

Tax Topics

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January 2000

"The mission of the Louisiana Department of Revenue is to serve the citizens of Louisiana by administering efficiently the state's tax and regulatory statutes in a manner that will generate the highest degree of public confidence in our integrity and fairness."

Brett Crawford,
Secretary

Withholding Tax Filing Changes For 2000

\$ Beginning this year, there will be a number of changes in the withholding tax forms and filing procedures. The changes are as follows:

1. The L-1 forms (the forms filed throughout the year to report and remit withholdings) will no longer request the gross payroll amount.
2. The gross payroll amount will no longer be reported with the Electronic Funds Transfer (EFT), and the EFT transmission will be the L-1 filing for those using EFT.
3. The L-3 form (annual reconciliation) included in the new booklets received for the year 2000 will request the gross payroll amount for the entire year. (NOTE: This L-3 form will not be filed until February 2001, but is included in the coupon booklet received for the year 2000.)
4. Taxpayers who report their annual withholding on magnetic media will be able to use federal form W-2G or 1099-R magnetic media formats to report withholding on gaming winnings or retirement payments.

5. Those taxpayers who have "occasional filer" status will now receive coupon booklets each year.

The first three changes are in response to a problem encountered by taxpayers filing and paying by EFT. In the past, a taxpayer paying by EFT was not required to file a paper L-1 form if the gross payroll amount for the period was a part of the EFT transmission. On several occasions taxpayers transposed the gross payroll amount and withholding amount, causing the taxpayer to pay the gross payroll to the Department.

To eliminate the possibility of this erroneous payment, the gross payroll amount is no longer being requested or accepted with the L-1 form or the EFT transmission. Instead, the gross payroll for the entire year will be reported on the annual reconciliation (L-3 form). The L-3 form due in February 2000 (included in the 1999 coupon booklet) will still be in the old format and will not request the gross payroll amount. But the L-3 form to be filed in February 2001 will request the gross payroll amount for the entire year of

2000. The request for gross payroll on the L-1 form and with EFT transmissions will be eliminated for withholding periods beginning on or after January 1, 2000. These changes will be effective with the L-1s and L-3 forms in the new coupon booklet for 2000.

Another benefit of removing the gross payroll amount from the L-1 form is that the EFT transmission will be the L-1 form. **Taxpayers paying by EFT should not file a paper L-1 form. The only exception is if penalty and/or interest is paid.** In that case, a paper L-1 form should be filed to reflect how much of the EFT payment is tax, how much is penalty, and how much is interest. If there is no withholding to report for a period, an EFT transmission for zero dollars should be sent (or if your financial institution will not process a zero transmission, you can send a small amount such as one cent).

The fourth change affects taxpayers that withhold from gaming winnings or pension payments and report their withholdings for the year on magnetic media rather than filing paper W-2s. In past years, the Department could only accept magnetic media using the TIB-4 file format, including the optional "S" record. (This is the file format established by the Social Security Administration for magnetic media reporting of wage withholding.) Beginning with the magnetic media accompanying the L-3 form due in February 2000, taxpayers, under certain conditions, will be able to report gaming withholding using the file format required for federal W-2G magnetic media reporting. At the same time, taxpayers withholding on pension payments will, under certain conditions, be able to report pen-

Special Reminder Announcement

Louisiana taxpayers are reminded that they will not be mailed a pre-addressed state individual income tax booklet this year if they have used alternative methods of filing for the past two years. This includes taxpayers that have filed electronically, through a paid tax preparer that furnished a computer-generated substitute tax form, by on-line computer, or by TeleFile. Those who telefiled, however, will be mailed a TeleFile booklet.

More than 650,000 taxpayers will not be mailed a booklet this year, saving taxpayers approximately \$160,000 in printing costs and \$98,000 in postage. Unaddressed booklets will still be available at libraries, regional offices of the Department, and metropolitan offices of the Internal Revenue Service. Downloadable forms will be available from the Department's Internet web page at www.rev.state.la.us. After January 1, taxpayers may also order tax booklets by calling the toll-free number, (888) 829-3071.

Continued on Page 6

Is a transaction a rental or a service?

