

Tax Topics

www.rev.state.la.us

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

**Cynthia Bridges
Secretary**

Louisiana Tax Amnesty - A second chance

The Tax Delinquency Amnesty Act of 2001, Act 136 (HB 992) of the Regular Session of 2001, was signed into law by Governor Mike Foster on May 25, 2001. This Act authorizes the Department of Revenue to establish a tax amnesty program that applies, with several exceptions, to taxpayers with taxes due for any taxable period ending prior to July 1, 2001. The tax amnesty program is being conducted during the period September 1, 2001, through October 30, 2001. An emergency rule for the Louisiana Tax Delinquency Amnesty Act of 2001 (LAC 61:I.4912) has been adopted and may be found on the Department's web site at www.rev.state.la.us.

Under the tax amnesty program, the Department will not seek to collect any penalties or any interest that may be due, provided the taxpayer's application for amnesty has been approved by the Department and payment of the entire amount of tax and fees due are received by October 30, 2001. The Department will not seek civil or criminal prosecution

of the taxpayer for the tax period for which amnesty has been granted.

Taxpayers who are a party to a criminal investigation or to any civil or criminal litigation that is pending in any Louisiana or federal court for nonpayment, delinquency, or fraud in relation to any tax imposed by state law are prohibited by the act from participating in the Tax Amnesty Program. In addition, amnesty will not be granted for the taxable period of any tax in an ongoing or unresolved review or examination of the taxpayer's return or books and records, if the Department has notified the taxpayer in writing of the review or examination prior to the application for amnesty. Also, taxpayers who have paid under protest and filed suit pursuant to Revised Statute 47:1576 will not be eligible for amnesty.

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 procedure, or if the Department has entered into an

installment agreement with the taxpayer.

Taxpayers must apply for amnesty in writing using the Louisiana Tax Amnesty Application, Form R-20083, supplied by the Department of Revenue. The form allows taxpayers to specify the tax and taxable period for which amnesty is being sought.

Amnesty applications are available on our Internet web site at www.rev.state.la.us or may be obtained by calling the toll-free Tax Amnesty Hotline at 1-800-662-0546 between 8:00 a.m. and 4:30 p.m. Monday through Friday, or in Baton Rouge at (225) 925-7456. Applications are also available at our regional offices across the state.

This issue of the *Louisiana Tax Topics* contains summaries and articles on selected major tax laws amended or enacted during the 2001 Regular and Extraordinary sessions of the Louisiana Legislature. The summary information presented is only intended to provide a general description of the law's major provisions and should not be construed to represent a complete analysis or specific interpretation of the law.

A complete listing of tax legislation enacted in 2001 may be obtained from the Department's web page on the Internet at www.rev.state.la.us, or by contacting the Policy Services Division at the following address: P.O. Box 15409, Baton Rouge, LA 70895, FAX (225) 925-3855.

Copies of particular acts may be obtained from the Office of the Secretary of State at (225) 342-2085.

Legislative Summary

Administrative

Act 6 of the First Extraordinary Session (HB 14) amends R.S. 47:1621 to expand the authority of the secretary of the Department of Revenue to refund overpayments under certain circumstances and to re-evaluate refund overpayments denied between January 1, 2000, and March 27, 2001. Effective March 27, 2001.

Act 104 of the Regular Session (SB 674) enacts R.S. 47:1542.2, to provide that if a taxpayer maintains both machine-sensible and hard-copy formats of records in regard to a tax levied, the taxpayer shall

make the records available to the secretary of the Department of Revenue or his designee in the machine-sensible format upon request of the secretary or his designee. Effective May 24, 2001.

Act 201 of the Regular Session (SB 668) amends R.S. 47:1541 and R.S. 47:1562(B), relative to audits and assessments. The Act enacts new law R.S. 47:1541(B) and R.S. 47:1541(C) to specifically provide that the taxpayer and the secretary of the Department of Revenue or his designee may enter into a

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Legislative Summary (continued)

binding agreement to use a sampling procedure as a basis for projecting audit findings and establishing the taxpayer's tax liability. Effective May 31, 2001.

Alcohol and Tobacco Control

Act 1188 of the Regular Session (HB 1682) enacts R.S. 26:71.1(1)(g), (h), and (i) and 271.2(1)(g), (h), and (i) to provide that Class A-General retail permits must be able to accommodate a minimum of 25 patrons and contain no less than 375 square feet of public habitable floor area; amends R.S. 26:73.1 and 273(A)(7) to provide for the definition of a "donut shop"; and amends R.S. 26:280(C) and 80(C)(3) to authorize the commissioner to accept documentation as proof that certain specified people meet the necessary qualifications of applicants for alcohol permits from certain publicly traded corporations. Effective June 29, 2001.

