

Louisiana Tax Topics

Department of Revenue and Taxation



Vol. 16, No. 4
October 1996

"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."

John Neely Kennedy, Secretary

Sales tax on exempt transactions to continue at four percent

The current four percent state sales and use tax levied on many traditionally exempt items will continue through June 30, 1997.

Act 5 of the 1996 Regular Session of the Legislature extends the three percent tax on exempt transactions that were subject to the suspension during the 1995-1996 fiscal year. The law also reenacts Revised Statute 47:321, which is a one percent tax that was removed when the Louisiana Recovery District's one percent tax was created. The reenacted one percent tax became effective upon the expiration of the Louisiana Recovery District on October 1, 1996.

The State used a \$146 million surplus from fiscal year 1995 and an additional \$74 million recognized by the Revenue Estimating Conference for fiscal year 1996 to pay off

the Recovery District debt. By paying off the Recovery District bonds, the State will save approximately \$250,000,000 over the next two years.

Transactions subject to the four percent tax rate include, but are not limited to, food for home consumption, electricity, newspapers, water, natural gas, as well as traditionally taxable items such as clothing and motor vehicles. All transactions that have been completely exempted from the tax will continue to be fully exempt. Those transactions include, but are not limited to, road use gasoline, prescription drugs, supplies and vessels purchased by commercial fishermen, purchases by state and local government agencies, and sales of goods delivered outside Louisiana.

This issue of Louisiana Tax Topics contains summaries of selected major tax laws amended or enacted during the 1996 Regular and Extraordinary Sessions of the Louisiana Legislature. 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 1996 may be obtained from the Department's electronic bulletin board at (504) 922-2529, from the Department's Page on the Internet at www.rev.state.la.us, or by contacting the Research and Technical Services Division at the following: P.O. Box 201, Baton Rouge, LA 70821-0201, FAX (504) 925-3855. Copies of particular acts may be obtained from the Office of the Secretary of State at (504) 342-2085.

1996 Legislative summary

Corporation income and franchise tax

Act 19 (SB 44) amends R.S. 47:245(F) and R.S. 47:287.95(F) to provide for double-weighting of the sales factor for certain multi-state taxpayers whose net apportionment income is derived primarily from the *business of manufacturing or merchandising* and enacts R.S. 47:606(A)(3) to provide for the use of an additional ratio based on net sales for corporations engaged in the *business of manufacturing*. *Business of*

manufacturing or merchandising and *business of manufacturing* include only taxpayers whose net apportionable income or net sales is derived from the manufacture, production, or sale of tangible personal property. With regard to income tax, *business of manufacturing or merchandising* does not include taxpayers subject to the tobacco tax or any taxpayer whose income is primarily derived from the production or sale of unrefined oil and gas. With regard to franchise tax, the term *business of manufacturing* does not include certain integrated oil com-

panies or taxpayers whose income is primarily derived from the production or sale of unrefined oil and gas or the manufacture, distribution, distillation, importation or sale of alcoholic beverages. Effective for taxable years beginning on or after January 1, 1997.

Act 39 (HB 151) of the 1996 First Extraordinary Session amends and reenacts R.S. 51:2452, 2453, 2455, 2458, 2459, 2460, and 2461 and enacts R.S. 51:2461(C) and repeals R.S. 51:2456, relative to the *Louisiana Quality Jobs Program Act*, to provide a refundable tax credit, as opposed to incen-

Continued on page 2

Summary continued

tive payments, to promote economic development, and the creation of new jobs in basic industry establishments. To qualify under the *Louisiana Quality Jobs Program Act*, an establishment must offer a basic health benefit plan to individuals employed in new direct jobs in the state, have a projected annual gross payroll for new direct jobs equal or greater than \$1 million within three years of the anticipated date that the establishment will first qualify for the credit, and meet other qualifications provided for in the act. Qualifying establishments may enter into a contract with the Department of Economic Development to receive a refundable tax credit against their Louisiana corporation and personal income taxes and corporation franchise tax. The amount of the credit is equal to the net benefit rate multiplied by the gross payroll of new direct jobs and is applicable to the tax periods provided for in the contract. The Department of Economic Development establishes the net benefit rate based on a cost benefit analysis. The tax credit allowed to partnerships, limited liability companies, or "S" corporations is allocated to the shareholders or partners. Effective May 7, 1996

Act 42 (HB 176) of the 1996 First Extraordinary Session enacts R.S. 51:2771 to provide a tax credit against corporation franchise tax for capital cost invested in qualifying projects by certain companies. The credit in each year is limited to the increase in the franchise tax liability that results from the qualifying project. The amount of credit is five percent of the capital cost of a qualifying project each year for a period of 20 years. The credit cannot exceed 100 percent of the capital cost of a qualifying project. The credit is also contingent on the creation of a minimum number of new jobs at base wages as provided for in the legislation. Capital cost is defined as the costs incurred in connection with the acquisition, construction, installation, and equipping of a qualifying project.