Periodically, there is a question as to whether a certain transaction should be classified as a lease or rental of tangible personal property subject to the sales tax or whether it is a nontaxable service. Most of the transactions in question have a common element in that the persons who provide the property have some personal contact with the property while the property is in service to their customers.

In a lease or rental transaction, possession and use of the tangible personal property is transferred from one person to another for a consideration, without the transfer of the title to the property. The degree, frequency, and purpose of contact that a person has with his property while the property is in service to another is important in determining whether the transaction is a taxable lease or rental.

When the personal contact is continuous and for the purpose of providing a service to customers that cannot be accomplished for any period of time without the presence of the service personnel, the transactions will probably be considered a service transaction rather than a lease or rental transaction. Treatment of the transaction as a service will be applicable even when some part of the charge to the customer is determined by the rental value of the property used by the service personnel, provided that the control of the property at all times during the service transaction remains with the service personnel.

Alternatively, if the owner's personnel contact the property only periodically while the property is in service to their

customers, such as for the purpose of servicing or maintaining the property, the transactions will probably be considered a lease or rental transaction. In such a case, separate charges to the customer by the owner or lessor for the delivery and setup of the property would not be taxable. However, charges for maintenance and service of the property, even when separately stated, would be taxable.

Examples

1. An oil well drilling company loses part of a drilling bit in the hole, which creates an obstruction that impedes further operation of the drilling equipment. A fishing-tool service company is called in to remove the obstruction in order that the drilling operation can resume. The fishing-tool service company brings certain specialized tools for use by its own personnel in the removal of the obstruction. This is a service transaction. Because even though a part of the service company's charges to the drilling company is based on the tools that its personnel has to use on the job, it does not result in a separate charge for the use of those tools, which is necessary to be considered a lease or rental.
2. A business office enlists a plant nursery to decorate its office with live ornamental plants that are to remain the property of the plant nursery. The plant nursery charges separately for the delivery and placement of the plants. For an additional charge, the plant nursery visits the customer's office each week to water, fertilize, and

Continued on Page 4

Oilfield Site Restoration Fee

= The State Treasurer has notified the Secretary of the Department of Revenue that the Oilfield Site Restoration Fund balance has dropped below six million dollars. Therefore, in accordance with the provisions of Revised Statute 30:86(C), the collection of the fee resumed effective December 1, 1999. The fee will be collected quarterly thereafter until the fund reaches \$10 million. Reporting forms were mailed to taxpayers during the last week of December.

The Oilfield Site Restoration Fee collected for the quarter ending December 31, 1999, will be due on January 31, 2000, for oil/condensate, and on February 15, 2000, for gas. Failure to collect or remit this fee could result in an assessment of tax, interest, and penalties.

Further information is available from the Severance Tax Division at (225) 925-7500.

Two Severance Tax rules repealed

% The Department of Revenue, Severance Tax Division, has repealed Louisiana Administrative Code 61:I.2905 and 2907 relating to severance tax credits and exemptions.

Repealed was Section 2905 that provided for administration of the tax credits to municipalities operating a manufacturing establishment or an electric generating plant based on the amount of natural gas consumed in these operations granted under Revised Statute 47:7. Act 4 of the 1998 Regular Legislative Session repealed R.S. 47:7. Prior to the repeal of R.S. 47:7, Act 5 of the First Extraordinary Session of 1988 had abolished the funding for this program, and the specific paragraphs related to funding were repealed by Act 984 of the 1992 Regular Legislative Session.

Also repealed was Section 2907 that provided for administration of a severance tax exemption for newly discovered wells granted under R.S. 47:646.1 et seq. Under this provision, working-interest owners were allowed an exemption from 50 percent of the severance taxes on the oil or gas produced from a newly discovered field for 24 months from the date that regular production began. Act 2 of the 1994 Regular Legislative Session repealed R.S. 47:646.1 to 47:646.5.


Repeal of these two rules for which the statutes have been repealed has no effect and are considered housekeeping.