Charitable Gaming

Act 106 of the Regular Session (SB 698) enacts R.S. 4:703(10) defining non-commercial lessor; amends R.S. 4:707(D) and enacts R.S. 4:717(B) to allow the examination of the records of certain exempt organizations to ensure that net gaming proceeds are devoted to allowable purposes; and enacts R.S. 4:719(E) to require commercial and non-commercial lessors to verify that lessees are properly licensed to conduct charitable games. Effective July 1, 2001.

Collection

Act 69 of the Regular Session (HB 985) enacts R.S. 47:1582 to authorize the Department of Revenue to collect the federal refund offset fee from the tax debtor in instances when the Internal Revenue Service (IRS) has garnished a taxpayer's federal income tax refund to pay state tax liabilities. The IRS charges a fee per refund offset and this legislation will allow the department to pass on this fee to the tax debtor. Prior to submitting the debt for offset, the Department will notify the taxpayer by certified mail, return receipt requested, and allow 60 days for the taxpayer to respond. Effective July 1, 2001.

Act 103 of the Regular Session (SB 659) amends R.S. 47:1580(C) pertaining to suspension and interruption of prescrip-

tion to provide that prescription will be interrupted for failure to file any tax return and will not begin to run again until the tax return has been filed. However, this provision does not apply if the taxpayer has entered into a voluntary disclosure agreement with the department or for use tax returns if the use tax due is \$500 or less. (Also see Act 1167.) Effective July 1, 2001.

Act 257 of the Regular Session (HB 1172) enacts R.S. 47:1508(B)(18), relative to the confidentiality of state tax records, to authorize the secretary to publish the names and addresses of taxpayers who are delinquent in the payment of any tax and the assessment has become final and collectible by distraint and sale. Disclosures may only be made after the taxpayer has been notified by registered mail. Effective August 15, 2001.

Act 763 of the Regular Session (SB 1104) enacts R.S. 47:1516.1 to authorize the secretary of the Department of Revenue to contract with private collection agencies to collect in-state tax debts. The department must notify the taxpayer that the debt is a final judgment and if the debt is not paid within 60 days of the date of the notice, a collection fee, not to exceed 25 percent of the total liability, will be charged to the taxpayer's account. Effective June 25, 2001.

Act 1167 of the Regular Session (HB 1103) amends R.S. 47:1580(A)(4) and (C), pertaining to suspension and interruption of prescription, to clarify the actions that constitute the filing of a false or fraudulent return and provide that prescription will be interrupted for failure to file any tax return and will not begin to run again until the tax return has been filed. However, this provision does not apply if the taxpayer has entered into a voluntary disclosure agreement with the department or for use tax returns if the use tax due is \$500 or less. (Also see Act 103) Effective August 15, 2001.

Income Tax

Act 203 of the Regular Session (SB 675) amends R.S. 47:116(A) and 118(A) and the introductory paragraph of (D) and R.S. 47:120.1(A), the introductory paragraph of R.S. 47:120.1(D), and R.S.

47:120.1(G)(1) to provide that every individual whose income tax liability can reasonably be expected to exceed \$200 for declarations of estimated tax for income tax years starting prior to January 1, 2001, and \$1,000 for declarations of estimated tax for income tax years starting on and after January 1, 2001, after deducting all allowable credits, shall be liable for filing of a declaration of estimated tax. A penalty is to be imposed when there is any underpayment of estimated tax by an individual. Effective May 31, 2001.

Act 269 of the Regular Session (HB 1402) amends R.S. 47:299.1, 299.2(1)(a), and 299.11(8) and enacts R.S. 47:299.11(9) to authorize any agency of the state to file offset claims with the secretary of the Department of Revenue against an individual's income tax refund and for the ranking and priority of offset claims filed by two or more agencies. It is the intent of the legislature that an agency use the remedy of offset in addition to and not as a substitute for any other remedy or action available to it for collecting debts. Effective June 1, 2001.

Act 332 of the Regular Session (SB 690) amends R.S. 17:3091 et seq. and R.S. 47:293(6)(a)(vi), and enacts R.S. 17:3092(11) and (12) and repeals R.S.

