Louisiana
Tax Topics
Department of Revenue

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

John Neely Kennedy, Secretary

Louisiana's inheritance tax to be phased out over next seven years

Act 818 of the 1997 Regular Session of the Louisiana Legislature phases out Louisiana's inheritance tax over the next seven years. The first provisions become effective July 1, 1998. The final phase-out of the inheritance tax applies to deaths occurring after June 30, 2004.

Act 818 amends and reenacts Louisiana Revised Statutes 47:2401, 2431 and 2432(A), and enacts R.S. 47:2403(E) and 2420(D) that provide various effective dates in order to accomplish the seven-year phase-out. The amendments, reenactments, and effective dates are as follows:

Effective July 1, 1998—R.S. 47:2403(E) provides that the tax rates shall be reduced as follows:

1. For deaths occurring after June 30, 1998, and before July 1, 2001, the tax rates shall be reduced by 18 percent.
2. For deaths occurring after June 30, 2001, and before July 1, 2002, the tax rates shall be reduced by 40 percent.
3. For deaths occurring after June 30, 2002, and before July 1, 2003, the tax rates shall be reduced by 60 percent.
4. For deaths occurring after June 30, 2003, the tax rates shall be reduced by 80 percent.

R.S. 47:2420(D) provides that no penalty or interest shall apply or be assessed when a succession is opened no later than the last day of the ninth month following the death of a decedent.

Effective for deaths occurring after June 30, 2004—R.S. 47:2401(B) provides that the tax levied by 2401(A) shall not apply when a judgment of possession is rendered or when a succession is judicially opened no later than the last day of the ninth month following the death of a decedent.

Effective July 1, 2004—R.S. 47:2431 provides for the levy of an estate transfer tax upon all estates subject to federal estate taxation under the Federal Internal Revenue Code. R.S. 47:2432(A) provides that wherever there is a credit allowable under the United States Internal Revenue Code the maximum amount allowable shall be paid to Louisiana. The language limiting the estate transfer tax to the amount by which the federal state death tax credit exceeds inheritance taxes has been eliminated.

Questions may be directed to the Inheritance and Gift Taxes Section at (504) 925-7424. ■

Cost price set for refinery gas

The cost price for refinery gas for use tax purposes has been determined to be $.335 per thousand cubic feet (MCF) for the calendar year 1998.

This year's value is based on the posted price of $18.68 for West Texas Intermediate Crude on December 1, 1997, as reported in *The Wall Street Journal*. By applying the price to the formula specified in Louisiana Revised Statute 47:301(3)(f), the following value is determined: $18.68 divided by $29, multiplied by $.52, equals $.335 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 (instead of being 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 the circumstances of its use.

Questions concerning the cost price for refinery gas for state tax purposes should be directed to the Sales Tax Division at (504) 925-7356. Questions on the valuation adopted by local authorities should be addressed to the particular local authority. ■

Rate of judicial interest determined

In accordance with Louisiana Civil Code Article 2924(B)(3) as amended by Act 275 of 1997, the judicial interest rate beginning January 1, 1998, and ending December 31, 1998, has been calculated to be 7.30 percent.

Under provisions of Revised Statutes 47:1624 and 47:1576, interest payable on refunds made by the Department of Revenue will be payable at this judicial rate during 1998. ■

Department promulgates regulations

The Department recently amended three regulations in our administrative code. Due to space limitations, two amendments are summarized and one is printed in its entirety. The full text of all recently adopted regulations are available on the Department's homepage on the Internet at *www.rev.state.la.us* and on the Department's electronic bulletin board at (504) 922-2529.

Effective December 20, 1997, LAC 61:I.2901 has been amended to reflect changes to the severance tax statutes. Act 40 of the 1997 Regular Legislative session repealed the $0.06 per ton severance tax on gravel and changed the way timber is taxed.

Effective November 20, 1997, LAC 61:I.4351 has been amended pertaining to the procedures that must be used in order to request an alternate filing period method to be used to file sales tax returns.

Regulation

Effective December 20, 1997, LAC 61:I.4303.B, pertaining to the sales tax on rental or lease payments, has been amended to clarify the tax due when property is leased within Louisiana for use both within and without the state.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 43. Sales and Use Tax