Return required to be filed

¢ Revised Statute 47:101(A)(1) provides that, beginning with the return for 1999, all individuals required to file a federal individual income tax return shall be required to file a Louisiana individual income tax return. However, the statute also provides that no tax shall be due for any taxable period for which a federal individual income tax return is not required to be filed.

For further information, contact the Personal Income Tax Division at (225) 925-4611.

Resolving State Tax Liabilities: Multistate Voluntary Disclosures

 (The following is taken from an article written by H. Beau Baez, III, Counsel for the Multistate Tax Commission National Nexus Program.)

Many businesses believe that states can assert their taxing jurisdiction over companies only when they open a store or office in a state. This is not true. In the area of use tax collection, a business can avoid nexus with a state if it stays within the "safe harbor for vendors whose only connections with customers in the [taxing] state is by common carrier or the United States mail." [*Quill Corp. v. North Dakota*, 504 U.S. 298, 315 (1992).]

However, many businesses do more than ship their products by common carrier, thereby creating state tax liabilities for themselves through their use of in-state permanent or temporary employees, traveling salesmen, independent

contractors (full-time or part-time), inventory, leased property, or other property. If a business is found to have a sales or use tax collection duty, many states will hold the business primarily liable for the sales or use tax.

Income and franchise tax nexus standards also surprise the unwary business. In the income tax area, a business can be required to file a state income tax return if its employees or representatives do anything beyond the solicitation of sales. For example, if a business provides any services, sells intangibles, or owns property in the state, it might be required to file an income tax return in that state. [See *Interstate Commerce Tax Act* 15 U.S.C. § 381-384 (1959), Public Law 86-272.] Moreover, if a business has never filed a tax return in a state, that state might be able to assess taxes indefinitely back to

the date nexus was first established with the state (e.g. 30 years), not the normal three years that most states use when dealing with taxpayers that are registered and filing in the state.

The Multistate Tax Commission's (MTC) National Nexus Program offers a solution. The National Nexus Program operates an innovative voluntary disclosure program that allows companies to resolve potential tax liabilities simultaneously with multiple states. Through this program, companies may approach a large number of states anonymously to propose settlement of potential state sales/use tax or income/franchise tax liabilities arising from past activities within those states. Taxpayers benefit by resolving potential state tax disputes before the state issues prior-year assessments of taxes, interest, and penalties. Tax professionals benefit by being allowed to focus on substantive tax issues. Multistate resolution saves time and money because MTC staff performs most of the work at no cost to the taxpayer.


A company representative initiates the process by contacting the Nexus Program anonymously, by letter, and requesting a voluntary disclosure. The Nexus Program staff need the following information:

- a brief description of the company's business, including the number of years the company has been in business;
- the nature and extent of the company's operations in the relevant states, including whether the company owns or leases property, engages employees, or has other potential nexus-creating activities in those states;
- a statement as to whether the company has been contacted by any of the states, and if so, the nature of the contacts;
- the terms proposed by the company; and,
- a schedule showing the estimated amount of taxes due, by tax type and year, for each state that the company wants contacted.

All voluntary disclosure negotiations are handled on a confidential and anonymous basis. Company representatives are

Continued on Page 4

Raw materials exclusion

 *Falco Lime, Inc. v. Kennedy*, 739 So.2d 953 (La.App.5 Cir. 1999) has affirmed the judgment of the Board of Tax Appeals in favor of the petitioner, Falco Lime, Inc. and Shell Oil Company.

Falco had applied for a refund of sales tax paid in 1988 on Falco's sale of quicklime to Shell Oil Company for use in the transformation of dichlorohydrin (DCH) and trichloropropane (TCH) into the end product, epichlorohydrin (ECH). Falco claimed that the purchase of quicklime is excluded from sales tax under the raw materials exclusion contained in Revised Statute 47:301(10)(c)(i).

Upon denial of the refund by the Department, Falco and Shell filed a petition with the Board of Tax Appeals. On November 5, 1997, the Board of Tax Appeals heard Falco's and Shell's case. After considering testimony of expert witnesses, the Board rendered a judgment in favor of Falco and Shell.