To qualify, a project, sponsored or undertaken by one or more investing companies, must meet any one of the following:

- Capital costs not less than \$20 million with industrial, warehousing, or research

activity as the predominant trade or business activity.

- A small business addition with capital costs not less than \$1 million, with industrial, warehousing, or research activity as the predominant trade or business activity.

- A headquarters facility with capital costs not less than \$20 million.

Each investing company, or its shareholders, partners, members, owners, or beneficiaries, are entitled to the capital credit for each tax year.

A company receiving a tax credit under this legislation is not entitled to the tax exemption provided for in R.S. 47:3202 through 3205. Effective for July 1, 1996, and null and void after June 30, 1998. However, a credit received prior to that date shall remain effective for the remainder of the 20-year period.

Act 42 (HB 230) amends and reenacts R.S. 47:287.733 to piggyback federal law with respect to the recognition of certain gains between members of a consolidated group. The prior law recognized gain to the distributing corporation in the taxable year assets were transferred by such corporation to an affiliated corporation in a consolidated group. This legislation defers recognition of such gain to the distributing corporation until such time conditions necessary for recognition of the gain for federal purposes are met. If the distributing corporation is merged with another corporation, reorganized, or ceases to be liable for corporation income tax for any reason, the deferred gain will be restored to income and taxed. Effective for taxable periods beginning after December 31, 1996.

Individual and corporation income tax

Senate Concurrent Resolution 32 clarifies that the legislature, in enacting R.S. 47:1580(B)(2) and (3) and R.S. 47:1623(E)(1) and (2), intended for prescription of income tax to be suspended solely for the purpose of incorporating federal changes that result from audits by the Internal Revenue Service. This Resolution

is not intended to affect pending litigation and therefore only has prospective application.

Sales tax

Act 7 (HB 97) amends R.S. 47:301(10)(a)(iii) and (iv), and R.S. 47:301(18)(a)(iii)(iv) to provide an exclusion from the local sales tax on the purchase of automobiles for rental. This legislation also amends R.S. 47:551(A) and enacts R.S. 47:551(D) to provide for a state tax of 2.5 percent on certain automobile rentals of 29 days or less and to impose a local tax of .5 percent on those rentals. This one-half percent local tax is to be collected by the Department, as an agent of the local taxing authorities, and distributed monthly to the central local sales and use tax collectors. This automobile rental excise tax is continued through June 30, 2000. Effective July 1, 1996.

Act 8 (HB 113) enacts a new exemption under R.S. 47:305.50 (to be renumbered) to allow the tax-free purchase of trucks, road trucks, tandem trucks, tractors, and truck-trailers with a gross weight of 26 thousand pounds or more and trailers and semitrailers as defined in R.S. 47:451 that are used at least 80 percent of the time in interstate commerce. This exemption applies to both state and local sales and use tax and is sheltered from the suspension of exemptions under Act 5 of the 1996 Regular Session. Effective July 1, 1996 and null and void on July 1, 1998.

Act 15 (SB 30) enacts new exclusions under R.S. 47:301(7)(f), the definition of *lease or rental*, R.S. 47:301(10)(q), the definition of *retail sale*, and R.S. 47:301(18)(d) (to be renumbered), the definition of *use*, to exclude from the sales tax the lease or rental and the purchases of educational materials or equipment used for classroom instruction by approved parochial and private elementary and secondary schools. To qualify for the exclusion, the schools must comply with the court order from the Dodd Brumfield decision and Section 501(c)(3) of the Internal Revenue Code. Educational materials and equipment are limited to books, workbooks, computers, computer software, films, videos, and audio tapes. The act also in-

Summary continued

cludes an exclusion for the purchase and ultimate sale of tangible personal property by these schools if the money from such sales is used solely and exclusively to support the school or its program or curricula. Effective July 1, 1997.

Act 28 (HB 104) enacts an exclusion under R.S. 47:301(8)(d), the definition of *person*, to allow for the purchases of bibles, song books, or literature used for religious classes by churches or synagogues recognized by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code. The Department is required to adopt a regulation for this statute. The church or synagogue must obtain an exemption certificate from the Department prior to authorizing any exempt purchase. Effective July 1, 1996.

Act 29 (HB 116) amends R.S. 47:305(D)(1)(h) to remove the valuation for refinery gas, when used by the producer or manufacturer, from that statute and place the valuation formula under R.S. 47:301(3)(f). This bill also enacts R.S. 47:301(13)(d) to provide that the taxable selling price for refinery gas, when not used but sold by the refinery shall be either the average monthly spot market price of one thousand cubic feet (MCF) of natural gas delivered into pipelines in Louisiana as reported by the Natural Gas Clearing House and as determined by the Department for natural gas severance tax purposes or the price for which the property is actually sold, whichever is greater.

