

tax *Topics*

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

Cynthia Bridges
Secretary

www.revenue.louisiana.gov

2005 Regular Session Legislative Summary

Multiple Taxes

Act 151 (SB 216) enacts R.S. 46:120-122 to create the Louisiana Military Family Assistance Fund and enacts R.S. 47:120.31, 297.5, and 306.2 to allow taxpayers to make income and sales tax refund check-off donations to the fund for tax years beginning on or after January 1, 2005. Money in the fund shall be used solely for need-based claims of family members of activated military personnel as authorized by the La. Military Family Assistance Board. Effective June 28, 2005.

Act 403 (HB 795) amends R.S. 47:3201-3205 and 4301-4306 to expand the Tax Equalization Program to allow existing manufacturing industries, headquarters, and warehousing and distribution establishments contemplating relocating outside of Louisiana to be eligible for tax exemption and allows contracts of exemption for which the initial five-year renewal period ended after December 2002 but before February 2003 to be renewed for up to two additional five-year periods provided that the total number of years of exemption does not exceed 20 years. The Act also expands the Industry Assistance Program to permit investments in and modernization of facilities to qualify for a tax reduction contract; removes the limitation to manufacturing establishments; permits businesses listed as Vision 2020

businesses to participate in the program; deletes prohibition that total amount of tax exemptions granted to manufacturing establishments for any fiscal year cannot exceed four percent of the corporate franchise, income, sales and use taxes collected during fiscal year preceding the fiscal year for which the exemptions are granted; and extends the maximum length of contract from 10 years to 15 years. Effective August 15, 2005.

Alcohol and Tobacco Control

Act 508 (HB 338) provides for an alternative measurement of the 300-foot limitation from a church, synagogue, public library, school, or full time day care for the sale of alcoholic beverages. The Act also requires distribution of alcoholic beverages through wholesalers with an exception for native wineries that have producer's permits. Effective July 13, 2005.

Collection

Act 295 (SB 138) amends R.S. 47:296.2(C), 296.3(C), and 1516.1(G)(2), and enacts R.S. 47:1584 to extend the innocent spouse relief to taxes other than individual income taxes. Effective for any tax, interest, penalty, or other amount remaining uncollected on June 29, 2005.

(Continued on page 2)

This issue of the Louisiana Tax Topics contains summaries of selected major tax laws amended or enacted during the 2005 Regular Session 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 the legislation enacted in 2005 may be obtained from the Department's web page on the Internet at www.revenue.louisiana.gov, or by contacting the Policy Services Division at: P.O. Box 44098, Baton Rouge, LA 70804-4098, Fax (225) 219-2776.

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



Act 452 (HB 721) amends R.S. 47:1601(A) to provide that interest shall be computed from the 15th day after the issue date of the notice. If payment is received on or before the 15th day, no refund of interest shall be issued. If payment is received after the 15th day but on or before the 30th day, no additional interest will be assessed. If payment is not received on or before the 30th day, interest will continue to accrue as provided for in R.S. 47:1601(A)(1) or (2). This reduces the issuance of small interest refunds and billings when the payment is not on the interest date. It also authorizes the Secretary to abate all or any part of interest assessed that is attributable to unreasonable errors and delays by the Department and to promulgate rules and regulations that provide a means for the compromise of the amount of interest to be added to the tax due. Any such compromises shall be open to public inspection and published in the Department's annual report. Effective August 1, 2005.

Excise Taxes

Act 252 (HB 599) moves the point of collection for tax on motor fuels to the terminal rack. Clear diesel fuel, as newly defined, will be subject to tax when the product leaves the terminal via the rack so that subsequent sales of the product should be of taxed fuel and any clear diesel ultimately used for a nontaxable purpose could be eligible for the refund of the fuel tax paid. The discounts allowed to dealers and marketers are also changed. Current law gives gasoline dealers three percent of the first 1¢ of tax; gasoline jobbers three percent of the first 4¢ of tax; and special fuel suppliers three percent of net taxable gallons. Suppliers (refiners) are allowed to keep 1.5 percent of the tax if they timely file and remit the taxes and pass on one percent of the tax to the distributors (marketers). Effective July 1, 2006.

Act 375 (HB 634) amends R.S. 47:715.1(A) to increase the special fuels tax refund for contract school bus drivers of privately-owned school buses transporting Louisiana public or private school students from one half of the tax to three fourths of the gasoline and special fuels tax. Effective July 1, 2005.

Income Tax

Act 351 (HB 130) enacts R.S. 47:287.730, relative to electing out of partnership treatment for income tax purposes to continue to allow electing partnerships to piggy-back the federal income tax treatment for state corporation income tax purposes for the electing partnerships. For federal income tax purposes, certain partnerships can elect to not be treated as partnerships. Each partner is treated as having directly earned income rather than having received income from an investment in a partnership. Electing partners will be treated as having directly earned the income for state purposes also. Effective August 15, 2005, for all taxable periods after December 31, 2004.

