

Louisiana Tax Topics

Department of Revenue and Taxation



Vol. 17, No. 1
January 1997

"The mission of the Louisiana Department of Revenue and Taxation is to serve the citizens of Louisiana by efficiently collecting the state's tax revenue in a manner that will generate the highest degree of public confidence in our integrity and fairness."
John Neely Kennedy, Secretary

Official Department form

7	Federal adjusted gross income	61,690	14	Adjusted Louisiana income tax	1,435
8	Federal standard deduction	2,000	15	Tax on Louisiana income less credits	1,435
9	Excess federal standard deduction	3,353	16	Payments on 16 deductions and 9C credits	0
10	Less federal standard deduction	59,687	17	Overpayment or refund	0
11	Less federal income tax	9,369	18	The balance due Louisiana PAY THIS AMOUNT	210
12	Less Louisiana income tax	1,435	19	Overpayment or refund	0
13	Total credits	5,292	20	Overpayment or refund	210
14	Total Louisiana income tax	1,435	21	Overpayment or refund	210
15A	Credits from Schedule A	0	22	Amount of Line 21 to be REFUNDED in 1997	210
15B	Amount of Line 15 to be REFUNDED in 1997	0	23	Amount of Line 21 to be REFUNDED in 1997	210
15C	Total credits	0	24	Amount of Line 21 to be REFUNDED in 1997	210

Approved substitute form

Substitute individual income tax return forms

Last year, a substitute income tax return form utilizing a scannable band area was developed for processing 1995 income tax returns that are produced from commercial tax software programs or commercially printed return forms. This year the Department will again accept substitute returns using the scannable band format for 1996 tax returns.

Instead of a two-page return form, both the resident substitute form (IT-540) and the nonresident substitute form (IT-540B) are single page return forms. The three tax schedules (Tax Credits Schedule A, Donation Schedule D, and Adjustments to Income Schedule E) are combined on a single page. A remittance coupon is available for

accompanying payments for "Tax Due" returns. Because the substitute forms are in a scannable format, laser printed forms should be submitted for processing. Photocopies are not acceptable for electronic processing and should not be filed.

Software developers and commercial forms printers are required to receive prior approval from the Department for substitute return forms to insure compatibility with automated processing equipment. A listing of companies that has received approval for substitute forms can be obtained from *Fax Link* at (504) 922-2984, from the electronic bulletin board service (BBS) at (504) 922-2529, or from the Internet at <http://www.rev.state.la.us>. ■

Decision affects taxability of repairs

On June 26, 1996, the Louisiana Second Circuit Court of Appeal decided in the case of *Clyde Juneau Company, Inc. v. Caddo-Shreveport Sales and Use Tax Commission* (No. 28,433-CA) that the repair and servicing company was liable for the payment of sales or use taxes on the acquisition price of materials acquired for service work to immovable heating and cooling systems, but was not liable for the collection of sales taxes on the retail price at which the parts were sold to customers.

In handing down the ruling, the court reasoned that the sale of the materials used

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Education expenses credit reinstated

Beginning with the 1996 tax year, a credit of \$25 per dependent child in school is allowed against individual income taxes under Revised Statute 47:297(D). The credit is applicable to dependent children in kindergarten through 12th grade.

The provisions of this statute have been under legislative suspension since the 1986 tax year. The most recent legislative action, Act 21 of the 1994 Regular Session of the Legislature, continued the suspension through June 30, 1996. The education expenses credit is once more available since legislation to continue the suspension was not enacted during 1996. Questions concerning the education credit should be directed to the Income and Corporation Franchise Taxes Division at (504) 925-4611. ■

DORT services now include an Internet page and Fax Link

The Department now has its own home page on the Internet and has also begun offering *Fax Link*, a fax-on-demand system that makes it easy to obtain various forms, publications, and other documents from the Department.

Fax Link is an automatic system that allows someone using a touchtone telephone to place an order for a form or publication and have it sent automatically to the caller's fax machine. A caller is led through the system step by step where he can order a list of available documents and their identification numbers. The system asks the caller to punch in the fax number where the document is to be sent and the identification number of the document being requested. When the caller hangs up, the system sends the requested document to the designated fax machine within a matter of minutes.

Many of the most often requested documents are on the system and more will be added in the future. The number to access *Fax Link* is (504) 922-2984. This is not a toll-free number.

The Department also now has its own home page on the World Wide Web. Anyone with computer access to the Internet can find a listing of nine different menu items pertaining to the Department. The address is <http://www.rev.state.la.us>.

Among the items on the Department's home page are a message from Secretary John Kennedy, 1996 legislative information, current press releases, a directory of services, unclaimed property names, and a department profile. Users can check for names on the unclaimed property list, download tax forms and publications, as well as check the answers to frequently asked questions.

