v. John N. Kennedy, Secretary of the Department of Revenue and Taxation, State of Louisiana*, bearing No. 4720, for \$54,727.
- (8) *Multimedia Radio, Inc. v. Secretary, Department of Revenue, State of Louisiana*, bearing No. 4925, for \$117,680.

The bill also appropriates \$683,101.29 from the state general fund for Fiscal Year 1999-2000 to pay the following judgments rendered by the Board of Tax Appeals, State of Louisiana:

- (1) *Texas Gas Transmission Corporation v. State of Louisiana*, bearing No. 4818, for \$273,292.
- (2) *American Express Travel Related Services v. State of Louisiana*, bearing No. 5004, for \$127,666.84.
- (3) *Crawler Supply Company, Inc. v. State of Louisiana*, bearing No. 4207, for \$55,736.45.
- (4) *Belden Wire & Cable Company v. State of Louisiana*, bearing No. 4827, for \$170,322.
- (5) *TIW Corporation v. State of Louisiana*, bearing No. 5024, for \$56,084.

MISCELLANEOUS

Act 882 (HB 1295) amends and repeals various statutes in Title 22 that are relative to requirements for countersignatures on certain insurance policies. Under the new Act, insurance companies with no commissioned agents in the state are no longer required to obtain a countersignature of a Louisiana resident insurance agent on surety bonds required for nonresident contractors and subcontractors and dealers registered for gasoline, special fuels, tobacco and alcoholic beverage taxes. Effective July 2, 1999.

Act 1032 (HB 2110) enacts R.S. 47:1605(C) to provide that certain underpayments of tax shall not subject a taxpayer to the imposition of the examination and hearing cost penalty provided in R.S. 47:1605(A). Under current law, taxpayers that fail to make a return or make a grossly incorrect or false or fraudulent report may be assessed costs incurred in making an examination or audit, holding hearings, or subpoenaing and compensating witnesses. This legislation provides that the secretary will not impose the examination and hearing cost penalty when the taxpayer has made a grossly incorrect report but shows that there was reasonable cause for the underpayment and the taxpayer acted in good faith. Effective August 15, 1999.

Senate Concurrent Resolution 88 urges and requests the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs to meet and to function as a joint committee to study and investigate the tax laws of Louisiana and report to the legislature at least thirty days prior to the commencement of each regular legislative session. The resolution also urges and requests the Louisiana State Law Institute to form a committee on taxation to study and investigate particular areas of the tax laws of Louisiana and to report to the joint committee.

OFFICE OF ALCOHOL AND TOBACCO CONTROL

Act 139 (HB 795) repeals R.S. 26:73(D)(3) requiring an affidavit from the local health department be included in the application for a special Class “R” restaurant permit. Effective August 15, 1999.

Act 556 (HB 1157) amends R.S. 32:407(D) and R.S. 40:1321(E) and (F) to require that, beginning January 1, 2000, driver’s licenses and identification cards issued to persons less than twenty-one years of age will contain a highly visible distinctive color to indicate person is underage. Effective August 15, 1999.

Act 719 (HB 796) amends R.S. 26:77 and 277 to require only one advertisement in the newspaper when making application for a retail dealer’s permit for the sale of alcoholic beverages. Effective August 15, 1999.

Act 987 (HB 794) amends R.S. 26:793(A) to allow the commissioner of the Office of Alcohol and Tobacco Control to provide for the definition and issuance of Class A - Caterers Permits. Effective August 15, 1999.

Act 1010 (HB 2032) enacts R.S. 26:81(F) and 281(J) to provide a definition of the term “public library” for the purposes of alcoholic beverage permit limitations. Effective August 15, 1999.

House Study Request 60 requests the House Committee on Judiciary to study whether the Office of Alcohol and Tobacco Control, Department of Revenue, should promulgate rules and regulations making licensed establishments that serve alcoholic beverages responsible for the nuisances caused by their customers. The study must be completed before the 2001 Regular Legislative Session convenes.

PERSONAL INCOME TAXES

Act 129 (HB 672) amends R.S. 47:120.35 to provide for the donation by an individual of all or any portion of his individual income tax refund to the Children’s Trust Fund. This fund will be added to the donation schedule beginning with the 1999 tax return. Effective August 15, 1999.

Act 195 (HB 2039) enacts R.S. 47:120.61 to provide for the donation by an individual of all or any portion of their individual income tax refund to the Louisiana Breast Cancer Task Force. This organization will be added to the donation schedule beginning with the 1999 tax return. Effective August 15, 1999.

Act 203 (SB 261) amends R.S. 47:101(B)(7) to expand the innocent spouse provisions and make relief easier to obtain. This Act eliminates existing understatement thresholds and only requires that the innocent spouse prove that the understatement of tax was attributable to an “erroneous,” as opposed to a “grossly erroneous” item of the other spouse. A method is also provided to apportion tax relief based on the tax attributable to the portion of the understatement of which the innocent spouse was not aware. Taxpayers are allowed two years from the date that collection activities began to make the election to qualify as an innocent spouse, but under certain conditions the secretary is allowed discretionary authority to grant relief when the taxpayer fails to make the election within the prescribed time period. This Act conforms Louisiana’s innocent spouse provisions with the recent changes made by the Internal Revenue Service Restructuring Act of 1998. Effective August 15, 1999.

