Louisiana
Department
of Revenue

Volume 19
Number 2
April 1999

Tax Topics

www.rev.state.la.us.

"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."

John Neely Kennedy, Secretary

Attorneys Robert R. Rainer, David R. Cassidy and Robert L. Atkinson (*L-R*) discuss the finer points of tangible vs. intangible property at a seminar for Department employees.

Movables vs. immovables subject of employee training seminar

The Department's on-going training program recently included a seminar for employees from various Department sections involved with Louisiana general sales tax. More than 30 Department employees attended the seminar to closely study what constitutes tangible personal (movable) property.

Attorneys Robert R. Rainer of Rainer, Anding & McLindon, David R. Cassidy and Robert L. Atkinson of Breazeale, Sachse & Wilson, L.L.P., gave presentations on movable vs. immovable property. Attendees were provided with copies of the Articles of Civil Code, as well as lists of numerous court cases and their decisions.

Since Louisiana sales and use tax is a tax upon transactions that involve tangible personal (movable) property but not real (immovable) property, civil code definitions and court case history are used as guides to determine whether a transaction is taxable or not. The seminar provided Department employees involved with collecting the state's sales tax with the technical training and background information that will help them accomplish their task.

Severance tax rules amended

This past year the Severance Tax Division amended LAC 61:I.2903, the rule for oil, natural gas, and condensate. The amendments were many, but none will affect the way the tax is administered.

The rule was updated to include new language for clarity purposes, delete obsolete rules that referred to repealed statutes, delete rules that restated the statutes, and to include in the rule longstanding procedures and policies. The amendments took effect December 20, 1998.

For a copy of LAC 61:I.2903, please contact the Severance Tax Division at (225) 925-7500. Copies may also be obtained from Fax Link, the Department's fax on demand system, at (225) 922-2984, or from the internet web page of the Office of the State Register at *www.state.la.us/osr/osr.htm*.

Rate of judicial interest determined

In accordance with Louisiana Revised Statute 13:4202, the judicial interest rate beginning January 1, 1999, and ending December 31, 1999, has been set at 6.73 percent.

Under provisions of Revised Statutes 47:1624 and 47:1576, interest on refunds made by the Department of Revenue will be paid at this rate during calendar year 1999.

Sales and use taxation of medical-related property

The Louisiana sales tax law provides several exemptions for medical-related property.

- *Revised Statute 47:305(D)(1)(j)* exempts the sales and use tax on sales of drugs prescribed by physicians or dentists.
- *R.S. 47:305(D)(1)(k)* exempts the sales and use tax on sales of orthotic and prosthetic devices and wheelchairs and wheelchair lifts prescribed by physicians or licensed chiropractors for personal consumption or use.
- *R.S. 47:305(D)(1)(l)* exempts the sales and use tax on the sale or purchase of any ostomy, ileostomy, or colostomy device, or any other appliance, including catheters or any related item that is required as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste.
- *R.S. 47:305(D)(1)(m)* exempts the sales and use tax on patient aids prescribed by a physician or licensed chiropractor for home use.
- *R.S. 47:305(D)(1)(s)* exempts the sales and use tax on any and all medical devices used exclusively by the patient in the medical treatment of various diseases, or administered exclusively to the patient by a physician, nurse, or other health care professional or health care facility in the medical treatment of various diseases under the supervision of and prescribed by a licensed physician.
- *R.S. 47:305(D)(1)(t)* exempts the sales and use tax on orthotic devices, prosthetic devices, prostheses and restorative materials utilized by or prescribed by dentists in connection with health care treatment or for personal consumption or use.
- *R.S. 47:305(G)* provides that the state sales and use tax shall not apply to the purchase or rental by private individuals of machines, parts therefor, and materials and supplies that a physician has prescribed for home renal dialysis.
- *R.S. 47:305.2* provides that the state sales and use tax shall not apply to the sale at retail, the use, the consumption, the distribution, and the storage of insulin, both prescription and nonprescription, to be used or consumed in this state for personal use or consumption.
- *R.S. 47:315.3* provides that any person who has paid Louisiana sales and use taxes on the sale, lease, or rental of corporeal movable property when such sale, lease, or rental is paid by or under the provisions of Medicare, shall be entitled to reimbursement of the amount of tax paid on such property.

Although much of the property that is exempted by these statutes is readily identifiable, several of the exemptions, including the one for prescription drugs, medical devices, and patient aids for home use, are frequently the subject of questions directed to the Department. This article will provide guidelines regarding those exemptions.