Act 400 (HB 627) enacts R.S. 47:6020 through 6020.4 to create the Angel Investor Tax Credit Program. Investments must be at risk and not secured or guaranteed and not raised from other incentive programs, pooled funds, organized through capital placement agreements, or the result of illegal activity. An angel investor cannot be the principal owner, spouse, or relative within the third degree of blood or marriage from the owner. The Louisiana Entrepreneurial Business must be located in Louisiana, received approval by the Department of Economic Development, demonstrate that it will have more than 50 percent of its sales from outside Louisiana, and is not a business engaged primarily in retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, or financial services including venture capital funds. Expires December 31, 2009. Effective August 15, 2005, for tax years beginning on or after January 1, 2005.

Act 401 (HB 679) amends R.S. 47:287.92(B), 287.93(A), 287.95(F)(2), 287.738(A) and 606(A)(3); enacts R.S. 47:287.94(H) and 287.738(F); and repeals R.S.47:287.71(A)(1) and (2), 287.73(C)(1), 287.95(E), and 287.750, to create the Louisiana Headquarters and Growth Act. For corporation income tax purposes, this Act provides for an exemption for interest and dividends, a single factor apportionment formula for certain businesses, and the apportionment of profits or losses from sales or exchanges not made in the regular course of business. For corporation franchise tax purposes, this Act provides for a single factor allocation of the franchise tax base for certain businesses. Businesses primarily engaged in manufacturing or merchandising will use a single sales factor for apportionment purposes for both income and franchise taxes.

Effective August 15, 2005, for income tax periods beginning after December 31, 2005, and franchise tax periods beginning after December 31, 2006.

Act 405 (SB 73) allows taxpayers to take a credit of up to \$1,000 against income or corporate franchise taxes for qualified donations made to qualified playgrounds under R.S. 47:6008 for certain tax years between 1992 and 2001, if taken on an amended return by December 31, 2008. Effective July 11, 2005.

Act 293 (SB 131) enacts R.S. 47:301(10)(y) and (18)(k) to grant an exclusion from state and local sales tax for nonprofit organizations that donate toys to children. The organizations are required to obtain exemption certificates from the Department of Revenue or the tax collector of the political subdivision. Effective July 1, 2005.

Act 301 (SB 196) amends Civil Code Article 466 to clarify and re-confirm the interpretation of this Article, including the "societal expectations" analysis that prevailed prior to the decision in *Willis-Knighton Medical Center v. Caddo Shreveport Sales* __So. 2d__, 2005 WL 737481 (La.) 2004-0473 (La. 4/1/05). This Article now provides with respect to component parts of "immovables," and no longer refers to component parts of buildings or other constructions. The Article provides that things such as plumbing, heating, cooling, electrical, or other installations are component parts of an immovable as a matter of law, and that other things are considered to be permanently attached to an immovable if they cannot be removed without substantial damage to themselves or to the immovable or if, according to prevailing notions in society, they are considered to be component parts of an immovable. Effective June 30, 2005.

Act 345 (SB 337) enacts R.S. 47:301(7)(j), 47:301(10)(y), and 47:301(18)(k) to exclude from the definitions of the terms "lease or rental," "sale at retail," and "use" manufacturing machinery and equipment that is used to manufacture, produce, or extract unblended biodiesel. The Act provides definitions of the terms "manufacturing machinery and equipment" and "unblended biodiesel." This portion of the Act is effective July 1, 2005.

The Act also enacts R.S. 47:301(10)(z) and 47:301(18)(l) to provide sales tax exclusions from the definitions of "sale at retail" and "use" for alternative substances used as fuels by certain manufacturers. Alternative substances are defined as any substance other than oil and natural gas and any product of oil or natural gas, specifically including petroleum coke, landfill gas, reclaimed or waste oil, unblended biodiesel, and tire-derived fuel, and specifically excluding coal, lignite, refinery gas, nuclear fuel, and electricity. Manufacturers who are eligible to claim these exclusions are those who are assigned by the Louisiana Department of Labor codes within the North American Industrial Classification System (NAICS) in the agricultural, forestry, fishing, or hunting sector 11 or manufacturing sectors 31 to 33, as they existed in 2002. This portion of the Act is effective July 1, 2006, and becomes null and void on June 30, 2012.

The Act also repeals R.S. 47:305.31, which provided a sales tax exemption on manufacturer-purchased "energy conservation property" during an eight-year period ending in 1989.

Sales Tax

Act 278 (SB 27) enacts R.S. 47:305.53 and R.S. 47:337.9(D)(27) to provide a state and local sales tax exemption for nonprofit organizations that were established prior to 1975 conducting comprehensive programs on sickle cell disease. The organizations are required to obtain exemption certificates from the Department of Revenue. Effective July 1, 2005.