The Department's home page is part of Info Louisiana, a cooperative effort by the Governor's office, legislature, supreme court, and several state departments that gives public and private sectors quick electronic access to essential government information. ■

Sales Tax Regulations adopted/amended effective September 20, 1996

LAC 61:I.4301, regarding the sales tax definition of lease or rental, was amended to add language to stipulate that certain contracts between motion picture theater operators and film distributors do not fall under the definition of a taxable lease or rental. The agreements, which specify the number of times the film is to be shown, the amount to be charged to the patrons, and the type of facilities in which the film is to be shown, are not considered a taxable lease or rental because of the restrictions placed on the parties. This regulation was amended under the authority of Revised Statute 47:301 and was originally adopted in February 1987 and previously amended September 1995.

LAC 61:I.4351 was amended to provide for the procedures to be used to request a sales tax alternate filing period. This regulation was amended under the authority of R.S. 47:306 and was originally adopted in February 1987.

LAC 61:I.4409 was amended to provide that in some cases, agreements between film distributors and theater operators may not be considered to be taxable leases or rentals. For exceptions to the definition of a taxable lease or rental, a reference was made to LAC 61:I.4301. This regulation was amended under the authority of R.S. 47:305.9 and was originally adopted in February 1987.

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Taxability of repairs continued

in the repairs was not complete until after the materials had been made component parts of the immovable heating and cooling systems. Since sales tax is levied only on sales of and repair services to tangible personal property or movable property, the court held that the repair dealer's sale of parts that had been rendered immovable could not be taxed. The court said that although the selling price of materials itemized on the repair dealer's invoice was higher than the dealer's acquisition price, it did not change the nature of the transactions at issue from nontaxable sales of immovables to taxable sales of movables.

How shall sales or use tax be paid?

Following this decision, persons engaged in furnishing repairs to central heating and cooling systems or other immovable property, that furnish and sell materials to customers only after the materials have been rendered immovable by their repair service labor, will not be required to collect sales taxes on charges for repair materials, even if the price of the materials is listed separately on the invoice. Instead, they will be required to pay the tax on their acquisition price of the materials used in rendering repair services to immovables. This tax is normally

paid to vendors who are registered to collect and remit the state and local sales and use tax. In cases where the vendors fail to collect the tax, persons engaged in providing repairs to immovables will be required to remit the state tax on purchases directly to the Department and the local tax directly to the appropriate local authority.

Taxability of repairs to movable property not changed

Revised Statute 47:301(14)(g)(i) levies the state sales tax on "The furnishing of repairs to tangible personal property, including but not restricted to the repair and servicing of automobiles and other vehicles, electrical and mechanical appliances and equipment, watches, jewelry, refrigerators, radios, shoes, and office appliances and equipment." The sales and use tax ordinances of most Louisiana political subdivisions provide similar language about taxing repair transactions. Under the state statute and local ordinances, repairs to movable property, such as household appliances, window air conditioning units, vehicles, computers, jewelry, and office equipment, remain fully taxable on the amount charged for both materials and labor. The court's decision does not affect the taxability of these transactions. ■

Part three in a three-part series **Inheritance Tax Laws**

This is the final article of a three-part series on Louisiana's inheritance tax provisions. The first article (April 1996) gave an overview of the inheritance tax statutes and discussed succession and classification of heirs and legatees. The second article (July 1996) discussed exemptions and exclusions.

Usufruct of the surviving spouse

Usufruct of the surviving spouse is not inherited, but is a right originating out of the marriage contract and passing by operation of law (Civil Code Article 890). A surviving spouse is entitled to usufruct unless the deceased spouse leaves a testament denying usufruct. The value of any usufruct granted to a surviving spouse is deducted from the net estate in order to arrive at the net estate to be distributed (Revised Statute 47:2405, *Succession of Marsal*, 118 La 212, 24 So 778, and *Succession of Lewis*, 12 So 2d 7).

Usufruct is defined as "... a real right of limited duration on the property of another. The features of the right vary with the nature of the things subject to it as consumables or nonconsumables" (C.C. Article 535). The individual to whom a usufruct is granted is called the usufructuary, whereas the owner of the property is called the naked owner.

The Civil Code classifies things subject to usufruct as consumable or nonconsumable, and defines consumables as things "... that cannot be used without being expended or consumed, or without their substance being changed, such as money, harvested agricultural products, stocks of merchandise, foodstuffs, and beverages" (C.C. Article 536). Nonconsumables are things "... that may be enjoyed without alteration of their substance, although their substance may be diminished or deteriorated naturally by time or by the use to which they are applied, such as lands, houses, shares of stock, animals, furniture, and vehicles" (C.C. Article 537).

Intestate Succession

When an individual dies without a will, and is survived by children, the law automatically gives his surviving spouse usufruct over any portion of his share of the community being inherited by the children (C.C. Article 890). However, the surviving spouse does not receive usufruct over any

separate property owned by the decedent. It will be inherited by the children free from usufruct. Furthermore, the law provides that usufruct of the surviving spouse terminates when the surviving spouse contracts another marriage.