The Department appealed to the 29th Judicial District Court for the Parish of St. Charles. In a judgment dated November 24, 1998, the trial court affirmed the Board's decision. The Department then appealed to the Fifth Circuit Court of Appeal. After considering the law and evidence presented to the Board of Tax Appeals, the Court determined that the test for determining whether a material is subject to the raw materials exclusion is whether the material was purchased for the purpose of further processing into a finished product, so that the material or any of its elements becomes a recognizable, integral part of the finished product. An integral part is defined as one that is essential to completion, "organically joined or linked." The Fifth Circuit Court of Appeal disagreed with the Department's position about the existence of substitutes for quicklime, holding it was not essential to the determination of an "integral, identifiable part."

Additionally, the Fifth Circuit made an important pronouncement that could impact future Board of Tax Appeals cases involving expert witnesses. The pronouncement was that where there are two permissible views of evidence, the fact-finder's decision to accept the opinion of one expert and reject the opinion of the other is never manifestly erroneous.

Multistate Voluntary Disclosures (continued)

asked not to reveal the name of the company or any information that could readily identify the company to Nexus Program staff until the agreements are finalized.

Once Nexus Program staff have evaluated the facts and circumstances of the company's contacts in the states with which it is seeking a voluntary disclosure, the staff will advise the company representative of terms generally acceptable to the states. Offers to settle state tax liabilities on a prospective basis may be recommended if the facts warrant such treatment (e.g. "gray" nexus areas). Nexus staff will work with the representative to formulate an offer that will be acceptable to the states. A majority of Nexus Program member states expect three years of back taxes and interest, but they will waive penalties and tax obligations for all tax periods prior to the look-back period. Once terms are agreed upon, Nexus Program staff will forward a voluntary disclosure agreement (i.e. contract) to the states specified by the company representative. Disclosure agreements recommended to states by Nexus Program staff are accepted in most cases. The entire voluntary disclosure process typically takes one hundred and twenty days, but can take longer for more complicated cases.

The National Nexus Program and its member states adhere to the following policies for all voluntary disclosures:

- A company that volunteers to disclose its liabilities will remain anonymous throughout the negotiation and disclosure process until the final stage when registration forms and signed agreements are sent to the states through the Nexus Program office.
- Nexus Program member states and the Multistate Tax Commission have adopted a strict policy that they will not reveal the identity of the taxpayer to any state that does not accept the disclosure offer.
- Nexus Program staff will forward any voluntary disclosure offer to states as requested by the company's representative, if in the staff's opinion the offer is likely to be accepted by a majority of the states to which it is offered.

- Nexus Program staff will not process offers to non-member states.

- The Nexus Program will not process a disclosure offer for a state that has previously contacted the company (something beyond a routine mass mailed letter) or has selected the company for audit, other investigation, or review. Contact by one member state will preclude disclosure only with the contacting state and does not prevent a disclosure from occurring with other member states.

- If a company has already sent written notice to the Nexus Program staff of its intent to offer a voluntary disclosure to a member state and that member state contacts the company at a later date to conduct an audit of the company, Nexus Program staff will request the member state to temporarily stop the audit until the voluntary disclosure negotiations are complete.

Voluntary disclosures are processed only for Nexus Program member states. Besides Louisiana, the District of Columbia

and the following 36 states are members of the MTC National Nexus Program: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Washington, West Virginia, and Wisconsin.

The Nexus Program makes the sales and use tax registration forms for the sales tax jurisdictions of 46 states available to the public upon request.

If you have questions about the voluntary disclosure program or would like to initiate a disclosure, contact Mr. H. Beau Baez or Mr. Thomas K. E. Shimkin at the Multistate Tax Commission, 444 North Capitol Street, N.W., Suite 425, Washington, D.C. 20001, (202) 508-3800. Also, you may contact the Nexus Program by emailing information to nexus@mtc.gov.

Rental or a service (continued)

prune the plants. This is a lease or rental transaction. The essence of the transaction is the furnishing of the plants. The periodic presence of the owner of the plants is solely for the purpose of maintaining the plants and not to provide additional services to the customer. Charges to the customer for the delivery and setup of the plants can be excluded from the taxable lease-rental; but charges for periodic maintenance cannot.

What Is the Tax Liability?