Act 357 (HB 212) amends Section 2 of Acts 1996, No. 15 (later amended by Acts 1998, No. 47, Acts 2000, No. 33, and Acts 2003, No. 141) to extend the termination date regarding the exclusion from state and local sales tax of certain transactions involving certain private and parochial elementary and secondary schools from July 1, 2005, to July 1, 2009. These exclusions from the term "lease or rental" at R.S. 47:301(7)(f), from the term "sale at retail" at R.S. 47:301(10)(q), and from the term "use" at R.S. 47:301(18)(d), apply to books, workbooks, computers, computer software, films, videos, and audiotapes. R.S. 47:301(10)(q)(i) further provides sales tax exclusion on sales of tangible personal property by approved parochial and private elementary and secondary schools and students, administrators, teachers, or other employees of the schools, if the proceeds of the sales, less reasonable and necessary expenses, are used solely to support the school or its curricula. Effective June 30, 2005.

Act 364 (HB 304) enacts R.S. 47:301(10)(y) to provide a state sales and use tax exclusion for purchases of natural gas to be held, used, or consumed in providing natural gas storage services or operating natural gas storage facilities. Effective June 30, 2005.

Act 377 (HB 639) amends R.S. 33:4574.1(A)(1)(b) to provide that the term "hotel" shall not include camp and retreat facilities owned and operated by nonprofit organizations exempt from federal income tax under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3) of the Internal Revenue Code provided the net revenue derived from the organization's property is devoted wholly to the nonprofit organization's purposes. This change deletes the requirement that there be religious purposes involved. This Act also amends R.S. 47:301(6)(b) to provide the same, and additionally provides that the term "hotel" shall include camp and retreat facilities that sell rooms or other accommodations to transient guests who are not attending a function of the nonprofit organization that owns and operates the camp and retreat facilities or a function of another nonprofit organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3) of the Internal Revenue Code. R.S. 47:301(14)(b)(iv) is also amended to remove the requirement of religious purposes and provides the same nonprofit language as the above two sections. Effective June 30, 2005.

Act 393 (HB 832) enacts R.S. 47:301(8)(f) to provide an exclusion from state sales and use tax for purchases by nonprofit entities that sell donated goods and spend 75 percent or more of revenues on directly employing or training persons with disabilities or workplace disadvantages. Nonprofit entities must apply for an exclusion certificate annually with each exclusion certificate effective for a one-year period. Effective July 1, 2005.

Act 394 (HB 867) enacts R.S. 47:303(A)(3)(b) and 47:337.86(A)(2) to provide that an applicant for registration in Louisiana of a vehicle that has been previously registered in another state shall be given credit against the Louisiana state and local use tax for the rate of sales or use taxes paid on the vehicle in that other state. In order for the credit to be allowed, the other state must similarly allow credit against its use tax for sales or use taxes paid in Louisiana. The applicant for vehicle registration in Louisiana must be able to document the amount of the tax payment in the other state. Effective July 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:

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

Act 397 (HB 78) amends R.S. 47:305.50(B)(1) to provide a state and local sales and use tax exemption for rail rolling stock sold or leased in Louisiana. Previously, this exemption was limited to rail rolling stock manufactured in the state for use in interstate commerce. The Act also adds R.S. 47:305.50(B)(2) to provide a state and local sales tax exemption for parts or services used in the fabrication, modification, or repair of rail rolling stock. Political subdivisions are authorized to provide by ordinance that the sales or use tax exemption provided by R.S. 47:305.50(B)(2) will not apply within their jurisdictions and that their sales or use taxes will be due on parts or services used in the fabrication, modification, or repair of rail rolling stock. Effective July 1, 2005.

Act 410 (HB 90) amends R.S. 47:301(13) to provide that the term "sales price" does not include the price of specialty items sold to members for fund-raising purposes by nonprofit carnival organizations domiciled within Louisiana and participating in a parade sponsored by a carnival organization. It also amends R.S. 47:305.40, which is currently suspended, to provide that the sales and use taxes do not apply to sales of specialty items for use in connection with Mardi Gras activities by specified organizations. Effective August 15, 2005.

Act 443 (HB 655) amends R.S. 51:1787(B)(6), relative to sales tax rebates for construction in an enterprise zone, to provide up to a two-year extension for compliance with the requirements for the creation of new jobs. When the business is a nonprofit organization organized to finance the development and construction of buildings and infrastructure to serve a public institution of higher education, the new permanent jobs may be jobs created by the public institution of higher education. Applies to all contracts entered into under the provisions of R.S. 51:1787(A) after January 1, 2002. Effective July 11, 2005.