Act 29 also enacts R.S. 47:301(18)(d) (to be renumbered) to provide an exclusion from the state and local sales and use tax for tangible personal property created or derived as a residue or by-product from the processing of raw materials for resale. This residue or by-product includes such items as catalyst cracker coke derived from crude oil, wood chips, bark and liquor derived from the processing of sawlogs or pulpwood timber, or bagasse derived from the processing of sugarcane. Effective July 1, 1996 until June 30, 1998.

Act 32 (HB 36) of the 1996 First Extraordinary Session amends R.S. 47:306(A)(3)(a)(i) and (ii), and R.S. 47:306(B)(4)(a) and (b) to provide that the vendor's

compensation allowed to dealers for the timely filing and remittance shall continue at the rate of 1.1 percent of the amount of tax due and timely paid until June 30, 1998. This legislation also provides that a percentage of the deduction allowed as vendor's compensation shall be deposited in and credited to the Workforce Development and Training Fund. Effective May 7, 1996.

Act 33 (HB 160) enacts new exclusions under R.S. 47:301(3)(f), the definition of *cost price*, and R.S. 47:301(13)(d), the definition of *retail sale*, to allow a sales tax exclusion for any amount that a manufacturer pays directly to a dealer of the manufacturer's product for the purpose of reducing the sales price of that product, and that actually results in an equivalent reduction in the sales price of that product. This does not include coupons that dealers accept from the purchaser as part payment of the *sales price* of the manufacturer's product. This exclusion applies to tobacco buydowns or similar buydowns by manufacturers in other industries. Effective July 2, 1996.

Act 36 (HB 191) enacts a new exemption under R.S. 47:305.50 (to be renumbered) to exempt rail rolling stock manufactured in this state for use in interstate commerce from state and local sales and use tax. This exemption is sheltered from the suspension of exemptions under Act 5 of the 1996 Regular Legislative Session. Effective July 1, 1996 and null and void on July 1, 1998.

Transactions taxable at 1% fully exempt as of October 1

Many transactions on which the state sales and use tax has been levied at a reduced one percent rate for the last several years became fully exempt as of October 1, 1996. Revisions to reflect these transaction changes have been made to the state sales tax return, beginning with the return form that will be used for filing the October, 1996 sales tax return that must be filed by November 20, 1996.

The rate changes were brought about by the retirement of the remaining outstanding bonds of the Louisiana Recovery District, the expiration of the one percent sales and use tax levied by the Recovery District, and the replacement of the Recovery District's one percent tax by a new one percent tax. The new one percent tax is levied by Revised Statute 47:321, as enacted by Act No. 5 of the 1996 Regular Session of the Louisiana Legislature, and becomes effective immediately upon the expiration of the Recovery District tax levy.

Several exemptions and exclusions enacted by the Legislature since 1988 that have applied to other state sales taxes, have not been applicable to the one percent Recovery District levy. Therefore, numerous transactions have been subject to a one percent tax because of this provision. However, Act 5 provides that the new one percent tax levied by R.S. 47:321 will be subject to the same definitions, exemptions, and tax credits that apply to other portions of the state sales tax law.

Among the transactions that will no longer be subject to the one percent tax are the following:

- *Manufacturers rebates given on new vehicles, R.S. 47:301(3)(e).
- *Purchases of tangible personal property to be leased or rented, R.S. 47:301(10)(a)(3).
- *Purchases of certain equipment used to control industrial pollution, R.S. 47:301(10)(l).
- *First \$50,000 of the sales price of new farm equipment used in poultry production, R.S. 47:301(13)(c).
- *Sale of nonmonetized bullion having a total value of \$1,000 or more, R.S. 47:301(16)(a)(ii).
- *Wheelchair lifts prescribed by a physician, R.S. 47:305(D)(1)(k).
- *Sales taxes paid on leases and sales of property paid for by Medicare, R.S. 47:315.3.
- *Rail rolling stock manufactured in this state for use in interstate commerce, R.S. 47:305.50.