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Rule on Signature Alternatives for Electronic Filings

In July, the Department of Revenue amended Louisiana Administrative Code 61:1.4905 pertaining to tax return signature alternatives. The Department administers several electronic filing programs for the purpose of reducing the number of paper return filings. As the number of electronic filing programs continues to increase, it is the Secretary's intention to have the alternative signature requirements apply to any tax. This rule can be found on the Department's web site at www.rev.state.la.us.

Legislative Summary (continued)

17:3097, relative to the Louisiana Student Tuition Assistance and Revenue Trust Fund (START). The Act clarifies state tax laws relating to the taxation of education savings accounts deposits. For tax years beginning on and after January 1, 2001, if the owner of an education savings account deposits less than the maximum \$2,400 into an owned account, the difference between the total deposits and \$2,400 will roll over to subsequent years and will be exempt from inclusion in the account owner's taxable income for purposes of state income in addition to the \$2,400 in the year actually deposited, as provided in R.S.47:293(6)(a)(vi). Effective June 6, 2001.

Incomplete Tax Returns

The Department of Revenue receives a significant number of tax returns with incorrect or missing state tax identification numbers. This problem is especially prevalent with corporate income/franchise tax returns where more than 30 percent of the returns received fall into this category. The failure to include the proper state ID number causes processing delays, duplications, inefficiencies, and increases the possibility of errors in processing returns and/or payments.

In an effort to solve this problem, the Department is launching an initiative to inform software vendors and tax practitioners of the problem and request their assistance in correcting the situation.

Letters will soon be mailed to all software vendors, requesting that they modify their software so that the state tax identification number is a "required" field. Additional mail-outs will be sent to CPAs and tax practitioners to request that they include the proper tax identification number on all returns.

In addition to the letters, the Department will take every opportunity available to inform and educate all parties of the identification problem and stress the importance of properly completing returns and payments.

Sales Tax

Act 7 of the Regular Session (HB 1274) amends R.S. 47:306(A)(3)(a) and (B)(4) to retain the rate of vendor's compensation for sales and use tax filers at one and one-tenth percent after June 30, 2001. Effective July 1, 2001.

Act 13 of the Regular Session (HB 923) amends R.S. 47:303(B)(7) to stipulate that when a licensed motor vehicle dealer sells, assigns, or otherwise transfers an agreement for the lease of a motor vehicle to the licensed lessor of the motor vehicle for whom the agreement was made, the

transfer includes the sales tax on the lease and the licensed lessor is responsible for remitting the taxes to the appropriate taxing authority. Effective August 15, 2001.

Act 245 of the Regular Session (HB 896) amends R.S. 47:304(F) to allow dealers to absorb the sales tax charged to customers under certain conditions. In any advertisements of such intent, the dealer must state that he will remit the tax not paid by the purchaser. Also, the dealer must furnish written evidence to the customer that the tax was paid by the dealer. Effective July 1, 2001.

Rule Adopted on Penalty Waivers

In June, the Department of Revenue adopted Louisiana Administrative Code 61:III.2101. The purpose of this rule is to inform the public of the documentation required when submitting requests for waiver of delinquent filing or late payment penalty and of factors that will be considered by the Department of Revenue in evaluating waiver requests. This rule can be found on the Department's web site at www.rev.state.la.us.

Title 61

REVENUE AND TAXATION

Part III. Department of Revenue; Administrative

Provisions and Miscellaneous

Chapter 21. Interest and Penalties

§2101. Penalty Waiver

A. The secretary may waive a penalty in whole or in part for the failure to file a return on time or the failure to timely remit the full amount due when the failure is not due to the taxpayer's negligence and is considered reasonable. All penalty waiver requests must be in writing and be accompanied by supporting documentation. If the combined penalties for a tax period exceed one hundred dollars, all of the facts alleged as a basis for reasonable cause must be fully disclosed in an affidavit sworn before a notary public in the presence of two witnesses and accompanied by any supporting documentation. The affidavit must be signed

by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the sworn affidavit may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts.

B. Before a taxpayer's request for penalty waiver will be considered, the taxpayer must be current in filing all tax returns and all tax, penalties not being considered for waiver, fees and interest due for any taxes/fees administered by the Department of Revenue must be paid.

C. In determining whether or not to waive the penalty in whole or in part, the department will take in account both the facts submitted by the taxpayer and the taxpayer's previous compliance record with respect to all of the taxes/fees administered by the Department of Revenue. Prior penalty waivers will be a significant factor in assessing the taxpayer's compliance record. Each waiver request submitted by the taxpayer will be considered on an individual basis. Each tax period or audit liability will be considered separately in determining whether the penalty amount mandates approval of the waiver by the Board of Tax Appeals. The delinquent filing and delinquent payment penalties will also be considered separately in making this determination.

