



# Tax Topics

[www.revenue.louisiana.gov](http://www.revenue.louisiana.gov)

"The mission of the Louisiana Department of Revenue is to administer applicable laws and collect revenues to fund state services."

Cynthia Bridges  
Secretary

**Volume 25  
Number 3  
July 2005**

## **New IRS regulations on federal motor fuel excise taxes effective March 1**

(The Louisiana Municipal Review March 2005)

Recent Internal Revenue Service regulations related to federal motor fuel excise taxes due to become effective on March 1, 2005 may impact local governments, according to the National League of Cities.

The American Jobs Creation Act, enacted last year, contained provisions that would change the procedures under which state and local governments and non-profit educational organizations may claim an exemption from federal motor fuel excise taxes and apply for a refund of any taxes paid.

The changes affect only refunds for tax paid on gasoline purchased at retail outlets, but not refunds on diesel fuel. As passed, the tax on gasoline purchased in bulk would continue to be handled as it has in the past.

Under regulations recently issued by the IRS, credit card and fleet card companies that have been handling the administration of tax refunds on these types of purchases will no longer be able to do so as of March 1. As a result, local government may have to begin collecting information on their retail gasoline purchases so that they can be in position to apply directly for refunds.

The NLC is actively lobbying the IRS to extend the effective date to allow Congress adequate time to pass legislation that will specifically allow fleet card issuers to continue administering refunds. The NLC anticipates a response from the IRS soon.

Fuel Excise Tax Coalition Document  
Proposal to Resolve Problems with  
Gasoline Excise Tax

### **PROBLEMS**

- The new law opens the door for triplicate refund claims: the dealer, the oil company supplier, and the exempt agency may all file refund claims with respect to the same volume of fuel. In order to protect themselves in the event of an audit, suppliers may be forced to pass the tax through to fleets, who will then have to file their own refund claims.
- There are approx. 75,000 retailers in the U.S. that will have to register as ultimate vendors with the IRS in order to administer refund claims on behalf of the tax-exempts. Registering thousands of retailers and, in turn, processing thousands of refund claims each month would place an unreasonable administrative burden on the IRS and create

unprecedented opportunities for tax evasion and fraud.

- Retailers will not have the data required to file refund claims. They do not know at the time a customer swipes its credit card at the pump who the customer is or whether that customer is tax-exempt. In order for branded retailers to be able to file refund claims, the credit card company would have to process this information concerning credit card purchases made by tax-exempts, then the oil company would have to process this information and submit it to each retail outlet. Oil companies' accounting systems cannot handle the complexities of this type of information processing and distribution. It would be virtually impossible for credit card issuers to deliver the requisite data to each independent retailer.
- The oil company supplier cannot administer refund claims under the new rule because it will not know, and cannot control, which retailers are registered as ultimate vendors and filing refund claims, and which are not.
- Ultimately, tax-exempts will have to administer their own refund claims and wait for reimbursement of tax payments

## **Motor Fuel** (...Continued)

by the IRS. This will have a dramatic detrimental impact on the budgets of state fleets and other tax-exempts because of the delays in claims processing by the IRS.

### **SOLUTIONS**

- For credit card sales of gasoline and diesel fuel to state and local governments and non-profit educational organizations, the person extending the credit to the ultimate purchaser should be treated as the ultimate vendor. Statutory language should clarify that the person extending the credit is treated as the ultimate vendor solely for the purpose of determining who is treated as the person who paid the tax on the fuel. This will reduce the number of refund claimants and claims which, in turn, will reduce evasion opportunities and the administrative burden on the IRS. This will provide a more uniform refund procedure for taxed highway fuels.
- Allow an appropriate transition period to give parties an opportunity to make the necessary systems modifications and other administrative changes that will be required to comply with the new law.
- Tax-exempts should be given the opportunity to file their own refund claims with respect to both gasoline and diesel fuel purchases, subject to submitting appropriate supporting documentation as specified by the IRS in regulations. This would assure the credit card issuer that it has the option of passing the tax through to state agencies that use credit cards to purchase fuel. States could then apply for refunds. In addition, states and local governments would have the opportunity to seek refunds of tax paid on cash purchases of fuel.

While it is necessary to find an ultimate solution, in light of the March 1, 2005 deadline, it is vital that the IRS extend the implementation date of March 1 while work continues between the coalition and members of Congress to find an appropriate legislative solution.

---

## **Motion Picture Investor Tax Credit: Transfer Fee**

The Motion Picture Investor Tax Credit, La. Rev. Stat. 47:6007, is transferable and can be applied against all Louisiana income taxes. Act 7 of the 2004 1st Extraordinary Session of the Louisiana Legislature amended La. Rev. Stat. 47:6007. One of the amendments allows the Department of Revenue to impose a fee of up to \$200 per transferee for each transfer of the credit.

