

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

Tax amnesty program to be in effect from October 1 through December 31, 1998

The Tax Delinquency Amnesty Act of 1998, Act 135 (SB 121) of the First Extraordinary Session of 1998, was signed into law by Governor Foster on May 5, 1998.

The act authorizes the Department of Revenue to establish a tax amnesty program

The act prohibits the granting of amnesty to taxpayers whose tax, excluding interest and penalties, is greater than \$500 and who have been previously notified by the Department in writing of a failure to file a timely return or of an existing tax liability

for certain taxpayers that have not already been contacted by the Department for taxes due for any taxable period ending prior to July 1, 1997. Taxpayers who owe \$500 or less in taxes per tax period for any taxable period prior to July 1, 1997, and who have been previously notified by the Department in writing of a failure to file a timely return or of an exist-

This story about the tax amnesty program and the accompanying summaries of other legislation enacted in the First Extraordinary Session of the 1998 Louisiana Legislature are intended only to provide summary information and general descriptions of the provisions of the acts. They should not be construed to represent complete descriptions or specific interpretations of the laws. Copies of these acts/bills may be obtained from the Office of the Secretary of State at (504) 342-2085 or on the legislative web page at www.legis.state.la.us.

ing tax liability are also eligible for amnesty.

The amnesty program will be conducted during the period October 1, 1998, through December 31, 1998.

Under the amnesty program, Act 135 directs the Department, upon the written application of the taxpayer, to collect only the tax owed, one-half of the interest owed, and any fees. No penalty will be collected. In addition, the Department will not seek civil or criminal prosecution of the taxpayer for the taxable period for which amnesty is granted.

for the tax and tax period for which amnesty is sought. Also, taxpayers who are a party to a criminal investigation or to any civil or criminal litigation that is pending in any state or federal court for non-payment, delinquency, or fraud in relation to any state tax imposed by state law are prohibited by the act from participating in the amnesty program.

Amnesty may be granted even if a lien exists against the taxpayer's property, if the Department has initiated proceedings under the assessment and distraint statutes, or if the Department has entered into an installment agreement with the taxpayer.

Taxpayers must apply for amnesty in writing using an amnesty tax return form supplied by the Department of Revenue. The form allows taxpayers to specify the tax and taxable period for which amnesty is being sought. The forms will be available to taxpayers in September 1998. ■

"Tobacconist at large" defined

Act 84 (SB 55) of the First Extraordinary Session of 1998 defines "tobacconist at large" and authorizes them to purchase tobacco products from any manufacturer, wholesale dealer, or other supplier. The bill became effective upon the Governor's signature, May 1, 1998. ■

Governor signs Taxpayer's Bill of Rights

Act 136 (SB 122) of the First Extraordinary Session of 1998 provides for a Taxpayer's Bill of Rights.

This act spells out in nontechnical terms the rights and obligations of the Department of Revenue, as well as those of Louisiana taxpayers. The act guarantees that the rights, privacy, and property of taxpayers are protected during tax assessment, collection, and enforcement processes administered by the Department under the tax laws of the state.

The rights assured Louisiana taxpayers are as follows:

1. The right to be treated fairly, courteously, and with respect.
2. The right to have all tax forms, instructions, and information written in plain English.
3. The right to prompt and accurate answers to their questions in accordance with Department of Revenue Policy and Procedure Memorandum Administrative Number 10.14.

(continued on page 2)

Oil Spill Contingency Fee takes effect

In accordance with the provisions of Revised Statute 30:2486(B), collection of the Oil Spill Contingency Fee began March 1, 1998, after the Secretary of the Department of Revenue was notified by the State Treasurer that the Oil Spill Contingency Fund balance had fallen below \$8 million. The first returns were due by April 30, 1998, and will be due quarterly thereafter.

Act 7 of the 1991 Extraordinary Session of the Louisiana Legislature enacted R.S. 30:2451 through 2496, establishing the Oil Spill Contingency Fee. The fee is two cents per barrel of crude oil and is imposed on every person owning crude oil in a vessel at the time the crude oil is transferred to or from a vessel at a marine terminal within the State of Louisiana. The operator of the marine terminal collects the fee from the owner

of the crude oil and remits it to the Department of Revenue. The fee is collected only once on the same crude oil and is imposed on both foreign and domestic oil if transferred in Louisiana, regardless of the oil's origination or destination.

The statutes define facility as "any structure, group of structures, equipment, or device other than a vessel which is used for one of the following purposes: exploring for, drilling for, producing, storing, handling, transferring processing, or transporting oil." Marine terminal is defined as "any terminal facility within the State of Louisiana used for transferring crude oil to or from vessels." The term vessel includes "every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether

self-propelled or otherwise, including barges."

