

Louisiana **Tax Topics**

Department of Revenue and Taxation



Vol. 15, No. 5
July 1995

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.

Supreme court reverses trial court and 1st circuit, holds interstate pipeline compressor fuel taxable

On April 10, 1995, the Louisiana Supreme Court ruled in Columbia Gulf Transmission Company v. Secretary of the Department of Revenue and Taxation, State of Louisiana (No. 94-C-1650) that Louisiana use tax is due on natural gas withdrawn in Louisiana from an interstate pipeline for use in powering engines at the Louisiana-based compressor stations for the pipeline.

Columbia Gulf Transmission Company (Columbia Gulf) transports natural gas from offshore Louisiana to Kentucky through underground interstate pipelines. The gas loses pressure during the journey and is recompressed at four Louisiana compressor stations. The department sought to impose a use tax on the gas that was diverted from the pipelines for consumption at the four compressor stations.

The basis for the department's imposition of the tax was Revised Statute 47:302, and similar language of R.S. 47:331, which levies a tax upon "the cost price of each item or article of tangible personal property when the same is not sold, but is used, consumed, distributed, or stored for use or consumption in this state; provided there shall be no duplication of the tax."

Columbia Gulf argued that a use tax on natural gas diverted from interstate gas and used solely to propel other interstate gas violates the Commerce Clause of the United States Constitution. Columbia Gulf also cited language of R.S. 47:305(E)(1), which states the intention of the sales and use tax law to levy a tax "on the sale at retail, the use, the

consumption, the distribution, and the storage to be used or consumed in this state, of tangible personal property after it has come to rest in this state and has become a part of the mass of property in this state." Columbia Gulf contended that the natural gas on which the tax was sought had not come to rest in Louisiana and not become a part of the company's mass of property in the state.

The Court held that the sales and use tax statute clearly intends to tax property consumed in the state. "When natural gas compressor fuel is consumed," the court stated,

"it comes to rest and becomes a part of the state's property. Fuel must necessarily come to rest as it is consumed. It ceases to exist; it is terminated; it is used in Louisiana; it cannot be taxed by another state."

The Court also held that the taxation of this fuel is not barred by the Commerce Clause of the United States Constitution. The Louisiana Supreme Court in its decision cited a 1977 decision of the United States Supreme Court in Complete Auto Transit, Inc. v. Brady [430 U.S. 274. 97

Continued on page 2

Don't get caught in the red Agencies checking for dyed diesel fuel

Don't get caught with the wrong colored diesel fuel. Red dye is added to tax exempt fuel at the refinery or terminal to make it traceable. Fuel taxed for use on roads is clear or has a yellowish tint. If an inspection of the fuel tanks on a vehicle used on the roads of this state reveals a different color, samples of the suspect fuel are sent to a laboratory for analysis. Truckers with colored diesel fuel are subject to fines.

Department of Transportation and Development (DOTD) and Internal Revenue Service officials have recently set up operations to test the fuel in the tanks of trucks traveling Louisiana highways. The Department of Revenue and Taxation is cooperating

with the IRS and DOTD in cracking down on fuel tax evaders. Those drivers caught using exempt fuel on the road will be required to pay the taxes due, and will be subject to fines of \$1000, or \$10 per gallon of improperly used fuel, whichever amount is greater. Repeat violations bring higher fines.

Since it is illegal both to use the tax-exempt fuel on the road, or to hold it or sell it for on-the-road use, the owner of a tank containing fuel to be used illegally is also subject to penalties.

The dyed-fuel inspection program is one of many joint Federal-State compliance projects currently in progress. ■

Commercial fishing exemption program

The Sales Tax Division began a program in 1992 of auditing applications submitted by commercial fishermen for sales tax exemptions eligible under Revised Statute 47:305.20 on their purchases of fishing vessels, vessel operating supplies, fuel, and repair services and parts. The audits are conducted for the purpose of determining that each applicant qualifies for the exemption under the criteria set out in the statute:

- the applicant must be both the owner and the operator of the vessel;
- the vessel must be used primarily for commercial fishing;
- the applicant must possess the licenses required for commercial fishing in Louisiana;
- the catch must be for human consumption;
- commercial fishing must be the applicant's primary source of income; and,
- since fishing is mandated to be a commercial activity in order for the exemption to be issued, the applicants must be up-to-date in the filing of their Louisiana income tax returns.

