

Tax Topics

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"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

Jury verdict favors Department

In November, a 19th Judicial District Court jury rendered a \$25.2 million verdict in favor of the Department in the first Louisiana tax case ever decided by a jury.

In the case, *John N. Kennedy and the State of Louisiana, Department of Revenue and Taxation v. Tennessee Gas Pipeline Company*, the jury awarded the state additional corporate income taxes for the years 1986 through 1993. The additional taxes awarded also bear statutory interest, as well as two separate penalties.

Taxes in the case totaled \$9,282,518 for the years 1986 through 1993. Interest on

that amount, calculated through November 15, 1999 (the date of the verdict), totaled an additional \$11,314,870.68. A penalty equal to five percent of the tax, or \$464,125.90, was imposed for willful negligence or intentional disregard of rules and regulations. A second penalty of 50 percent of the tax, or \$4,641,259, was also imposed for filing a return that is false, fraudulent, or grossly incorrect with the intent to defraud the State of Louisiana.

The factual issue before the jury was whether Tennessee Gas was required to follow Louisiana's regulation regarding the allocation of the company's interest expense deduction under Louisiana Administrative

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2000 cost price for refinery gas

\$ The cost price for refinery gas for use tax purposes has been set at \$.41 per thousand cubic feet (MCF) for the calendar year 2000.

This year's value is based on the posted price of \$22.88 for West Texas Intermediate Crude Oil on December 1, 1999, as reported by the *Wall Street Journal*. By applying the price to the formula specified in Louisiana Revised Statute 47:301(3)(f), the value is determined as follows: \$22.88 divided by \$29.00, multiplied by \$.52, equals \$.41 per MCF. This price is the maximum value that can be set for refinery gas by state and local authorities.

Refinery gas that is sold, exchanged, or bartered (rather than used by the producer) is subject to sales tax based on the greater of the actual selling price or the average monthly spot market price of one MCF of natural gas delivered into pipelines in Louisiana as reported by the Natural Gas Clearing House and as determined by the Department for natural gas severance tax purposes. Refinery gas is subject to both state and local use tax, regardless of its use.

Listed below are the valuations for previous years, as well as the current year:

1997	\$.445	1999	\$.20
1998	\$.335	2000	\$.41

Questions concerning the cost price for refinery gas for state purposes should be directed to the Sales Tax Division at (225) 925-7356. Questions about the valuation adopted by local authorities should be directed to the appropriate local authority.

Definition of "inventory" upheld

% In the case *Southlake Company v. Secretary, Louisiana Department of Revenue*, the First Circuit Court of Appeals has ruled the definition of "inventory" as tangible personal property as contained in Louisiana Administrative Code 61:I.1701. This definition excludes "real property" as inventory.

The Southlake Company had asserted that it should be entitled to the credit granted in Louisiana Revised Statute 47:6006 that grants a tax credit against corporate franchise taxes for *ad valorem* taxes paid by manufacturers, distributors, and retailers. While the statute defines the terms "manufacturers," "distributors," and "retailers," it does not define "inventory." In the case, it was undisputed that Southlake is a real estate developer, in the business of purchasing raw land and adding infrastructure and houses, and selling the finished product to home buyers. Southlake took the position that it should be entitled to the credit for the *ad valorem* taxes it paid on its real property, since its real property was its "inventory" and that it was a "manufacturer," "distributor," and/or "retailer."

The Department had disallowed the credit based on the position that the regulation on *ad valorem* taxes (LAC 61.I.1701) defines inventory as tangible personal property, a definition that excludes real property. Southlake had offered several other definitions of the term "inventory" to the court, but the First Circuit Court of Appeals noted that jurisprudence requires that exemptions from taxation are strictly construed against the taxpayer, and must be clearly, unequivocally, and affirmatively established by the taxpayer in order to prevail.

Technical Advisory Memorandum issued

The following Technical Advisory Memorandum 99-003 has been issued by the Department to provide general guidelines and procedures for granting or denying innocent spouse relief:

The Louisiana Legislature enacted Revised Statute 47:101(B)(7) to provide relief for an innocent spouse. Louisiana's innocent spouse provisions were amended in 1999 to more closely parallel recent changes to federal innocent spouse provisions made by the Internal Revenue Service Restructuring and Reform Act of 1998.