Prescription drugs — R.S. 47:305(D)(1)(j)

The term "drugs" is defined by *R.S. 47:301(20)* to include "all pharmaceuticals and medical devices which are prescribed for use in the treatment of any medical disease."

All pharmaceuticals sold under physician or dentist prescriptions to consum-

Continued on next page

Direct shipments of sparkling or still wines

Act 71 of the 1998 Regular Session of the Louisiana Legislature enacted Revised Statute 26:359. The act imposes a tax on the direct sale and shipment by authorized manufacturers or retailers of sparkling or still wines to consumers within the state. This act also provides for the enforcement and collection of the tax, requires an application and tax payment before shipments can be made, and provides for penalties for unlawful shipments of sparkling or still wines to Louisiana consumers under certain circumstances.

The Department has adopted LAC 61:I.201, pertaining to direct shipments of sparkling and still wines. This regulation is scheduled for publication in the March 1999 issue of the *Louisiana Register*. A copy of this regulation may be obtained from the Excise Taxes Division at (225) 925-7652, or from the internet web page of the Office of the State Register at *www.state.la.us/osr/osr.htm*.

1999 Cost price for refinery gas

The cost price for refinery gas for use tax purposes has been set at $.20 per thousand cubic feet (MCF) for the calendar year 1999.

This year's value is based on the posted price of $11.13 for West Texas Intermediate Crude Oil on December 1, 1998, 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: $11.13 divided by $29.00, multiplied by $.52, equals $.20 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.

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.

Medical-related property (continued)

ers at retail (drug stores) are exempt under this statute. Pharmaceuticals purchased by hospitals to be dispensed to patients under physician or dentist prescriptions are likewise exempt under this provision of the law.

All medical devices prescribed by physicians for treatment of medical diseases are exempt when sold to patients. Patients must have written prescriptions to purchase the items without the payment of tax.

Prescribed patient aids for home use — R.S. 47:305(D)(1)(m)

This exemption is for sickroom supplies that are sold or furnished to a patient, under a physician's or chiropractor's prescription, and are intended for the comfort and convenience of the patient. Examples: humidifiers, oxygen equipment, mattress pads, hospital beds, suction machines and supplies, and peg feeding tubes. Property purchased by hospitals or other medical institutions, whether durable or disposable, cannot qualify for exemption as patient aids for home use.

Medical devices — R.S. 47:305(D)(1)(s)

The statute exempts the sales or use tax on any medical items provided that:

- Physicians prescribe the items. Any qualifying medical devices given to, applied to, or administered to patients by a healthcare professional are deemed to have been administered under physicians' orders.
- The items are used under the supervision of a physician or a designated healthcare professional such as a nurse, medical technician, or therapist.
- The items are used personally by patients. This means that the device will be given to, applied to, inserted into, or administered to the patient either personally by the patient or for the patient by a healthcare professional. At the very least, the device must come into contact with the patient. (Allowed: IV sets, feeding tubes – Disallowed: stethoscope, thermometer)
- The items are used exclusively by individual patients. This means that the items are discarded after one patient's use, and will not be used again. (Allowed: tubing, syringes – Disallowed: x-ray film, laboratory kits)
- The items are designed to treat a medical disease. Treatment includes diagnostic procedures necessary to facilitate treatment, and procedures necessary to maintain sanitary and hygiene standards during treatment. Treatment does not include routine procedures performed during a periodic health checkup of a patient. (Allowed: patient surgical drapes, surgical kits – Disallowed: surgeons' rubber gloves, surgeons' disposable gowns)

Lotions, salves, balms, ointments, and other preparations that are purchased in bulk and administered to patients by health care facilities for diagnostic or treatment procedures are considered consumable supplies and do not qualify for this exemption. Similarly, hand cleaner, soap, disinfectant, and other supplies used to maintain sanitary conditions do not qualify for sales tax exemption.

In many cases, medical device items are packaged by the manufacturer in sets or kits containing an assortment of items designed to provide the health care provider with all of the materials necessary for a medical procedure such as a surgical kit. For the purpose of this exemption, packaged kits and trays will be regarded as fully exempt if at least 50 percent of the value of the items contained in the kit meet the criteria set forth above and fully taxable if less than 50 percent of the value of the items meet the above criteria. Package kits that are designed for laboratory use do not qualify for exemption in any case.

Questions concerning these medical related exemptions should be directed to the Department's Sales Tax Division at (225) 925-7356.