§4303. Imposition of Tax

B. Tax on Lease or Rentals

1. General Rule
   a. Revised Statute 47:302(B) provides that the Louisiana lease tax shall be paid on leases "within this state" and R.S. 47:301(7) defines *lease* or *rental* as "the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter, for consideration, without transfer of the title of such property." Therefore, the Louisiana lease tax is due when a lessee possesses or uses leased tangible personal property within Louisiana, regardless of where the lessor and lessee entered into the lease contract or where the lessor transferred possession of the leased property to the lessee.
   b. *Lease* also means *rental* for the purposes of this Subsection.
   c. Lease payments on leases within Louisiana are subject to the tax rate provided in Title 47 of the Revised Statutes. The tax rate must be applied to each payment, whether made monthly or according to some other schedule.
   d. A lessor of leased property, as a *dealer* and agent for the Department of Revenue (department), shall collect the lease tax from the lessee of the leased property. The lessor must report lease payments on a cash-receipt basis as provided in R.S. 47:306(A)(2).
   e. Gross proceeds derived from the lease of tangible personal property within Louisiana are subject to the lease tax whether the leasing of tangible personal property is the established business of the taxpayer or is only incidental to the taxpayer's established business. Operating expenses and maintenance costs for keeping leased property in repair cannot be deducted from gross proceeds in arriving at the taxable base.
2. Exceptions to the General Rule
   a. Revised Statute 47:305(E)(1) provides that "nor is it the intention of this Chapter [Chapter 2 of Title 47 of the Revised Statutes] to levy a tax on bona fide interstate commerce."

      The lease tax imposed under R.S. 47:302(B) is a tax levied under Chapter 2 of Title 47 of the Revised Statutes. Therefore, the lease tax is not due on the lease of tangible personal property for those periods of time that it is used in bona fide interstate commerce, whether the use in bona fide interstate commerce is in Louisiana or outside of Louisiana.
   b. If the lessee used the leased tangible personal property both in bona fide interstate commerce (whether within or without Louisiana) and in intrastate commerce in Louisiana, the lease tax is due only on the portion of the lease payments attributable to operational usage in Louisiana in intrastate commerce. What constitutes *operational usage* shall be based on industry custom and the type of property at issue (e.g., flight time, vehicle miles). If average operational usage in Louisiana intrastate commerce is equal to or less than 10 percent of total operational usage during a lease payment billing period, the leased property shall be deemed to be used exclusively in interstate commerce and no lease tax shall be due for that period. Average operational usage in Louisiana intrastate commerce shall be determined by a ratio, the numerator of which is total Louisiana intrastate operational

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Payable-on-Death Bonds are subject to tax

U.S. Savings Bonds registered in beneficiary form (i.e. in an individual's name and payable on death to a beneficiary) are gifts made in contemplation of death and are subject to Louisiana inheritance tax.

This determination results from a ruling of the First Circuit Court of Appeal in *Gaupp v. Secretary, Department of Revenue & Taxation*, 691 So.2d 107 (La. App. 1 Cir. 1997), Writs Denied. In its decision, the Court said that Payable-on-Death (POD) United States Savings Bonds are distinguishable from United States Savings Bonds registered in an "OR" form (co-ownership form), such as "Mr. or Mrs." Co-ownership form bonds belong equally to either co-owner during their lifetime. When one co-owner dies, the surviving co-owner receives absolute ownership.

In the case of POD bonds, the court found that only the registered owner has an ownership interest during his or her lifetime. Only upon the death of the registered owner does ownership and survivorship interests pass to the beneficiary. Consequently, POD bonds are gifts made in contemplation of death and are therefore subject to Louisiana inheritance tax. ■

Sales tax related to computer software maintenance agreements

The Louisiana Supreme Court, on October 17, 1994, issued a decision in *South Central Bell Telephone Co. v. Sidney J. Barthelemy et al.* [643 So.2d 1240 (1994)]. The case involved a dispute between the City of New Orleans and South Central Bell over the sales and use taxability of computer software. The court upheld the assessments that the city made on South Central Bell's purchases of customized software used in the operation of the company's central office switching equipment. The court ruled that computer software, either "canned" or custom, constitutes taxable tangible personal property, regardless of whether transmitted on media such as diskettes, by telephone lines, or by other means. Since the sales tax ordinances of the City of New Orleans related to software taxation are nearly identical in their language to the state sales and use tax statutes, this decision of the Supreme Court applies to state sales and use taxation. Unless legislation is enacted to provide otherwise, the ruling issued in *South Central Bell* will govern state sales and use taxation in this area. Sales of custom and canned software are clearly taxable.

One aspect of the case that taxpayers continue to question is the taxability of maintenance services associated with software. The maintenance services addressed in *South Central Bell* consisted of technical support, updating, enhancing and reformatting the software, and advising Bell with respect to certain usages of the software.

The City of New Orleans had sought to tax these so-called maintenance services under the portion of the city sales tax code that levied the tax on the furnishing of repairs to tangible personal property. The court held that the services in question did not constitute repair services and were not taxable. The court held that a repair is replacing a part, putting together what is torn or broken, or restoring a thing to the condition in which it originally existed.

While some of the software-related services that are labeled "maintenance services" may not be taxable as repairs, some of the other services might otherwise be taxable. For example, an update of software that would consist of furnishing new versions of software with increased capabilities would be taxable as the sale of new software. Before deciding whether "maintenance services" are either taxable or nontaxable, an analysis of the services must be made. If a package of products and services are offered that consist of both taxable and nontaxable components, the entire package price is taxable, unless the nontaxable components can be purchased separately from those that are taxable and are separately priced.■

World Wide Web
www.rev.state.la.us

Fax Link (Fax-on-demand)
(504) 922-2984

Bulletin Board System
(504) 922-2529

Revenue's Administrative Code published

The Office of the State Register recently compiled and published the Department of Revenue's Administrative Code, Title 61, current through September 1997. The full text is available for download via their internet web site at the following:

http:/www.state.la.us/osr/lac/lac.htm.