R. S. 47: 101(B)(7) provides in part that an individual who qualifies as an innocent spouse shall be relieved from liability for any tax, penalties, interest, or other amounts for the applicable tax year to the extent that such liability is attributable to an omission from gross income or any claim of a deduction, credit or basis for which there is no basis in fact or law in that taxable year.

This memorandum provides general guidelines and procedures for use in granting or denying innocent spouse relief.

Guidelines and Procedures

- I. When an individual requests innocent spouse relief from the Louisiana Department of Revenue (LDR) after requesting relief from the Internal Revenue Service (IRS) or petitioning the Tax Court, the following guidelines are applicable:
 - A. The request for innocent spouse relief should be in writing and signed by the individual requesting relief.
 - B. The federal Form 8857 requesting relief from the IRS and all supporting documentation should be attached to the written request.
 - C. The written response from the IRS or Tax Court ruling granting or denying relief must be attached to the written request.
 - D. The Director of the Personal Income Tax Division shall have authority to grant an individual such relief, subject to the approval of the appropriate Assistant Secretary and the Secretary.

- E. If it is determined that the individual qualifies for relief, a letter from the Director of the Personal Income Tax Division granting such relief and all supporting documentation shall be submitted first to the appropriate Assistant Secretary for approval. If approved by the Assistant Secretary, all information should be submitted to the Secretary for approval.
- F. If approved by the Secretary, then the Personal Income Tax Division shall send written notice to all divisions impacted by such approval. Each affected division should take appropriate action.
- G. The Personal Income Tax Division shall provide the individual with a written response as to the outcome of his or her request for relief.

II. When an individual requests innocent spouse relief from LDR and has not requested such relief from the Internal Revenue Service or petitioned the Tax Court, the following guidelines are applicable:

- A. The request for innocent spouse relief should be in writing and signed by the individual requesting such relief. Documentation supporting the request should be attached.

Payable on Death bank accounts

Payable on death (POD) bank accounts are subject to inheritance tax.

Louisiana Revised Statute 47:2401 levies a tax upon all inheritances, legacies, and donations and gifts made in contemplation of death. In the event there is more than one depositor, each depositor is deemed to have an equal interest, unless otherwise stated in the bank's deposit account records. At the death of a depositor, the beneficiary inheriting the deceased depositor's interest will owe inheritance tax on any amount by which the inheritance exceeds any exemption that the beneficiary is entitled to under R.S. 47:2402.

- B. The Director of the Personal Income Tax Division shall examine the request for relief along with all supporting documentation to determine whether the individual qualifies for relief under R.S. 47:101(B)(7)(i)-(iv). Facts and circumstances to consider include but are not limited to 1) whether the individual directly or indirectly received any significant benefit from the understatement of tax, 2) if the individual was later divorced or deserted, and 3) the educational background and financial circumstances of the individual.
- C. The Director of the Personal Income Tax Division shall have authority to grant an individual such relief, subject to the approval of the appropriate Assistant Secretary and the Secretary.
- D. If it is determined that the individual qualifies for relief, E through G of Section I shall apply.

The Secretary may make exceptions to this policy as needed to enforce the provisions of the law.

Timber rates established for 2000


Timber values for use in determining severance tax timber rates for 2000 have been established by the Office of Forestry and the Louisiana Tax Commission.

The values and tax rates are as follows:

Product	Value Per Ton	Tax Rate Per Ton
Pine Sawtimber	\$46.87	\$1.05
Hardwood Sawtimber	\$25.67	\$.58
Pulpwood Pine	\$10.11	\$.51
Pulpwood Hardwood	\$ 5.16	\$.26
Pine Chip-&-saw	\$33.66	\$.76

Revised forms will be provided as soon as they are available. Any questions should be directed to the Severance Tax Division at (225) 925-7500, the Department's web site at www.rev.state.la.us, or Fax Link at (225) 922-2984.