Until the Department issues a rule setting forth a transfer fee schedule no fees will be imposed on transfers of the Motion Picture Investor Tax Credit.

Access information about the Department of Revenue on the World Wide Web at  
[www.revenue.louisiana.gov](http://www.revenue.louisiana.gov)

## **Woman Suspected of Food Stamp Fraud**

An Allen Parish store operator is suspected of giving cash for food stamps and skimming money off the top of the illegal sale.

Cassandra Hayes, who operates Gus Hayes Mini Mart in Oakdale, would give customers \$10 for \$20 worth of food stamps, keeping the remainder of the money for herself, authorities said.

Hayes faces 52 counts of charges, which include filing false Louisiana income taxes, Louisiana income tax evasion, filing false sales tax returns, failure to collect and remit sales tax, theft of funds from the U.S. Department of Agriculture and unauthorized use of food stamps, Allen Parish District Attorney Doug Hebert said Wednesday.

Investigators estimate Hayes' illegal actions involved \$150,000. The investigation was a joint effort between the Allen Parish Sheriff's Office, U.S. Department of Agriculture and the state Department of Revenue.

Hayes' arraignment is set for May 2.

---

## **No Additional Deduction for Oil and Gas Depletion**

There is no Louisiana deduction for oil and gas depletion in excess of the depletion allowed in computing federal adjusted gross income. No adjustment for depletion of any kind should be made on the Louisiana Return.

A number of individual income tax returns have been received this processing season on which individuals have claimed oil and gas depletion in excess of that allowed for federal income tax purposes. This "excess depletion" has been claimed on Schedule E, and at least one tax software package was generating this deduction prior to correction by the vendor.

Individuals who took an additional deduction for depletion should file an amended return as soon as possible to avoid penalties and interest.

## Revenue Ruling:

# Sales Tax on Repairs to Movable and Immovable Property *(No. 05-001)*

The full text of the Revenue Ruling is available on the Department's Internet web page at [www.revenue.louisiana.gov](http://www.revenue.louisiana.gov) under "Laws and Policies/Policy Documents".

La. Rev. Stat. Ann. § 47:301(14)(g) defines taxable "sale of services" to include the furnishing of repairs to tangible personal, or movable property. When repair dealers furnish repairs to tangible personal property, the sales tax is levied on the full amount paid or charged for the service, which includes amounts separately invoiced for replacement parts that are added to the customers' property. In these instances, repair dealers are the sellers of the parts furnished to customers. Credit can be claimed on dealers' state sales tax returns for state advance sales taxes paid to wholesale suppliers on their acquisitions of the parts. In cases where repair dealers acquire repair parts from wholesale suppliers who have not charged the state advance sales tax, the repair dealers are not required to remit use tax on their acquisition of the parts. However, the sales taxes that the dealers collect from customers on repair service transactions must be remitted without a claim for any advance sales tax, since none was paid to wholesale suppliers.

If the repair dealer fails to collect the Louisiana state sales tax from a customer on a taxable repair of tangible personal property, the customer is required to remit the tax on the transaction directly to the department. Both the repair dealer, who has not collected the tax, and the customer, who has not paid the tax to the repair dealer, are liable for the tax until the tax is remitted to the state.

However, the state sales tax law does not levy a tax on the furnishing of repairs to immovable property. A business that furnishes repairs to immovable property is not furnishing taxable services. The business is also not engaged in the "retail sale" of tangible personal property with respect to the parts that are provided to customers in connection with repairs to

immovable property, provided that title to or ownership of the parts does not transfer to customers until the parts have been incorporated into and made components of the customers' immovable property. La. Rev. Stat. Ann. § 47:301(10)(a)(i) defines the term "retail sale" or "sale at retail", in pertinent part, as a "sale to a consumer or to any other person for any purpose other than for resale as tangible personal property ..." Because the sale of the parts from the repair dealer to the customer is not a "retail sale" in these instances, the sale of the repair parts to the repair dealer is a "retail sale" upon which the repair dealer owes a sales or use tax. Credit cannot be taken for any Louisiana state sales taxes paid to suppliers on the repair dealers' purchases of the parts.

When suppliers have not collected the Louisiana sales tax on sales of the parts to the repair dealers, the repair dealers must remit sales or use taxes directly to the department.

Repair dealers and their customers do, however, have some latitude in determining the nature of transactions that occur between them, including whether the repair parts are being sold as movable property before the materials are incorporated into immovable property, or whether the repair parts are not being sold until the parts are incorporated into and made components of the customers' immovable property, as in the scenario above. The terms under which the parts are sold must be clear to the transacting parties, and disclosed on the invoices of sale, in order for the sales or use tax to be collected, remitted, and paid according to law. The method used for the payment of sales or use taxes on each transaction must be consistent with the transacting parties' business practices associated with the transaction. (March 1, 2005)

## Sales Tax Topics Workshop

The Baton Rouge Regional Office of the Louisiana Department of Revenue will be hosting a Beginner's Workshop covering general basic sales tax topics.