Testate Succession

If a testator is silent on the matter of usufruct, his surviving spouse receives usufruct by operation of law over any portion of his share of the community property received by his children (C.C. Article 890). However, by executing a will, a testator may confirm usufruct to his spouse for life, or a shorter period. In addition, he may grant his spouse usufruct over his separate property.

In the alternative, a testator is free to deny usufruct to his surviving spouse. The denial of usufruct must be specific when his share of the community property is bequeathed to his descendants. However, if his share of the community property is bequeathed to someone other than his descendants, silence on the matter of usufruct will cause his surviving spouse to be denied usufruct.

Misconceptions About Usufruct

Usufruct is a term unique to the civil law, and to Louisiana, the only civil law state. Consequently, the result has been some common misconceptions about usufruct. First, it is often believed that the surviving spouse can receive usufruct over property he or she has received in full ownership. Article 622 of the Louisiana Civil Code provides that a "usufruct terminates by confusion when the usufruct and the naked

ownership are united in the same person." A second misconception about usufruct is that the granting of usufruct to the surviving spouse over the decedent's entire estate defers the payment of inheritance tax by the naked owners until the usufructuary dies. However, it is only property that is inherited by the surviving spouse that is exempt from tax. Since usufruct is not received by inheritance, it does not qualify for the exemption.

Common Error

A common error committed in completing the inheritance tax return is the calculation of the usufruct of the surviving spouse on the gross estate. Jurisprudence has held that it is the residue after payment of debts that is subject to usufruct (*Succession of Fitzwilliams*, 3 La Ann 489). ■

Inventory tax credit

Recently, there has been an increase in refund requests involving ad valorem taxes paid on real estate and immovable property, such as subdivision lots and homes. These ad valorem taxes are being incorrectly claimed as inventory tax credits on individual income tax and corporation income and franchise tax returns. A credit is not allowed for ad valorem taxes paid on real estate and immovable property.

Only those taxes collected as ad valorem tax on inventory, as defined in Revised Statute 47:1961.1, are available for refundable credits on the individual income and

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Industrial revenue bond debt - subject to corporation franchise tax

Indebtedness related to industrial revenue bonds or similar bonds must be included in the corporation franchise tax base as borrowed capital in accordance with Revised Statute 47:603.

Industrial revenue bond debt usually appears on a corporation's books as a result of a lease agreement with a government organization. Typically, a parish issues industrial revenue bonds and uses the proceeds to construct a facility. The facility is then leased to a third party under an agreement that obligates the lessee to make payments, even if the lessee does not use the facility. The total amount of the outstanding payments represents the debt to be included in the franchise tax base.

The Department's position on this issue will be applied prospectively and no adjustments will be made for tax periods that begin prior to January 1, 1997. The first corporation franchise tax returns affected will be due April 15, 1997. ■

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Inventory continued

corporation income and franchise taxes returns. Property taxes paid by homebuilders on homes and by realtors on lots are not eligible for the credit.

Any refunds that have been issued on claims of inventory tax credits are subject to audit. Those found to be ad valorem taxes

paid on real estate or immovable properties are subject to recovery under the provisions of R.S. 47:1621.(C), along with interest. Questions concerning the inventory tax credit should be directed to the Income and Corporation Franchise Taxes Division at (504) 925-4611. ■

Regulations continued

LAC 61:I.4418 was adopted to provide for administration of the sales tax exemption for tangible personal property sold at or admission charges for events sponsored by certain nonprofit organizations. This rule specifies the types of organizations and events that qualify for the exemption and outlines the procedures that must be followed to receive the exemption. This regulation was adopted under the authority of R.S. 47:305.14.

For questions or additional information concerning these regulations, contact the Sales Tax Division at (504) 925-7356 or by fax at (504) 925-3860.

The full text of these regulations can be downloaded from the Department's electronic bulletin board service (BBS) at (504) 922-2529 or the Department's home page on the Internet at <http://www.rev.state.la.us>. Hard copies can be faxed to you using the Department's new fax-on-demand system, *Fax Link*, at (504) 922-2984. The document numbers for the regulations are:

Doc.	Regulation
4004	LAC 61:I.4301-Lease or Rental
5005	LAC 61:I.4351-Alternate Filing Periods
4006	LAC 61:I.4409-Motion Picture Rental Exemption
4007	LAC 61:I.4418-Nonprofit Organizations

For assistance with any of these systems, call the Help Desk at (504) 925-7292. ■

Tax Topics is a quarterly publication of the Louisiana Department of Revenue and Taxation. 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 504•925•6047.

This public document was published at a total cost of \$6,876. One hundred eight thousand copies of this public document were published in this first printing at a cost of \$6,876. The total cost of all printings of this document, including reprints, is \$6,876. This document was published for the Department of Revenue and Taxation, Post Office Box 201, Baton Rouge, LA 70821-0201, by the Division of Administration, State Printing Office, to disperse information concerning Louisiana tax matters deemed to be of public interest under authority of R.S. 47:1509. This material was printed in accordance with the standards for printing by state agencies established pursuant to R.S. 43:31.

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