On a transaction that is determined to be a lease or rental, the sales tax is collected and remitted on the gross proceeds from leasing and renting. Charges by the lessor or renter for operating expenses and maintenance costs for keeping leased or rented property in repair cannot be deducted from gross proceeds in arriving at the taxable base. Separately stated charges by a lessor or renter for delivering property to the place of lease or rental can be deducted from the tax-

able base. The tax on leases and rentals is required to be remitted on the lessor's or renter's state sales tax return for the month in which the rental or lease proceeds are collected, as provided for in Revised Statute 47:306(A)(2).

Property acquired by a lessor or renter exclusively for the purpose of being leased or rented as tangible personal property can, under R.S. 47:301(10)(a)(i) and (iii) and 47:301(18)(a)(i) and (iii), be purchased or imported without the payment of the state sales or use tax on the acquisition.

Property that is used by a service provider in a nontaxable service transaction is taxable to the service provider. Exemption from the sales or use tax cannot be claimed on the purchase or importation of such property.

For further information on the taxability of leases or rentals of tangible personal property, contact the Sales Tax Division at (225) 925-7356.

1999 Tax Return Booklets Mailed

More than one million taxpayers were mailed 1999 individual income tax booklets during the first week of January. This is 650,000 fewer than last year because taxpayers who used alternative methods of filing for the past two years were not mailed a pre-addressed booklet. Pre-addressed booklets are not needed when using alternative methods of filing, such as electronic filing, by paid preparer, TeleFile, or by on-line filing with a personal computer. Not mailing unneeded booklets saves taxpayers nearly \$260,000 in printing and postage costs. (See Special Reminder Announcement in this issue of *Tax Topics*.)

Both the resident IT-540 and the Non-resident IT-540B return remain in a scannable format this year, which allows the forms to be processed by automatic processing equipment that captures the income tax information directly from the form.

Taxpayers meeting certain prerequisites were mailed TeleFile booklets that allow them to file their return by telephone.

In a format change, the remittance coupon has been deleted completely from this year's forms. Also, two new donations options, the Children's Trust Fund and the Breast Cancer Task Force, have been added to Schedule D (donations).

Again this year, substitute forms produced from commercial software programs that have been approved by the Department will be accepted. Substitute form Schedules A, D, and E are together on a separate sheet. A listing of companies that have been approved for substitute forms can be obtained from the Department's Internet web page at <http://www.rev.state.la.us>.

Besides the alternative filing methods of TeleFile, electronic filing, and through a paid preparer, taxpayers again this year have the option of filing their return on-line from their own personal computer using software approved by the Department and made available from participating software providers. A list of approved software providers for on-line filing is listed on the Department's web page. Taxpayers should remember that these providers may charge for their software or the transmission of the on-line filing. Once a taxpayer has filed an on-line return, a signed state signature document (Form LA 8453OL), the state copies of W-2s, and all supporting documents must be maintained by the taxpayer for three years from December 31 of the year in which the taxes were due. A federal signature document and the federal copies of W-2s must be mailed to the Internal Revenue Service.

Important Notice To Tax Preparers

X Tax preparers should ensure that the address used to prepare a client's return is current and correct. Several instances have been noted when the Department had a correct and current address on file for a taxpayer's account, but a return prepared by a tax preparer listed the client's old address. The Department's processing protocol assumes that the address listed on the current return is the correct one and automatically updates the taxpayer's file with that address. This means a correct address is replaced with an incorrect one, which will delay a client's refund or cause unnecessary billings to be issued.