In cases where more than one marine terminal facility handles the oil, only one terminal operator is required to remit the fee to the Department of Revenue. Other marine terminal operators must obtain an affidavit from the terminal operator paying the fee, certifying that he will be remitting the fee to the Department of Revenue.

Operators of marine terminal facilities that are not already registered should immediately contact the Severance Tax Division of the Department of Revenue. Forms for reporting and certification of payment responsibility will be sent to the operator after registering for the Oil Spill Contingency Fee.

Questions should be directed to the Severance Tax Division at (504) 925-7500. ■

Governor signs Taxpayer's Bill of Rights *(continued from page 1)*

4. The right to ask for and receive assistance in complying with the tax laws, rules, and regulations of Louisiana.
5. The right to strict confidentiality of their tax records in accordance with Louisiana Revised Statute 47:1508.
6. The right to review and receive a copy of their tax records in accordance with R.S. 47:1508(B)(1) and R.S. 44:31 et seq.
7. The right to be free from harassment in audits and collection activities.
8. The right to be served by employees who are not paid or promoted based on the amount of tax dollars billed or collected.
9. The right to receive a refund, in some cases with interest, for any taxes overpaid so long as the refund claim is timely filed in accordance with Article VII, Section 16 of the Constitution of Louisiana and the laws of the state, including R.S. 47:1621(A); R.S. 47:1623; R.S. 47:2451; and R.S. 47:1580.
10. The right to be notified before their records are audited and to receive information about the estimated time, scope, and extent of the audit, unless the Department of Revenue determines that the taxpayer is likely to remove the assets from the jurisdiction of the state.
11. The right to request a meeting with the auditor to discuss the auditor's proposed assessment of tax due if they do not agree with the auditor's findings in accordance with R.S. 47:1563.
12. The right to request that any assessment of taxes due, including penalty and interest, be reviewed at the management level of the Department of Revenue in accordance with R.S. 47:1563.
13. The right to represent themselves or to authorize another person to represent or accompany them when dealing with the Department of Revenue.
14. The right to a hearing in order to dispute an assessment of taxes, interest, and penalties by timely filing an appeal with the Board of Tax Appeals in accordance with R.S. 47:1414, 1431, and 1481. A taxpayer shall not be required to pay the disputed tax, interest, and penalties in order to exercise this right.
15. The right to a formal hearing in order to contest the assessment of taxes, interest, and penalties by timely filing suit with the appropriate state district court. The assessment must be paid in full under protest in order to exercise this right in accordance with R.S. 47:1576.
16. The right to ask the Department of Revenue to consider an installment payment agreement for taxes, interest, and penalties due. If a taxpayer qualifies for an installment agreement, no further collection action will be taken as long as the taxpayer complies with the installment payment agreement.
17. The right to a prompt release of a lien upon payment of all taxes, penalty, interest, and filing fees due in accordance with R.S. 47:1578.
18. The right to have all other collection methods exhausted before the taxpayer's assets are seized, unless the Department of Revenue determines that the taxpayer is likely to remove the assets from the jurisdiction of the state.
19. The right to have a public hearing on all proposed Department of Revenue administrative regulations adopted under the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.
20. The right to complain and to be heard. ■

Sales and use taxes on cellular services and cellular hardware explained

The following is an explanation of the state sales tax that should be collected when (1) cellular telephone equipment is acquired directly from cellular service providers, and (2) when the equipment is acquired from independent retailers who are compensated by cellular service providers for arranging cellular service contracts with new customers.

Cellular telephone equipment acquired directly from cellular service providers

The state sales tax rate on the sale of intrastate telecommunication services is 3 percent. The state sales tax rate on the sale of tangible personal property, including cellular telephones, is 4 percent. This difference in sales tax rate between sale of telephone hardware and sale of intrastate telecommunication services often creates a sales tax collection question, especially for cellular telephone service providers who often combine the sale of 4 percent taxable cellular telephone hardware with the sale of 3 percent taxable intrastate cellular telephone services into "package" deals for their customers. A special method must be used by cellular telephone service providers to pay, collect, and remit the state sales and

use tax on transactions where the following conditions are present:


- The cellular telephone service provider sells or otherwise transfers ownership of the cellular telephone to a customer;
- The telephone is transferred to a customer without specific charge for the phone, or at a price below the service provider's acquisition "cost price" of the telephone; and,
- As a condition of ownership of the phone without a specific charge, or at a sales price below the cellular service provider's cost of the property, the customer must agree to subscribe to cellular services for a minimum duration of time, as specified in a contract between the cellular service provider and the customer.