Act 457 (HB 741) amends R.S. 47:305.10(F) to eliminate the conflict with R.S. 47:305(I), which provides a sales tax exemption for labor, materials, services, and supplies used for repairing, renovating, or converting drilling rigs, or machinery and equipment that are component parts thereof and used exclusively for the exploration or development of minerals outside the territorial limits of the state in Outer Continental Shelf waters. The Act also enacts R.S. 47:301(10)(y) and 47:301(18)(k) to exclude from the terms "retail sale" or "sale at retail" and "use" the purchase, importation, storage, distribution, or exportation of, or exercise of any right or power over, textbooks and course-related software by a private postsecondary academic degree granting institution, accredited by a national or regional commission that is recognized by the United States Department of Education, is licensed by the Board of Regents, has its main location within this state, and offers only online instruction. These exclusions apply if the textbooks and course-related software are physically outside of this state when purchased from a vendor outside of this state and then imported into this state, the first student use of the textbooks and course-related software occurs outside of this state, and the textbooks and course-related software are provided to the student free of charge. Effective July 11, 2005.

Act 458 (HB 747) eliminates the special treatment of sales of other petroleum byproducts, except feedstock, for both state and local purposes. These sales are now treated as any other sale of tangible personal property. Also revises the special rule regarding the definition of "sales price" for sales of refinery gas. The "sales price" for sales of refinery gas is now the same as the "cost price" for use tax purposes. Effective July 11, 2005.

Act 471 (HB 128) amends R.S. 47:301(3)(i)(ii)(bb) to include in the definition of "manufacturer" for purposes of the sales tax exclusions for manufacturing and agricultural machinery and equipment those who would be assigned a NAICS code within Sector 11 (agricultural, forestry, fishing, and hunting) or 31-33 (manufacturing), but are not required to register with the Department of Labor for unemployment insurance and, therefore, do not receive such assignment. This allows farmers and manufacturers with no employees to be eligible for the exclusions and is in accord with the intent of Acts 2004 1st Ex. Sess., No. 1. Also enacts R.S. 47:301(3)(i)(ii)(aa)(l)(ddd) to provide that machinery and equipment used by an industrial manufacturing plant to generate electric power for self consumption or cogeneration is included in the definition of "machinery and equipment" for purposes of the sales tax exclusions for manufacturing and agricultural machinery and equipment. Effective July 12, 2005.

Severance Tax

Act 446 (HB 672) amends R.S. 47:635, 640, and 1520, relative to the severance tax on oil and gas, to extend the tax return and payment due dates; to provide for a one-time payment of the oil and gas severance tax; to repeal the electronic funds transfer requirements; and to require oil or gas severance tax reports to be filed electronically. Effective for tax periods beginning on or after October 1, 2005.

Act 492 (HB 835) amends R.S. 47:633(7)(c)(iv)(aa), regarding the tax suspension for inactive wells, to extend the time for taxpayers to apply for certification to qualify for the tax suspension from June 30, 2006, to June 30, 2010, and extend the suspension period from two to five years for any well granted inactive certification on or after January 1, 2005. Effective July 12, 2005.

Louisiana Implements Programs to Help Taxpayers

The Louisiana Department of Revenue is implementing a multi-faceted program to increase compliance with the law eliminating the state sales tax on food for home consumption.

The exemption applies to a broad class of food and beverage products regardless of package size or quantity sold, provided that the foods are for human consumption, are not prepared by the sellers, and are not sold by restaurants, drive-ins, candy and nut counters, snack bars, private clubs, or establishments who furnish facilities for the on-premises consumption of food.

The Louisiana Department of Revenue is implementing the following enforcement measures to protect the citizens of this state from being charged with state sales tax on food for home consumption.

1. A Public Information Campaign, which will include partnering with the media to disseminate as much information as possible so that customers will know which items are taxable and which ones are not. Merchants will also be receiving additional materials and seminars on sales tax.
2. Compliance reviews will be increased. We will utilize individuals as mystery shoppers to determine who is in compliance. When a store is found to be non-compliant, information will be left with the manager and a subpoena will be issued to produce its records.
3. Modification of tax audit plan. As with any issue of non-compliance that is identified, we will be devoting more audit resources to this taxpayer base in an effort to determine who is charging state sales tax incorrectly, and if such monies have been remitted to the Department.
4. Revocation of Alcohol Permits. For those who remain non-compliant, the department will revoke alcohol permits. We will work with the Alcohol and Tobacco Control Commission to deny or revoke permits to those businesses.
5. The department will also seek public assistance. We ask the public to review their receipts when they shop at a convenience store and make certain that state sales tax is not being charged on items that are considered food for home consumption.

If you are being taxed for items which should be exempt, or if more information is needed about the sales tax amendment, contact the Fraud Hotline at 1-866-FRAUD05 (1-866-372-8305) or one of the regional offices:

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.

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