A hard copy of the publication can be purchased for $42.50 from the Office of the State Register, P.O. Box 94095, Baton Rouge, LA 70804-9095, (504) 342-5015. ■

Partial sales tax exemption applies to certain rubber-tracked commercial farm equipment

Louisiana Revised Statute 47:305.25 provides that state sales tax with regard to the sale and use of farm equipment shall apply only to that portion of the sale price in excess of $50,000 for each item of farm equipment. For the purpose of the exemption, this includes "rubber-tired farm tractors, cane harvesters, cane loaders, cotton pickers, combines, haybalers, and attachments and sprayers." Questions have arisen as to whether this partial exemption can be applied to units of eligible property that are rubber-tracked instead of rubber-tired.

The law does not define the terms "rubber tired" or "tire" for purposes of this exemption. In previous administration of the statute, an item of rubber-tired equipment was considered as one with traditional round rubber-compound pneumatic tires that completely encircle the unit's wheels. In future administration, rubber-tracked farm tractors, cane harvesters, cane loaders, cotton pickers, combines and haybalers will be considered as the equivalent of rubber-tired units for purpose of this exemption. The partial exemption will be available only on sales of eligible items that are used for commercial agricultural purposes in the production of food and fiber. Equipment that is used for any other purpose is fully taxable.

This change in position, regarding the eligibility of rubber-tracked agricultural tractors for the partial exemption, was effective January 24, 1997. Refunds of state sales taxes paid on transactions before that date will not be issued.

This partial exemption applies only to sales and use taxes imposed by the state of Louisiana and does not apply to taxes authorized and levied by any school board, municipality or other local taxing authority.

Questions concerning this matter can be directed to the Sales Tax Division in Baton Rouge or to any of the Department's regional offices. ■

Department promulgates regulations (continued from page 2)

use, and the denominator of which is total operational use (both intrastate and interstate). If average operational usage in bona fide interstate commerce (whether within or without Louisiana) is equal to or less than 10 percent of total operational usage during a lease payment billing period, the leased property shall be deemed to be used in Louisiana intrastate commerce and lease tax shall be due on the entire lease payment for that period. Average operational usage in bona fide interstate commerce shall be determined by a ratio, the numerator of which is total bona fide interstate operational use, and the denominator of which is total operational use (both intrastate and interstate). Nothing in this Subparagraph shall be construed to prohibit the department from imposing a lease tax on leased property stored in Louisiana for use in intrastate commerce in Louisiana.

c. The lease tax is not due if the leased property is leased for use and actually used in an offshore area beyond the territorial limit of Louisiana. In order for this exclusion to apply, the leased property may not be used within Louisiana and the lessee must complete a LGST-9B Sales Tax Exemption Certificate stating that the leased property will be used in a specific offshore area. The definition of *use*, for the purposes of Paragraph 2, is found in R.S. 47:301(4)(d)(ii).

d. The department shall authorize lessees, who are registered with the department on a form to be provided by the department and who used leased property in whole or in part outside Louisiana and/or in whole or in part in bona fide interstate commerce (whether within or without Louisiana), to issue exemption certificates to the lessors of the leased property for such use. A lessor receiving such an exemption certificate shall not be required to collect the lease tax for such leases, and lessees issuing such exemption certificates shall be responsible for reporting lease payments and paying the lease tax to the department for leases in accordance with the provisions of this regulation. ■

Timber rates established for 1998

Timber values for use in determining timber severance tax for 1998 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	$49.05	$1.10
Hardwood Sawtimber	$21.89	$0.49
Pulpwood Pine	$ 9.43	$0.47
Pulpwood Hardwood	$ 5.54	$0.28
Pine Chip & saw	$33.16	$0.75

Questions regarding the severance tax on timber should be directed to the Severance Tax Division at (504) 925-7500. ■

Corporation Income and Franchise Taxes Laws and Regulations booklet available soon

The Corporation Income and Franchise Taxes Laws and Regulations booklet (Form R-6600) will be available free of charge after May 1, 1998. To order a copy, fill out the coupon below and mail or fax it to the address or telephone number listed.

Please send a copy of the *Corporation Income and Franchise Taxes Laws and Regulations* booklet (available May 1) to the following address:

Name ______________________

Company ______________________

Address ______________________

City, state, ZIP ______________________

Mail this coupon to: Corporation Income and Franchise Taxes Division
Louisiana Department of Revenue
PO Box 201
Baton Rouge, LA 70821-0201

Or FAX this coupon to: (504) 925-3853

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