When these three conditions are present, a cellular service provider will collect the 3 percent tax rate on all charges to the customer that are related either to intrastate telecommunication service, the below-market sale of the cellular phone, or both. In addition, the cellular service provider must remit a 1 percent tax on his acquisition cost of the cellular telephone equipment furnished to the customer at a below-market price. When cellular telephone service pro-

viders remit advance sales taxes to the vendors of their cellular equipment at rates greater than 1 percent, the excess can be claimed on the cellular service provider's sales tax return as an advance sales tax credit.

Equipment acquired from independent retailers

When a portion of the "sales price" of tangible personal property is paid by other than the buyer to whom the property is sold and delivered, such payment does not reduce the taxable "sales price" of the property. This principle applies to recent advertised sales of cellular telephone equipment where an independent hardware seller offers a reduced sales price to the retail buyer of the cellular hardware. Typically, the reduced price to the buyer of the telephone hardware is made possible by payment of a portion of the "sales price" of the hardware by the cellular service provider who has contracted with the retail dealer. The cellular telephone equipment seller must collect the sales tax on the entire "sales price" of cellular equipment, including the portion of the "sales price" paid by both the retail buyer and cellular service provider. The state tax rate to be collected on this transaction is the rate that is applicable to telephone hardware and other tangible personal property, 4 percent. ■




Louisiana Department of Revenue
John Neely Kennedy, Secretary

Speaker's Bureau

Experts from the Department are available to speak at your functions, free of charge. Get your tax facts straight from the official source. We can speak on topics such as:

- Unclaimed property
- Sales tax information
- Record keeping requirements
- Electronic filing
- Audits and your rights
- Small business tax information
- Legislation, policy changes and court decisions



If you would like to have one of the Department's tax experts speak at your function or need more information, call 504-925-6047.

Hearing aids prescribed by audiologists nontaxable

The exemption for medical devices under R.S. 47:305(D)(1)(s) provides: "Any and all medical devices used personally and exclusively by the patient in the medical treatment of various diseases under the supervision of and prescribed by a registered physician."

Although certified audiologists are not registered physicians, the Department has determined that the exemption applies to hearing aids prescribed by certified audiologists. The exemption should be applied only to those hearing aids and component parts prescribed by registered physicians and certified audiologists. ■

Three percent suspension of sales tax exemptions continued

Act 1 (HB 126) of the 1998 Regular Session of the Louisiana Legislature continues the three percent suspension of sales tax exemptions on many traditionally exempt items, such as electricity, water, natural gas, and food for home consumption.

This act does not affect the taxability of items that have been fully exempt, such as prescription drugs, gasoline, sales for off-shore use, and food paid for with USDA food stamps. The act also does not affect items that have been fully taxable at four percent, such as clothing, furniture, and automobiles.

Act 1 is effective for two years, July 1, 1998, through June 30, 2000. ■

Sales Tax Law and Regulations booklet now available

The Sales Tax Law and Regulations booklet (Form R-1001) is now available free of charge. 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 *Sales Tax Law and Regulations* booklet to the following:

Name _____

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Mail this coupon to: Sales Tax Division
Louisiana Department of Revenue
PO Box 201
Baton Rouge, LA 70821-0201

Or FAX this coupon to: (504) 925-3860

Severance tax rate on natural gas set

Under the authority of Revised Statute 47:633(9)(d)(i), the "gas base rate adjustment" for the 12-month period ending March 31, 1998, is 1.3340. Accordingly, the Department of Revenue has determined that effective July 1, 1998, the severance tax rate on natural gas and related products described in R.S. 47:633(9)(a) to be 9.3 cents per thousand cubic feet measured at a base pressure of 15.025 pounds per square inch absolute and at the temperature base of 60 degrees Fahrenheit. The reduced rates provided for in R.S. 47:633(9)(b) and (c) remain the same.

Revised reporting forms will be distributed as soon as they are available. Questions should be directed to the Severance Tax Division at (504) 925-7500. ■



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

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

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(504) 922-2529

Sales tax vendor's compensation rate to remain at 1.1%

The compensation rate that sales tax filers receive for the timely filing for returns and remittance of taxes will remain at 1.1 percent until July 1, 2001, under the terms of Act 50 of the First Extraordinary Legislative Session of 1998. This temporary 1.1 percent vendor's compensation rate has been in effect since 1986. The rate of vendor's compensation was to have reverted to the pre-1986 rate of 1.5 percent under the terms of the statute in effect before passage of Act 50. ■

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 (504) 925-6047.

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