The Sales Tax Division audits approximately 1,300 applications each year in this continual project. In addition to checking the information on the applications, the department cross-references the information to the income tax returns to assure full compliance with the tax statutes of this state. Questions concerning this program or exemptions for commercial fishing should be directed to the Sales Tax Division at (504) 925-7356. ■

Joint successions of husband and wife

Occasionally, it is necessary to simultaneously file the successions of a husband and wife. In such an instance, most attorneys open a joint succession proceeding by filing joint pleadings; i.e., Joint Affidavit of Death and Heirship, Joint Petition for Pos-

Pipeline compressor fuel taxable continued

S.Ct. 1076, 51 L.Ed.2d 326 (1977)]. In *Complete Auto*, the Supreme Court had stated that a state tax statute that affects interstate commerce may survive a commerce clause challenge if the tax:

- (1) is applied to an activity having a substantial nexus within the taxing state;
- (2) is fairly apportioned;
- (3) does not discriminate against interstate commerce; and,
- (4) is fairly related to the taxing state's services.

The Louisiana Court held that Columbia Gulf's gas production has a substantial nexus with the State of Louisiana. There is no discrimination against interstate commerce, the Court held, since the tax is applied equally to intrastate and interstate pipe-

lines. The tax is fairly apportioned because it is imposed only on gas actually consumed in Louisiana compressor stations. In holding that the Louisiana tax on pipeline compressor fuel is fairly related to services provided by the state, the court mentioned Columbia Gulf's employees' uses of Louisiana's roads, schools, and fire and police protection, and the company's right to expropriate Louisiana private property.

In the sole dissent, Judge Norris stated: "The majority, with a mere wave of the hand, has effectively dismissed the 'comes to rest' requirement under our law. The decision to remove the per se ban on taxing interstate commerce and its accompanying limitations properly lies with the legislature, not this court." ■

Credit for ad valorem taxes paid on certain vessels

A credit is allowed against the corporate and personal income taxes and the corporation franchise tax for ad valorem taxes paid to political subdivisions of Louisiana on vessels in Outer Continental Shelf Lands Act waters.

The credit is sixty percent of the taxes paid between July 1, 1994 and June 30, 1995; eighty percent of the taxes paid between July 1, 1995 and June 30, 1996; and one hundred percent of the taxes paid on or after July 1, 1996. However, the taxes cannot have been paid under protest to qualify for the credit.

The following rules apply to the application of this credit:

- The credit for taxes paid by or on behalf of a corporation applies to that corporation. The credit for taxes paid by any member of an affiliated group, however, shall apply to that member or any other member of the group.
- The credit for taxes paid by an individual applies to the personal income taxes of that individual.
- The credit for taxes paid by or on behalf of an S Corporation shall apply first to the S Corporation, and any remainder of the credit is allocated to the shareholders in accordance with their respective interests.
- The credit for taxes paid by or on behalf of a partnership applies to the partners according to their distributive shares of gross income.

Any excess allowable credit over the amount applied according to the rules above is considered an overpayment and is refundable.

For more information about this credit, contact the Income and Corporation Franchise Taxes Division at (504) 925-4611. ■

Corporations' modified federal "Piggyback"

Corporation income tax statutes R.S. 47:287.2 to 287.785 were enacted in 1986, superseding the existing corporate income tax provisions, except for insurance companies. These statutes more closely aligned Louisiana corporate taxation with federal corporation income tax law.

Under the 1986 Act, gross income of a corporation is defined as the same dollar amounts and the same items as are required to be reported under federal law, subject to specific modifications. The modifications added to the federal gross income are:

1. Interest or dividend income on obligations or securities issued by the United States or any foreign government that the laws or treaties of the federal government exempt from federal income tax, but not from state income tax;
2. Interest on obligations or securities issued by other states or their political or municipal subdivisions;
3. IRC Section 633(d) gains (a federal transitional rule for certain small corporations);
4. IRC Section 1033 gains from involuntary conversions where Louisiana property was not replaced with Louisiana property; and,
5. Subpart F inclusions, where applicable, such as:
 - a. DISC and FSC income;
 - b. IRS Section 338 target company gains;
 - c. Gains on disposal of installment obligations; or,
 - d. Federal special rule for leases.

The modifications subtracted from federal gross income are:

1. Any income that Louisiana is prohibited from taxing by the laws or constitution of the United States;
2. Funds from any federal, state, or municipal government to subsidize the operation and maintenance of a public transportation system;
3. Refunds of Louisiana corporation income tax;

Update Court hands down latest rulings

In our January 1995, issue, we summarized the October 17, 1994, decision of the Louisiana Supreme Court in South Central Bell Telephone Co. v. Sidney J. Barthelemy et al. [643 So.2d 1240 (1994)] and reported that South Central Bell was seeking a rehearing of that decision. The Court has since denied the rehearing of the October 17, 1994, decision.

The Court held that computer software, either "canned" or custom, constitutes tangible personal property, regardless of the means by which the software is transmitted.