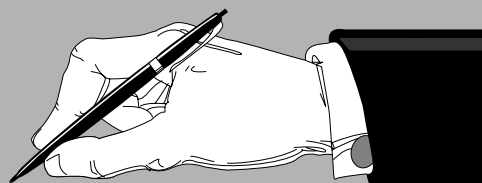
Baton Rouge - Main Office

| | |
|--------------------------|--------------|
| Central Registration | |
| (Taxpayer Services) | 225•925•7318 |
| Collection | 225•925•7448 |
| Corporate Income and | |
| Franchise Taxes | 225•922•0447 |
| Excise Taxes | 225•925•7656 |
| Inheritance & | |
| Gift Taxes | 225•925•7424 |
| Office of Alcohol and | |
| Tobacco Control | 225•925•4041 |
| Personal Income Tax ... | 225•925•4611 |
| Sales Tax | 225•925•7356 |
| Severance Tax | 225•925•7500 |
| Tax Forms | 225•925•7537 |
| Unclaimed Property ... | 225•925•7407 |
| Toll-Free | 888•925•4127 |
| Withholding | 225•922•0447 |
| TDD | 225•925•7533 |

Regional Offices

| | |
|--------------------|--------------|
| Alexandria | 318•487•5333 |
| Baton Rouge | 225•763•5721 |
| Lafayette | 337•262•5455 |
| Lake Charles | 337•491•2504 |
| Monroe | 318•362•3151 |
| New Orleans | 504•568•5226 |
| Shreveport | 318•676•7505 |
| Thibodaux | 504•447•0976 |

Things to remember



Taxpayers should remember the following when filing their individual income tax returns:

1. Do **NOT** submit a photocopy of an original scannable IT-540 or IT-540B return.
2. Do **NOT** staple W-2s or other pages to the return. Use paper clips.
3. Submit only an **ORIGINAL LASER COPY** of substitute returns.
4. Be sure the return has been signed before mailing.

Louisiana Tax Topics Index (Vol 19, Nos. 1-4)

Subject

No. Month

Alcohol and Tobacco Control

| | | |
|--|---|--------------|
| Certain cigarette sales banned | 4 | October 1999 |
| Definition and issuance - caterers permits, (Act 1010) | 4 | October 1999 |
| Licensed establishments responsible for customer nuisances (House Study 60) | 4 | October 1999 |
| Newspaper advertisement- retail dealer's permit, (Act 719) | 4 | October 1999 |
| Repeal of local health department affidavit requirement, (Act 139) | 4 | October 1999 |
| Rule amended - stocking, pricing, and rotating of alcoholic beverages (LAC 55:VII.319) | 3 | July 1999 |
| Underage driver's licenses (Act 556) | 4 | October 1999 |

Charitable Gaming

| | | |
|---|---|--------------|
| Office of Charitable Gaming transferred (Act 568) | 4 | October 1999 |
| License fees increased (Act 1286) | 4 | October 1999 |
| Rules amended (House Concurrent Resolution 6) | 4 | October 1999 |

Corporation Income and Franchise Taxes

| | | |
|---|---|------------|
| New telephone number for CIFT Division | 2 | April 1999 |
| Rule adopted - employer tax credits (LAC 61:I.1901) | 3 | July 1999 |

Excise Taxes

| | | |
|--|---|--------------|
| Alternative to producing invoice records (Act 202) | 4 | October 1999 |
| Carriers' reports on alcoholic beverages handled | 2 | April 1999 |
| Cigarette package requirements (Act 1265) | 4 | October 1999 |
| Direct shipments of sparkling or still wines | 2 | April 1999 |
| Internet filing of Beer Tax | 3 | July 1999 |
| Requirements for tobacco manufacturers (Act 721) | 4 | October 1999 |
| Rule adopted - direct shipments of wine (LAC 61:I.201) | 3 | July 1999 |
| Special fuel invoices (Act 893) | 4 | October 1999 |

Gift Tax

| | | |
|------------------------|---|------------|
| Gift Tax returns | 2 | April 1999 |
|------------------------|---|------------|

Inheritance Tax

| | | |
|---|---|--------------|
| Frequently asked questions | 1 | January 1999 |
| Inheritance and Estate Transfer Tax changes | 1 | January 1999 |

Legal

| | | |
|---|---|--------------|
| Arbitration by the Secretary of Revenue (Act 201) | 4 | October 1999 |
| Notice of Acquiescence - installation charges | 3 | July 1999 |