Other transactions that will become fully exempt from the state sales tax as of October 1, 1996, will include rentals of property to be used in the performance of contracts

Continued on page 4

Transactions continued

with the U.S. Navy, R.S. 47:301(7)(c); purchases by independent school bus operators of certain buses for public school transit, R.S. 47:301(10)(i); purchases of property, other than food, by food banks, R.S. 47:301(10)(j); purchases of "pelletized paper waste" for certain specified uses, R.S. 47:301(10)(r); purchases of tangible personal property, services, leases, and rentals by hospitals that provide free care to all patients, R.S. 47:301(10)(p); sale of services pursuant to a contract for the construction or overhaul of a U.S. Navy vessel, R.S. 47:301(14)(h); sales by thrift shops located on military installations, R.S. 47:305.14; sales of newspapers by certain religious organizations, R.S. 47:305.14; sales and purchases by certain organizations that provide training for blind persons, R.S. 47:305.15; certain purchases for the operation and maintenance of qualifying seafood processing plants, R.S. 47:305.20; purchases made by qualifying motion picture production companies, R.S. 47:1121-1128; purchases by off-track betting facilities, R.S. 4:227; purchases of trucks of 26,000 pounds or more, and associated trailers and semi-trailers to be used 80% of the time in interstate commerce, R.S. 47:305.50; purchases, leases and rentals by Boys State of Louisiana, Inc. and Girls State of Louisiana, Inc. R.S. 47:301(7)(f), 47:301(10)(q), and 47:301(18)(d); and tangible personal property created or derived as a residue or byproduct from the processing of raw materials for resale, R.S. 47:301(18)(d).

Any questions about these changes should be directed to the Department's Sales Tax Division in Baton Rouge at (504) 925-7356 or to any regional office.

No dyed fuel on the highway

Effective August 1, 1996, new regulations governing special fuels took effect to provide for the use of dyed special fuels and for penalties associated with the improper on-road use of dyed fuel.

Under the regulations, it is unlawful to operate a registered motor vehicle, or a vehicle

that is required to be registered for highway use, with undyed special fuel that has not been taxed, or with special fuel that contains any evidence of a dye or chemical marker. Violators are subject to a penalty of \$10 for every gallon of fuel involved, or \$1,000, whichever is greater. The penalty is increased with subsequent violations by multiplying the penalty by the number of violations. These penalties are patterned after Internal Revenue Service penalties for fuel tax evasion and are levied in addition to IRS penalties.

The new regulations have been added to Chapter 33 of Title 61 of the Louisiana Administrative Code to reflect amendments by Act 603 of the 1995 Regular Session of the Legislature to Revised Statute 47:803, 812, and 814 and the enactment of R.S. 47:802.1.

R.S. 47:802.1 authorizes a mechanism for obtaining a credit or refund for taxes paid on undyed fuel purchased for nontaxable use when, and only when, dyed fuel is not available. An application and certificate of credit or refund must be approved by the Department prior to the transaction.

For information or copies of the new regulations, or for copies of the application for a credit or refund, contact the Excise Taxes Division at (504) 925-7656.

"Cost price" and "sales price" set for refinery gas

Act 29 of the 1996 Regular Session of the Legislature established a "cost price" for refinery gas for use tax purposes.

The act affects R.S. 47:301(3)(f) that defines "cost price" as including a formula to calculate the price of refinery gas when used by the producer. The act also affects R.S. 47:301(13)(d), which defines the "sales price" of refinery gas, when sold by the producer, as the average of the monthly spot market price per thousand cubic feet of natural gas delivered into pipelines in Louisiana as reported by the Natural Gas Clearinghouse and as determined by the

Department of Revenue and Taxation for natural gas severance tax purposes at the time of such sale, or the price for which such property is actually sold, whichever is greater.

The formula used to calculate the "cost price" is the same as in the past. Fifty-two cents per MCF is multiplied by a fraction, the numerator of which is the posted price of West Texas Intermediate Crude Oil as of December 1 of the preceding year and the denominator of which is \$29. This amount will be the maximum value placed on refinery gas by the State or any political subdivision when such gas is used or consumed by the producer.

The published price of West Texas Intermediate Crude Oil in *The Wall Street Journal* on December 1, 1995 was \$18.43. By applying this price to the statutory formula, the following value is determined: \$18.43 divided by \$29, multiplied by \$.52, equals \$.33 per MCF.

This price is effective for periods beginning July 2, 1996, and will not affect the valuation of "refinery gas" prior to this date.

Questions concerning the "cost price" for refinery gas should be directed to the Sales Tax Division at (504) 925-7356.

Tax Topics is a quarterly 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 \$6,876. One hundred eight thousand copies of this public document were published in this first printing at a cost of \$6,876. The total cost of all printings of this document, including reprints, is \$6,876. 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.

M. J. "Mike" Foster, Jr. <i>Governor</i>	John Neely Kennedy <i>Secretary</i>
Danny Brown <i>Communications Director</i>	Paulita Chartier <i>Communications Specialist</i>
Joy Lonibos <i>Graphic Designer</i>	Denée Deloach <i>Student Graphic Designer</i>

Contributors

Sam Losavio	Gary Riles
Mike Pearson	Barbara Roe
Donald Preuett	Raymond Tangney