Rule establishes procedures for refund claims or credits

 Effective January 20, 2000, the Department of Revenue has adopted Louisiana Administrative Code 61:I.4909 to provide the procedure for filing claims for refunds or credits of overpayments of tax, penalty, or interest. Louisiana Revised Statute 47:1621 authorizes refunds of overpayments, R.S. 47:1623 pertains to prescription for filing claims for refunds or credits and authorizes the Secretary of the Department of Revenue to prescribe the manner for filing refund claims, and R.S. 47:1625 pertains to appeals for disallowance of refund claims. This regulation establishes the procedures to be followed to properly submit claims for refunds or credits.

Title 61

REVENUE AND TAXATION Part I. Taxes Collected and Administered by the Secretary of Revenue


Chapter 49. Tax Collection

§4909. Refund Claims

A. Taxpayers filing claims for refunds or credits of overpayments of tax, penalty or interest as authorized by R.S. 47:1621 and in accordance with R.S. 47:1623 must comply with the following procedures.

1. A claim for refund or credit shall be written in the English language, and be:
 - a. submitted on claims for refund/credit forms provided by the Secretary; or
 - b. written in a format substantially the same as that provided by the Secretary; or
 - c. submitted by timely filing an amended return.
 2. A claim for refund shall be signed and dated by the taxpayer or his authorized representative, and shall:
 - a. contain a clear statement detailing the reason for the claim;
 - b. indicate the appropriate tax and tax amount by tax period; and
 - c. be submitted to an appropriate office, division, or representative of the Department of Revenue. An "appropriate office, division, or representative of the Department of Revenue" means:
 - i. a Regional Service Center or Regional Audit Office;
 - ii. the appropriate division located at the department's headquarters in Baton Rouge;
 - iii. the Office of Alcohol and Tobacco Control for taxes or fees collected by that office;
 - iv. the tax collection officer assigned responsibility for the taxpayer's account for the period and tax related to the refund claim;
 - v. the field or office auditor that is examining the taxpayer's account for the period and tax related to the refund claim;
 - vi. the audit reviewer responsible for reviewing the audit file relating to the tax and tax period of the refund claim.
- B. Claims for refund shall be approved or denied by the Secretary or his designee in accordance with written departmental policy and procedures.
- C. Claims for refunds that have not been approved within one year of the date received or that have been denied may be appealed by taxpayer to the Board of Tax Appeals in accordance with R.S. 47:1625.

Electronic Funds Transfer payment rule amended

 Effective December 20, 1999, the Department has amended Louisiana Administrative Code 61:I.4910 to require electronic funds transfer of tax payments if a taxpayer files tax returns more frequently than monthly and during the preceding 12-month period the average total payment exceeds \$20,000 per month, or if a company files withholding tax returns and payments on behalf of other taxpayers and the average total payment for all tax returns filed during the preceding 12-month period exceeds \$20,000 per month.

Title 61

REVENUE AND TAXATION Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 49. Tax Collection

§4910. Electronic Funds Transfer

- A. Electronic Funds Transfer Requirements
1. Taxpayers whose payments in connection with the filing of any business tax return or report, including declaration payments, during the prior 12-month period average \$20,000 or more will be required to remit the respective tax or taxes electronically or by other immediately investible funds.
 2. Taxpayers that file tax returns more frequently than monthly and, during the preceding 12-month period, the average payment exceeds \$20,000 per month will be required to remit tax payments electronically or by other immediately investible funds.
 3. Companies that file withholding tax returns and payments on behalf of other taxpayers and during the preceding 12-month period, the average total payments for all tax returns filed exceed \$20,000 per month will be required to remit the respective tax or taxes electronically or by other immediately investible funds.
 4. Any taxpayer whose tax payments for a particular tax averages less than \$20,000 per payment may voluntarily remit amounts due by electronic funds transfer with the approval of the Secretary. Once a taxpayer requests to electronically transfer tax payments, he must continue to do so for a period of at least 12 months.