### **When:**

July 15, 2005

October 14, 2005

### **Time:**

10:00 a.m. - 11:00 a.m.

### **Where:**

8549 United Plaza Blvd.  
Baton Rouge, LA

For more information, contact  
Kent LaPlace at (225) 922-2300

## Sales Tax Exemption Phase-In Changes Continue for July Return

On July 1, 2005, two changes will be made to the Louisiana state sales tax return to continue the implementation of two phased-in exclusions from the tax resulting from prior years' legislation.

The first change appears on line 21 of Schedule A on the back of the sales tax return. The deduction factor for custom computer software will increase from 75% to 100%. This change completes the four-step phase-in enacted by Act 7 of the 2002 First Special Legislative Session. As of July 1, 2005, the sale of custom computer software is fully exempt from La. state sales tax. Parish sales taxes continue to apply. For details concerning the phased-in exclusion, see Revenue Ruling 02-008 on the LDR website.

*(...Continued on page 4)*

# Can a Subpoena Be Used as a Collection Tool to Enhance Compliance from Delinquent Taxpayers?

According to the Shreveport Regional Office, subpoenas have proven to be an effective collection tool. For taxpayers that have not responded to delinquent filing notices or where bank levies were not effective, the Shreveport Regional Office relies on the subpoena. In order to reestablish a field presence, taxpayers with delinquent filing periods of a year or more are "served" by way of a hand delivered subpoena. The owner of the delinquent business is identified and given the subpoena. The subpoena is given in a private setting like the owner's office, in order to prevent embarrassment or a possible confrontation in front of the business employees.

The subpoena merely requests the taxpayer to submit the applicable records, returns and legal tender to bring the delinquent account current at an "administrative hearing." The administrative hearing is held in the Shreveport Regional Office conference room. The regional director is the hearing facilitator. Other persons present at the hearing are the tax officer responsible for the case, the collection supervisor and/or the collection manager and the taxpayer and/or his representative. The objectives of the hearing are to get a commitment from the taxpayer to pay the outstanding amount owed immediately or enter into an installment agreement. Should the taxpayer fail to comply with the subpoena, Seizure and/or Cease and Desist actions will follow.

## Phase-In Changes (...Continued)

The second change will be an increase in the deduction factor on line 22 from 5% to 19%, for the sale, purchase, lease or rental of certain manufacturing equipment. This year's change will be the second of seven annual increments in the deduction factor that will culminate in a 100% exclusion on July 1, 2010. The six-year phase-in of this exclusion was enacted under Act 1 of the 2004 First Special Legislative Session for manufacturing machinery and equipment acquired by qualifying manufacturers. The partial exclusion applies to Louisiana state sales and use tax, and also to the taxes levied by those parishes that have adopted the exclusion in their ordinances. For details concerning the exclusion, including how to qualify and apply, see Revenue Information Bulletin 04-012A on the LDR website.

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 Communications Section at the address below, or by calling (225) 219-2760.

This public document was published at a total cost of \$7,657.00. One hundred eight thousand copies of this public document were published in this first printing at a cost of \$7,657.00. The total cost of all printings of this document, including reprints, is \$7,657.00. 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.

Kathleen Babineaux Blanco  
Governor

Cynthia Bridges  
Secretary

Byron Arthur  
Press Secretary/Communications Director

Tara G. Cunningham  
Public Information Officer

### Tax assistance is available at the following offices of the Louisiana Department of Revenue.

#### Alexandria

Room B-100  
900 Murray Street  
P.O. Box 1191  
Alexandria, LA 71309-1191  
318-487-5333

#### Lafayette

Brandywine III, Suite 150  
825 Kaliste Saloom Road  
P.O. Box 81857  
Lafayette, LA 70598-1857  
337-262-5455

#### Monroe

Room 105  
122 St. John Street  
P.O. Box 1783  
Monroe, LA 71210-1783  
318-362-3151

#### Shreveport

1525 Fairfield Avenue  
P.O. Box 31706  
Shreveport, LA 71130-1706  
318-676-7505

#### Baton Rouge

Suite 200  
8549 United Plaza  
P.O. Box 80519  
Baton Rouge, LA 70898-0519  
225-922-2300  
225-219-2114 (TDD)

#### Lake Charles

Suite 1550  
One Lakeshore Drive  
P.O. Box 3702  
Lake Charles, LA 70602-3702  
337-491-2504

#### New Orleans

Suite 2100  
1555 Poydras Street  
New Orleans, LA 70112-3707  
504-568-5233

#### Thibodaux

1418 Tiger Drive  
P.O. Box 1429  
Thibodaux, LA 70302-1429  
985-447-0976