In March 1995, we reported on the decision of the Louisiana First Circuit Court of Appeal in Comdisco, Inc. v. Secretary of the Louisiana Department of Revenue and Taxation [647 So.2d 341 (1994)] concerning use tax liability on an aircraft purchased outside of Louisiana and subsequently leased to a business in Louisiana. Our article indicated that a determination was to be made by the Louisiana Supreme Court as to whether writs of certiorari were to be granted. Since publication of that article, we have learned that the Supreme Court has denied Comdisco's application for writs. The de-

4. Interest on obligations or securities issued by the state of Louisiana or its political or municipal subdivisions;
5. IRC Section 78 foreign dividends gross-up amount;
6. Dividends from banking corporations; and
7. Subpart F exclusions, where applicable, such as:
 - a. IRC Section 338 target company losses; or,
 - b. Losses on disposition of installment obligations.

The definition of allowable deductions, including the modifications, will be addressed in a later article. Any questions regarding the above information may be directed to the Income and Corporation Franchise Taxes Division at (504) 925-4611. ■

nial allows the First Circuit Court of Appeal decision to stand.

The First Circuit Court held that the lessor's importation of the aircraft into Louisiana for the purpose of leasing the aircraft to a Louisiana lessee was a use taxable act. The lessee's subsequent use of the aircraft in interstate commerce did not create an exemption for the lessor under the interstate commerce exception of Revised Statute 47:305(E). The Court further held that the Department of Revenue and Taxation has the authority under R.S. 47:1562 to estimate the date that taxable property is brought into the state, if a report or return is not filed by the taxpayer who is liable for the payment of use taxes on the imported property. ■

Exemption numbers given expiration dates

The Sales Tax Division has implemented a program by which all wholesaler (W), offshore (OS), for-hire carrier (FH), direct pay (DP), and leasing (L) numbers that exempt taxpayers from the payment of advanced sales taxes will be given an expiration date.

Any new number issued will be given an expiration date of three years from the end of the month of issue. Taxpayers will be notified six months prior to the expiration date and will be required to reapply and requalify for the exempt status. Over the next few months, taxpayers holding existing exempt numbers will be notified of their expiration date.

All exemption certificates for these numbers will be modified to include an expiration date for the exempt number after which time these certificates will be invalid. Taxpayers will be required to issue new exemption certificates to their suppliers with each renewal of their exempt status. ■

Louisiana Tax Topics 1994-1995 Index

(Vol. 14, Nos. 1-3; Vol. 15, Nos. 1-4)

Income and corporation franchise taxes

Ad valorem tax credit for offshore vessels (Act 49)	Vol 14, No. 2	Oct 94
Amending the corporate tax return	Vol 15, No. 2	Apr 95
Automated phone system to check on refunds	Vol 15, No. 2	Apr 95
Bond forfeiture - income tax refund offset (Act 52)	Vol 14, No. 2	Oct 94
Common CIFT return errors	Vol 15, No. 2	Apr 95
Contributions to educational institutions	Vol 15, No. 4	Jun 95
Education credit suspended (Act 21)	Vol 14, No. 2	Oct 94
Educational expenses related to law enforcement (Act 23)	Vol 14, No. 2	Oct 94
Employment of first time drug offenders tax credit (Act 104)	Vol 14, No. 2	Oct 94
Estimated payment schedule	Vol 15, No. 3	May 95
Inventory tax credit (Act 28)	Vol 14, No. 2	Oct 94
Inventory tax credit	Vol 15, No. 1	Mar 95
Modifications to disabled person's home (Act 11)	Vol 14, No. 2	Oct 94
Net operating loss calculation	Vol 15, No. 2	Jun 95
Public utility holding company's taxable capital (Act 40)	Vol 14, No. 2	Oct 94
Recycling equipment credit	Vol 15, No. 4	Jun 95
Special Olympics refund checkoff (Act 94)	Vol 14, No. 2	Oct 94
Telephone service corporations (Act 134)	Vol 14, No. 2	Oct 94
Treatment for alcohol and substance abuse tax credit (Act 33)	Vol 14, No. 2	Oct 94

Inheritance tax

Returns must be filed	Vol 15, No. 1	Mar 95
Tax waivers	Vol 15, No. 1	Mar 95
U.S. Treasury obligations	Vol 15, No. 1	Mar 95
Usufruct calculated on net estate	Vol 15, No. 1	Mar 95