IFTA License Renewals

IFTA License and decal renewals are due to be filed between December 1, 2001, and February 28, 2002. An application for renewal of the International Fuel Tax Agreement (IFTA) license and decal may be denied by the Department if (1) all IFTA returns due under the current license were not filed timely by the return's due date; (2) all motor fuels use taxes, penalties, and interest due under the current license were not paid in full; or (3) the current license was revoked or canceled.

The purpose of IFTA is to promote and encourage the efficient use of the highway system by the uniform administration of motor fuels use tax laws within IFTA member jurisdictions. Every licensee is required to maintain records substantiating the information reported on the quarterly IFTA tax return. These records must be preserved for four years from the return due date or filing date, whichever is later, plus any time period included as a result of waivers or jeopardy assessments.

Operational records must also be maintained and made available for audit in the licensee's base jurisdiction. By signature, a licensee certifies, to the best of their knowledge, that all information submit-

ted to the base jurisdiction is true, accurate, and complete. Any falsification subjects the licensee to appropriate civil and/or criminal action in the IFTA base jurisdiction.

Failure to file a tax return when due, make records available upon written request, or to maintain records from which the licensee's true liability may be determined, are grounds for revocation of the license in all IFTA member jurisdictions. In the case of license revocation, the licensee's tax liability will be determined on the basis of the best information available.

A licensee's base jurisdiction may also require the licensee to post a bond for the following reasons: failure to file timely returns; failure to remit taxes; or when an audit indicates a bond is required to protect the interests of the member jurisdictions. A former licensee whose license was revoked may have the license reinstated, but the base jurisdiction may require a reinstatement fee in accordance with the existing jurisdictional laws.

For further information about IFTA provisions and license renewal procedures, contact the Excise Taxes Division at (225) 925-7656.

Revenue Ruling Garnishment of Seamen and Masters Federal Income Tax Refund

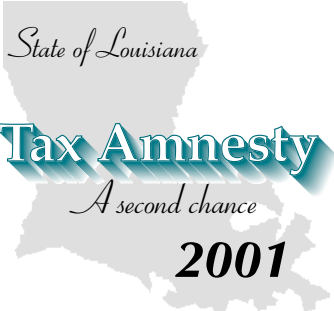
On May 16, 2001, the Department of Revenue issued Revenue Ruling No. 01-001 that addresses the authority of the Louisiana Department of Revenue to garnish the federal income tax refunds of seamen and masters domiciled in Louisiana in order to satisfy state tax liabilities.

The revenue ruling is available in its entirety on the Department's web site at www.rev.state.la.us under "Rules and Legislation."

Notice from the Legal Division Office of Legal Affairs

To ensure that the Legal Division receives your mail in a timely and proper manner, please address to:

Louisiana Department of Revenue
Legal Division, Office of Legal Affairs
P.O. Box 4064
Baton Rouge, LA 70821-4064



Visit the Department's web site at www.rev.state.la.us for more information.

Man pleads guilty in election probe

John Richard Dalme, Jr., 55, pleaded guilty on April 16, 2001, to one count of filing false public records. As part of a negotiated plea, Dalme was placed on probation and ordered to pay \$250 to the state Department of Revenue.

Dalme was accused of misrepresenting former Louisiana Elections Commissioner Jerry Fowler's involvement in a land-development scheme near Natchitoches. State prosecutors alleged that Fowler hired Dalme to run a 161-acre ranch near Natchitoches and that his \$40,000 annual salary was paid by Independent Voting Machine Services, a company owned by New Jersey businessman Pasquale Ricci. Fowler and Ricci pleaded guilty last year to charges that they participated in a kickback scheme that netted Fowler between \$1 million and \$3 million while he was in office.

Ricci put money into Bayou Ridge Ranch and Dalme told an accountant that the money came from Fowler. As a result of the misrepresentation, Fowler received a chunk of the profit when the property was sold for \$400,000 between 1996 and 1998. Dalme got \$8,100 from the sale, which he didn't report on his 1997 tax return.

A grand jury originally charged Dalme with principal to malfeasance in office and one count of conspiracy to commit money laundering. Those charges were dropped in exchange for his guilty plea.

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 Public Affairs Bureau at the address below, or by calling (225) 925-4299.

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