Rule provides for signature alternatives

X Effective December 20, 1999, the Department has amended Louisiana Administrative Code 61:1.4905 to allow a taxpayer's Personal Identification Number (PIN) to serve as an alternative to the signature requirement for individual income tax returns that are filed via the telephone, and to provide for taxpayers who file their tax return online using a personal computer, and for a software provider/transmitter to sign and maintain the signature document for three years from December 31 of the year in which the taxes were due, rather than file it with the Department. In addition, provisions for signature alternatives have been provided for the Beer Tax return filing program via the Internet and for business tax returns filed using a personal computer and a software provider/transmitter.

**Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and
Administered by the
Secretary of Revenue**

**Chapter 49. Tax Collection
§4905. Signature Alternatives;
Electronic Filings**

A. As authorized by R.S. 47:1520, the following alternate methods for signing, subscribing, or verifying tax returns, statements, or other documents filed by electronic means are allowed and shall have the same validity and consequence as the actual signature and/or written declaration.

B. Electronic Filing. The following alternatives, as determined by the Secretary, are allowed in lieu of submitting a written signature/declaration for tax returns transmitted electronically by the taxpayer or the taxpayer's agent:

1. the taxpayer's signature document maintained by the electronic filer on file and secured for a period of three years from December 31 of the year in which the taxes were due;
2. the taxpayer's signature on a trading partner agreement with the department; or,
3. an electronic signature as determined by the Secretary.

C. Telefiling

1. Individual Income Tax Returns. For

tax returns filed by the taxpayer using a touch-tone telephone to transmit return information, a Personal Identification Number (PIN) will serve as the signature alternative.

2. Sales Tax Returns. For tax returns filed by the taxpayer using a touch-tone telephone to transmit return information, a Personal Identification Number (PIN) will serve as the signature alternative.

D. On-Line Filing

1. Individual Income Tax Returns. For tax returns filed by the taxpayer using a personal computer and software provider/transmitter, the signature document must be completed and maintained by the taxpayer as an alternative to the signed tax return. The signed form and state supporting documents must be maintained by the taxpayer for three years from December 31 of the year in which the taxes were due.

2. Business Tax Returns. For tax returns filed by the taxpayer using a personal computer and software or an Internet provider/transmitter, a signature alternative as determined by the Secretary will serve in lieu of a written signature.

Rate of judicial interest determined

≥ In accordance with Louisiana Revised Statute 13:4202, the judicial interest rate beginning January 1, 2000, and ending December 31, 2000, has been set as 7.285 percent.

Under provisions of R.S. 47:1624 and 47:1576, interest on refunds made by the Department of Revenue will be paid at this rate during calendar year 2000.

Listed below are the interest rates on refunds for previous years, as well as the current year:

01/01/97 - 07/31/97	9.25%
08/01/97 - 12/31/97	7.90%
01/01/98 - 12/31/98	7.60%
01/01/99 - 12/31/99	6.73%
01/01/00 - 12/31/00	7.285%

Jury verdict (cont.)

Code 61:1.1130. The company asserted that it was entitled to an exception from the formula used by the regulation, but the jury ruled in favor of the state.

Several other legal issues were also presented during the course of the trial. Tennessee Gas challenged the interest expense regulation as exceeding the accompanying statute, R.S. 47:287.93, and asserted an equal protection challenge. Judge Curtis Calloway of the 19th Judicial District Court ruled that the regulation was consistent with the statute and denied Tennessee Gas's equal protection claim.

Lafayette woman sentenced on tax charge

¢ Yvette Archuletta, 31, of Lafayette, LA, has been given a suspended sentence of five years at hard labor after pleading no contest for failure to remit sales and withholding taxes to the State of Louisiana. Judge Glennon Everett of the Fifteenth Judicial District Court in Lafayette placed Archuletta on five years supervised probation and ordered her to pay restitution to the Louisiana Department of Revenue.

Archuletta has operated several businesses in Lafayette since 1992 and pled no contest in December 1999 to charges of willfully failing to pay sales and withholding taxes collected and owed to the State of Louisiana. Conviction under Louisiana Revised Statute 47:1641 is a felony and can carry a maximum punishment of five years imprisonment and a \$10,000 fine.

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