Act 205 (SB 264) enacts R.S. 47:1601(D) to provide for the suspension of the accrual of interest on certain individual income tax liabilities when the Department fails to notify a taxpayer of a liability within a certain time period. Under the Act, if an individual income taxpayer files a timely tax return and the secretary does not notify the taxpayer within 18 months of the tax return's due date or date of filing, whichever is later, the interest is suspended from the period beginning 18 months after the tax return's due date and does not begin again until 21 days after the secretary's notice to the taxpayer. The suspension does not apply to taxpayers that fail to notify the secretary of adjustments to their federal income tax within 60 days after the adjustments have been made. The Act's intention is to protect individual income taxpayers from accruing large interest liabilities when the Department does not timely issue a notice of additional taxes due. The IRS Restructuring Act of 1998 enacted a similar provision for the federal individual income tax. Effective June 11, 1999.

Act 711 (HB 519) enacts R.S. 47:299.2(1)(d) and 299.11(8) to add municipalities and parishes, except the city of New Orleans and the parish of Orleans, to the claimant agencies that may request the offset of state individual income tax refunds owed to persons with legally collectible debts. Effective August 15, 1999.

SALES TAXES

Act 200 (SB 258) amends R.S. 47:1576(A)(1) to provide procedures for individuals or businesses to pay disputed sales taxes under protest when the tax is collected by the vendor. Present law provides clear procedures for the payment of tax and the filing of suit against the Department by taxpayers who directly remit the tax at issue to the Department. Under the new Act, the customer who wishes to lodge protest to a vendor-collected sales or use tax will pay the tax to the vendor as they normally would. By the 20th of the following month, the customer would notify the Department of the details of the disputed tax and file suit against the Department within 30 days from the date of the notification. This Act codifies current Department procedures. Effective October 1, 1999.

Act 429 (SB 897) amends R.S. 47:473(H), which currently allows motor vehicle dealers to furnish vehicles with dealer inventory plates to the dealer's own sales representatives or educational institution employees as long as they are not renting or leasing the vehicle to them. This Act adds language to clarify that even though the IRS considers the dealer-provided automobile to be a taxable fringe benefit, the arrangement is not considered a rental or lease transaction. This amendment is consistent with the Department's interpretation of these transactions. Effective August 15, 1999.

Act 553 (HB 1132) enacts R.S. 47:303(B)(7) to provide that when the agent of a motor vehicle lessor collects an initial payment from a lessee, the state and local sales tax must be collected by the agent from the lessee and paid to the lessor. The lessor would be responsible for remitting the tax to the appropriate state and local taxing authorities. The local tax rate collected by the dealer from the lessee is to be based on the rate in effect in the parish where the vehicle will be used and not necessarily the location of the lessee. As an example, a motor vehicle could be leased by a dealer in one parish, leased to a company in a second parish, and primarily used by an employee (i.e. salesperson) in a third parish. The payments and the tax would be due based on the location where primarily used, in the third parish. Effective August 15, 1999.

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Act 977 (HB 726) enacts R.S. 51:1787(H) and (I) which allows certain businesses outside an enterprise zone or economic development zone to qualify for benefits from state and local taxes through tax exemption contracts approved by the Board of Commerce and Industry. Effective August 15, 1999.

House Study Request 24 requests the joint committee of the House Committee on Commerce and the House Committee of Ways and Means to study the impact of Internet commerce on the economy of the state.

House Study Request 56 requests the House Committee on Appropriations to study establishing a fund from the licensing fees and sales and use taxes on all-terrain vehicles (ATVs) to be used to acquire, develop, and maintain roads and trails for ATVs within Wildlife Management Areas of the state and to report study findings and recommendations to the House of Representatives prior to the convening of the 2000 Regular Session.

Senate Resolution 49 requests the Department to cease collection efforts for sales or use taxes on food donated to food banks for periods prior to July 1, 1998 until such time as legislation can be passed to clarify the taxability of these donations. Act 75 of the 1998 Regular Session made provisions to exclude these donations from the tax effective July 1, 1998. However, the taxation of donations of food items to food banks prior to that time is still in question.

SALES TAX - HOTEL/MOTEL DEDICATIONS

Act 93 (HB 106) enacts R.S. 47:322.39 to dedicate the 1% state room rental tax under R.S. 47:321 in St. Bernard Parish to the St. Bernard Parish Enterprise Fund. Under previous legislation, the 2.97% state room rental tax has been dedicated to the same fund. Effective July 1, 1999.

Act 121 (HB 564) enacts R.S. 47:302.45, 322.39, and 332.45 which provide for the dedication of the 3.97% state room rental tax in Red River Parish to the Red River Visitor Enterprise Fund. Effective July 1, 1999.