Miscellaneous

Amending withholding income tax returns	Vol 15, No. 3	May 95
Court denies debtor's appeal	Vol 14, No. 2	Oct 94
Electronic filing collections	Vol 15, No. 2	Apr 95
Electronic filing program	Vol 14, No. 2	Oct 94
Electronic funds transfer update	Vol 14, No. 1	Oct 94
Enterprise zone and tax incentive programs	Vol 14, No. 1	Oct 94
Gift tax, valuation of a usufruct (Act 10)	Vol 14, No. 2	Oct 94
Natural gas franchise tax, third party transportation costs (Act 35)	Vol 14, No. 2	Oct 94
Rate of judicial interest determined	Vol 15, No. 1	Mar 95
Requirements for 1994 W-2 forms	Vol 14, No. 1	Oct 94
Special fuels tax, school buses using LPG or CNG (Act 7)	Vol 14, No. 2	Oct 94
Tax filing date falls on a weekend or holiday	Vol 14, No. 1	Oct 94
Tax Topics index for Vol 13, Nos. 1-4	Vol 14, No. 1	Oct 94
Tips for filing returns	Vol 14, No. 2	Oct 94

Sales tax

Automobile rental contracts (Act 43)	Vol 14, No. 2	Oct 94
Cellular telephones ("Sales Price")	Vol 14, No. 3	Jan 95
Charitable hospitals, purchases and leases (Act 6)	Vol 14, No. 2	Oct 94
Coke on catalyst (B.P. Oil court case)	Vol 15, No. 1	Mar 95
Coke on catalyst (B.P. Oil court case update)	Vol 15, No. 2	Apr 95
Comdisco court case	Vol 15, No. 1	Mar 95
Consumer use tax returns included in 94 booklets	Vol 14, No. 3	Jan 95
Court decisions (South Central Bell and B.P. Oil)	Vol 14, No. 3	Jan 95
Economic development districts (Act 12)	Vol 14, No. 2	Oct 94
Feed, seed, and fertilizer (Act 29)	Vol 14, No. 2	Oct 94
Gambling vessels	Vol 15, No. 3	May 95
Hotel room tax in New Orleans (Act 42)	Vol 14, No. 2	Oct 94
Lease of aircraft	Vol 15, No. 1	Mar 95
Leases and rentals for use offshore (Act 8)	Vol 14, No. 2	Oct 94
Louisiana Tourism Promotion District (Act 4)	Vol 14, No. 2	Oct 94
Mail-order sales (Act 18)	Vol 14, No. 2	Oct 94
Manufacturer's coupons ("Sales Price")	Vol 14, No. 3	Jan 95
Medicare purchases and leases (Act 25)	Vol 14, No. 2	Oct 94
Newspapers published by religious organizations (Act 39)	Vol 14, No. 2	Oct 94
Nonprofit organizations for the blind (Act 29)	Vol 14, No. 2	Oct 94
Nonresident contractor program	Vol 15, No. 2	Apr 95
Pesticides used for agricultural purposes	Vol 15, No. 3	May 95
Refinery gas value set	Vol 15, No. 1	Mar 95
Sales price is taxable	Vol 14, No. 3	Jan 95
Sales tax exemption on Medicare purchases	Vol 14, No. 3	Jan 95
Sales tax on lease and rental transactions	Vol 14, No. 1	Oct 94
Short term rental of automobiles	Vol 14, No. 1	Oct 94
Suspension of exemptions (Act 20)	Vol 14, No. 2	Oct 94
Taxability of fifty ton vessels	Vol 15, No. 3	May 95
Thrift shops on military installations (Act 22)	Vol 14, No. 2	Oct 94

Severance tax

Deep wells, horizontal wells, inactive wells, or new discovery wells	Vol 15, No. 4	Jun 95
Natural gas severance tax rate determined	Vol 15, No. 4	Jun 95
Natural gas tax rate change	Vol 14, No. 1	Oct 94
Tax suspended on certain wells (Act 2)	Vol 14, No. 2	Oct 94
Taxable value of oil and / or condensate	Vol 14, No. 3	Jan 95
Timber rates established	Vol 15, No. 1	Mar 95

Baton Rouge – Main Office

Central Registration	504•925•7318
Collection	504•925•7448
Excise Taxes	504•925•7656
Income & Corporation	
Franchise Taxes	504•925•4611
Inheritance & Gift Taxes	504•925•7424
Sales Tax	504•925•7356
Severance Tax	504•925•7500
Tax Forms	504•925•7532
Unclaimed Property	504•925•7407
Withholding	504•925•4611
TDD	504•925•7533

Regional Offices

Alexandria	318•487•5333
Lafayette	318•262•5455
Lake Charles	318•491•2504
Monroe	318•362•3151
New Orleans	504•568•5233
Shreveport	318•676•7505
Thibodaux	504•447•0976

Tax Topics is a monthly 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 \$4,033.00. One hundred five thousand copies of this public document were published in this first printing at a cost of \$4,033.00. The total cost of all printings of this document, including reprints, is \$4,033.00. 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.

Edwin W. Edwards
Governor

Ralph Slaughter, CPA
Secretary