Miscellaneous

| | | |
|---|---|--------------|
| Internal Revenue Problem Solving Day | 3 | July 1999 |
| Employee seminar - movables vs. immovables | 2 | April 1999 |
| New telephone system installed | 4 | October 1999 |
| Rate of Judicial Interest determined | 2 | April 1999 |
| Tax Amnesty Program results | 2 | April 1999 |
| Tax Topics index - Vol. 18, Nos. 1-4 | 1 | January 1999 |
| Underpayment examination and hearing cost penalty, (Act 1032) | 4 | October 1999 |
| Voluntary Disclosure Agreement standardized | 2 | April 1999 |
| Withholding Tax Requirement to pay by electronic funds transfer (Act 204) | 4 | October 1999 |

Personal Income Tax

| | | |
|--|---|--------------|
| Addition of municipalities and parishes to claimant agencies (Act 711) | 4 | October 1999 |
| Donations to Breast Cancer Task Force (Act 195) | 4 | October 1999 |
| Donations to Children's Trust Fund (Act 129) | 4 | October 1999 |
| Federal/state electronic filing program | 1 | January 1999 |
| Fiduciary Income Tax booklets revised | 4 | October 1999 |
| Individual Income Tax booklets mailed | 1 | January 1999 |
| Innocent Spouse provisions (Act 203) | 4 | October 1999 |
| Mailing of pre-addressed booklets | 4 | October 1999 |
| Suspension of the accrual of interest (Act 205) | 4 | October 1999 |

Sales Tax

| | | |
|---|---|--------------|
| Procedures to pay disputed sales taxes (Act 200) | 4 | October 1999 |
| Sales tax from a motor vehicle lessor (Act 553) | 4 | October 1999 |
| Sales and use taxation of medical-related property | 2 | April 1999 |
| Sales and use tax seminar - East Baton Rouge Parish | 3 | July 1999 |
| Tax-free sales are illegal | 3 | July 1999 |
| Taxability of diving services | 3 | July 1999 |
| Taxability of charges by food and beverage caterers | 1 | January 1999 |
| Taxability of hotel rentals - government employees | 3 | July 1999 |
| Taxability of offset plates and typesetting by printers | 1 | January 1999 |
| Vehicles with dealer inventory plates (Act 429) | 4 | October 1999 |

Sales Tax (Local)

| | | |
|--|---|--------------|
| Exclusions for lease or rental property (Act 1266) | 4 | October 1999 |
|--|---|--------------|

Severance Tax

| | | |
|---|---|--------------|
| 1999 cost price for refinery gas | 2 | April 1999 |
| Natural gas severance tax rate changed | 3 | July 1999 |
| Oil Site Restoration Fee | 1 | January 1999 |
| Severance tax rules amended (LAC 61:I.2903) | 2 | April 1999 |
| Timber rates for 1999 | 2 | April 1999 |

Changes (continued)

sion withholding using the file format required for federal 1099-R magnetic media reporting. The conditions under which these file formats may be used are as follows:

- The file format is identified on the outside of the magnetic media.
- In the payee "B" record, the Louisiana taxpayer identification number of the taxpayer that withheld the tax from the payment is entered in the "Special Data Entries" field, positions 663 – 772 (60 bytes). The data entered must be 10 bytes numeric (no dashes or spaces) and can be left or right justified. The unused remainder of the 60-byte field should be filled with spaces or zeros. (Additional information on the file formats can be found in IRS Publication 1220 (Rev 8/99), Catalog No. 61275P).

The last change concerns taxpayers with "occasional filer" status. In the past, these taxpayers would be sent one L-1 payment form and then sent another form when the first one was filed. Effective for the year 2000, occasional filers will receive a full year coupon booklet in the same manner as all other taxpayers. They will continue to file only for those periods for which they have withholding. The only change is the manner in which L-1 forms are supplied to these taxpayers. However, care should be taken to make sure that the L-1 form for the appropriate tax period is filed rather than using the first L-1 form available in the booklet each time there is a filing.

If you have questions or need further information, call the Withholding Taxes Section at (225) 922-0447.

Tax Topics is a quarterly publication of the Louisiana Department of Revenue. Information contained herein is of a general nature; taxpayers requiring information concerning a specific tax matter should contact the appropriate tax office. Subscription information may be obtained from the Research and Technical Services Division at the address below, or by calling (225) 925-6047.

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