Act 137 (HB 765) amends R.S. 47:302.41(B), 322.21, and 332.36, changing the name of the fund to which the 3.97% state room rental tax in Livingston Parish is dedicated from the Livingston Parish Tourism Improvement Fund to the Livingston Parish Tourism and Economic Development Fund. The Act also specifies that 50% of the monies in the fund is allocated to the Livingston Parish Tourist Commission for specified purposes and 50% of the monies is allocated to the Livingston Parish Economic Development Council for specified purposes. Effective July 1, 1999.

Act 225 (HB 117) amends R.S. 47:302.20(B), 322.24(B), and 332.39(B), changing the name of the Houma-Terrebonne Tourist Commission to the Houma Area Convention and Visitors Bureau. Effective June 11, 1999.

Act 233 (HB 213) removes the June 30, 2001 sunset date for the dedication of the .97% state room rental tax in East Baton Rouge Parish. The Act repeals Section 2 of Act No. 1027 of the 1991 Regular Session of the Legislature which provided for the sunset date. Effective August 15, 1999.

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Act 381 (HB 2182) amends R.S. 47:322.35(B) to provide for the use of the 1% dedication of state room rental tax for LaSalle Parish and enacts R.S. 47:302.48 and 332.45 to dedicate the remaining 2.97% state room rental tax in LaSalle Parish to the existing LaSalle Economic Development District Fund. Effective July 1, 1999.

Act 840 (SB 353) amends R.S. 47:332.1 to change the use of the dedicated .97% state room rental tax in Jefferson Parish. Originally, all funds were dedicated to the Jefferson Parish Convention Center Fund. This Act provides that all proceeds from Ward 11 or the town of Grand Isle from the .97% state room rental tax will be dedicated to the Town of Grand Isle Tourist Commission Enterprise Fund. The use of the funds in the Jefferson Parish Convention Center Fund is also amended by this Act. Effective July 1, 1999.

Act 1025 (HB 2086) enacts R.S. 47:302.48, 322.39, and 332.45 which dedicates the 3.97% state room rental tax in Evangeline Parish to the Evangeline Parish Visitor Enterprise Fund. Effective July 1, 1999.

Act 1248 (HB 232) amends R.S. 47:332.7 abolishing the Bossier City Riverfront and Civic Center Fund and creating a special account for the 3.97% state room rental tax in Bossier Parish. Effective July 1, 1999.

Act 1324 (HB 2076) amends R.S. 47:302.29(A), 322.9(A), and 332.2(A) and enacts R.S. 47:302.45, 322.39, and 332.45 to dedicate the 3.97% state room rental tax in the city of Baker to the Baker Economic Development Fund. Prior to the new Act, state room rental tax in the city of Baker was dedicated to several funds for the East Baton Rouge Parish. Effective July 1, 1999.

Act 1380 (SB 1108) amends R.S. 47:302.26, 322.37(A) and (B), 322.38(A), (B)(2), and (C), 322.13 and enacts R.S. 47:322.38(D) to change the name of the fund for the dedication of the 3.97% state room rental tax in St. Tammany Parish from the St. Tammany Parish Tourist Commission Fund to the St. Tammany Parish Fund. This Act also amends the use of the 1% state room rental tax in Orleans Parish in the New Orleans Area Tourism and Economic Development Fund. Effective July 1, 1999.

SALES TAX - LOCAL

Act 1266 (HB 897) amends the exclusions under R.S. 47:301(10)(a)(iii) and (18)(a)(iii) to exclude local sales and use tax on purchases of tangible personal property that is purchased to be leased or rented. The exclusion is phased in over four years beginning with Fiscal Year 1999-2000. One-fourth of the sales price is excluded in the first year, with an additional one-fourth of the sales price being phased in each year. The entire sales price will be excluded beginning in Fiscal Year 2002-03. The Act also contains a provision that allows a property owner with a homestead exemption to waive their exemption, pay applicable property taxes, and receive a local sales and use tax credit up to the amount of property taxes paid. Effective July 12, 1999.

UNCLAIMED PROPERTY

Act 98 (HB 146) enacts R.S. 13:2488.80 pertaining to the Breaux Bridge City Court criminal and civil funds to provide that when surplus filing fees, fines, costs, or bonds have remained unclaimed

for five years or more, the judge of the court may transfer the surplus to the court's general operating fund account. Over the past several years, similar provisions have been enacted pertaining to the Natchitoches, Hammond, New Iberia, West Monroe, and Eunice city courts. Effective June 9, 1999.

Act 206 (SB 368) amends R.S. 9:162(B) relative to unclaimed property to provide that the secretary of the Department of Revenue is responsible for taking all reasonable measures to return unclaimed property to the rightful owners. Effective June 11, 1999 with the provisions of the Act being retroactive.

WITHHOLDING TAX

Act 204 (SB 262) amends R.S. 47:1519(B)(1) to require tax payments by electronic funds transfer (EFT) when the taxpayer files more frequently than monthly and the average total monthly payments during the preceding twelve month period exceed \$20,000 per month. In addition, this Act requires companies who file withholding returns and payments on behalf of other taxpayers to remit the taxes by EFT when the average total payments for all tax returns filed during the preceding twelve month period exceed \$20,000 per month. Effective June 11, 1999.