Gift tax returns must be filed

A Louisiana gift tax return must be filed by individuals, associations, joint stock companies, partnerships and corporations, making a gift totaling more than $10,000 annually to any single donee. The return and payment is due on or before April 15 of the calendar year immediately following the year in which the gift is made. The fact that the gift is an exempt transfer under the provisions of Revised Statute 47:1204 does not relieve the donor of the obligation to file a return.

The Secretary of Revenue is authorized under R.S. 47:1208(C)(3) to grant an extension of time for the filing of gift tax returns. Upon written request, and for good cause shown, an extension may be granted for a period not to exceed six months (October 15, 1999). An extension to file a federal gift tax return for the same taxable period will be accepted as an extension for the Louisiana gift tax return. Gift tax returns may be obtained by calling (225) 925-7424, or from the Department's web site at www.rev.state.la.us., or from Fax Link, the Department's fax on demand system, at (225) 922-2984.

Carriers to file report showing alcoholic beverages handled

Revised Statute 26:369 requires all common or contract carriers doing business or making deliveries within the state of Louisiana to file monthly reports with the Department showing the number of gallons of alcoholic beverages shipped or delivered within the state. The reports must show the date of the delivery, by whom the alcoholic beverages were shipped, and to whom they were delivered. The reports must be filed on or before the 15th day of the month following the period covered by the statement. If you have any questions concerning common/contract carrier reports, contact the Excise Taxes Division at (225) 925-7652.

Tax Amnesty Program smashes records

The Department of Revenue's Tax Amnesty Program smashed records as some 5,457 taxpayers filed for amnesty during the three-month program that ended on December 31, 1998.

Under the Tax Amnesty Program, the Department collected a total of $1,138,120.51 for applications processed by February 12, 1999. Secretary John Kennedy says this total is an unaudited figure and both the number of taxpayers receiving amnesty and the total amount collected are expected to increase when processing of all amnesty applications is completed.

For those applications processed by February 12, a breakdown of collections by tax type shows that individual income led all taxes with $793,834.29 collected. Other tax amounts collected were as follows: Inheritance Tax, $143,469.48; Gift Tax, $70,305.46; Sales Tax, $76,456.56; Corporation Income and Franchise Taxes, $41,812.73; Withholding Tax, $12,183.99; and, Fiduciary Tax $58.00.

Secretary Kennedy points out that only 77 taxpayers received amnesty during the last Tax Amnesty Program offered in 1987. Under the program offered in 1985, only 382 taxpayers received amnesty. "The huge success of the Tax Amnesty Program is a major accomplishment for the Department," Secretary Kennedy says. "Under Governor Foster's leadership, the program did what it was designed to do — give those taxpayers delinquent in their taxes a second chance and a fresh start."

LDR Contact Us

WORLD WIDE WEB
WWW.REV.STATE.LA.US.

FAX LINK (FAX-ON-DEMAND)
(225) 922-2984

Important Notice!

The telephone number for the Department's new Corporation Income and Franchise Taxes Division is (225) 922-0447. This number should be used when seeking assistance with corporation income tax, corporation franchise tax, and employee income tax withholding.

Timber rates established for 1999

The Office of Forestry and the Louisiana Tax Commission have established timber values used in determining severance tax timber rates for 1999.

The values and tax rates are as follows:

Product	Value Per Ton	Tax Rate Per Ton
Pine Sawtimber	$52.66	$1.18
Hardwood Sawtimber	$25.90	$ .58
Pulpwood Pine	$10.59	$ .53
Pulpwood Hardwood	$ 6.96	$ .35
Pine Chip-n-saw	$38.82	$ .87

Any questions or requests for revised forms 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.

Voluntary Disclosure Agreement

The Department now has standardized contracts available for use by taxpayers making Voluntary Disclosure Agreements.

Voluntary Disclosure Agreements are a method whereby taxpayers can contact the Department anonymously through a third-party representative in order to settle past tax liabilities and to register with the state to pay future tax liabilities. Until recently, there was no standardized agreement format that could be used for the many different types of state taxes.

Voluntary Disclosure Agreement forms address prospective and retroactive terms, prospective filing, and give assurance to the taxpayer that the state will not assess any additional tax for the periods and type(s) of taxes agreed upon in the contract. The state also agrees to waive penalties or delinquent payment penalties that have accrued on any unreported tax liability prior to the effective date of the agreement.

Voluntary Disclosure Agreements are negotiated through the tax division responsible for the state tax at issue. The standardized Voluntary Disclosure Agreement can be obtained by contacting the appropriate tax division.

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.

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, 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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