



Tax Topics

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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

1998 Regular Legislative Session Legislative Summary

Collection

Act 31 (SB 78) amends R.S. 47:1561.1 to extend personal liability to managers of limited liability companies and members of limited partnerships for the failure to file returns or to remit taxes withheld or collected and not accounted for or remitted. Effective June 24, 1998.

Excise Taxes

Act 64 (HB 286) amends R.S. 47:820.2(B) and (D) and 820.4 relative to the Transportation Infrastructure Model for Economic Development program. Included in this act were increases to the expenditure amounts on certain projects and the extension of the time for imposing the four cents per gallon tax on gasoline, motor fuels, and special fuels. Effective August 15, 1998.

Act 71 (HB 254) repealed R.S. 14:93.20 created by Act 728 of 1997 Regular Legislative session; amended R.S. 26:326, 341, 344, and 359; and enacted R.S. 26:341(B). Provisions require

out-of-state manufacturers and retailers to obtain authorization and pay an annual tax prior to selling or shipping sparkling or still wine into Louisiana. The act also provides circumstances under which sales and shipments may be made directly to a Louisiana consumer. All applicable sales and excise taxes on the products shipped into Louisiana are required to be paid by the manufacturers or retailers. Violators of this statute shall be fined \$25,000. Effective June 25, 1998.

Income and Corporation Franchise Taxes

Act 2 (HB 43) enacts R.S. 47:287.95(J), relative to the corporation income tax wage ratio used to determine the apportionment percentage, to address "common paymaster" situations among members of affiliated groups. A member of an affiliated group that serves as a "common paymaster" must eliminate from its wage ratio all payrolls that were paid on behalf of an affiliate, charged to

This issue of *Louisiana Tax Topics* contains summaries of selected major tax laws amended or enacted during the 1998 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 tax legislation enacted in 1998 may be obtained from the Department's electronic bulletin board at (225) 922-2984, 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. Copies of particular acts may be obtained from the Office of the Secretary of State at (225) 342-2085.

the affiliate, and, which do not represent salary, wages, or other compensation of the common paymaster. In turn, these amounts must be included in the affiliated corporation's numerator and denominator of its salary, wages, and other compensation apportionment ratio. Effective for taxable periods beginning after December 31, 1998.

Act 5 (HB 109) enacts R.S. 47:606(F), relative to corporation franchise tax, to provide that when a corporation merges, the property and the net sales and other revenues of the merging corporation must be included in the general allocation formula factors of the surviving corporation. Effective for taxable periods beginning after December 31, 1999.

Act 20 (HB 200) enacts R.S. 47:297(L), to provide for an individual income tax credit for the purchase of a bulletproof

Tax Amnesty Program

October 1, 1998 through December 31, 1998

Amnesty Hotline - 1-800-662-0546

For Amnesty application forms, write to:

Louisiana Department of Revenue
P.O. Box 144

Baton Rouge, LA 70821-0144

or visit our website at www.rev.state.la.us

or call our Fax Link (Fax-on-demand) at (225) 922-2984

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vest by qualified law enforcement officers and certain employees of the Department of Public Safety and Corrections. The credit allowed is for the price paid by the individual or \$100, whichever is less. Effective for taxable periods beginning after December 31, 1997.

Act 26 (SB 54) amends R.S. 47:287.95(C) and enacts R.S. 47:601.1, relative to corporate income and franchise taxes for certain transportation companies, to provide a minimal nexus standard for certain trucking companies before their income is apportioned to Louisiana for income tax purposes or the corporation franchise tax is imposed. The act provides that a trucking company is not required to apportion its income and pay income or franchise tax if the company's Louisiana income is derived solely from the business of transportation by truck and during the course of the income tax year it does not own or rent any real or personal property in the state, except mobile property; makes no pickups or deliveries within the state; and makes no more than 12 trips into the state. "Trucking company" is defined as a motor common carrier, or an express carrier that primarily transports the tangible personal property of others by motor vehicle for compensation. Effective June 24, 1998.

Act 30 (SB 76) enacts R.S. 47:6012 to establish a credit for income and corporation franchise taxes for donations of materials, equipment, advisors, or instructors made to training providers, vocational/technical schools, apprenticeship programs registered with the Louisiana Department of Labor, or community colleges within the state. The credit is for one-half the value of the materials, equipment, or services donated by the advisor or instructor and is to be taken in the taxable period in which the donation was made. The tax credit, when combined with all other applicable tax credits, shall not exceed 20 percent of the employer's tax liability for any taxable year. If the entire credit cannot be used in the year earned, the remainder may be applied against the income or corporation franchise tax liability for the succeeding two tax years or until the entire credit is used, whichever occurs first. Effective June 24, 1998.

Act 36 (SB 112) amends R.S. 51:2461(B), pertaining to the Louisiana Quality Jobs Program, to extend the date allowed to approve new applications from January 1, 1999, to January 1, 2001; and R.S. 51:2771(K), pertaining to the Louisiana Capital Investment Tax Credit, to extend the termination date from June 30, 1998, to June 30, 2000. Effective June 29, 1998.

Act 42 (HB 56) amends R.S. 47:287.11(A) to provide that any entity taxed as a corporation for federal income tax purposes will also be taxed as a corporation for state income tax purposes. Effective for taxable periods beginning after December 31, 1997.

Act 51 (HB 129) enacts R.S. 47:6012 to provide for a tax credit against corporation income and franchise taxes for qualified donations made to public elementary or secondary schools. The credit allowed is for 40 percent of the appraised value of the donation and not to exceed the taxpayer's total tax liability for the year. "Qualified donation" means a donation of immovable property purchased or otherwise acquired by a corporation and donated to a public school immediately adjacent or contiguous to the property. Effective July 1, 1998.

Act 53 (HB 169) amends R.S. 47:33(A) to allow resident individuals a credit against their personal income taxes for income taxes imposed by and paid to another state on income derived from property located in the other state if the other state also provides a similar credit to its resident individuals for Louisiana income taxes paid on income derived from property located in Louisiana. The


credit is allowed for the taxable year that the taxes were paid to the other state or in the succeeding taxable year. Effective August 15, 1998 through July 1, 2000.

Act 55 (HB 186) amends R.S. 47:1123 and enacts R.S. 47:1125.1 to provide a tax credit against income and corporation franchise taxes for qualified motion picture production companies for employment of Louisiana residents in the production of a qualified motion picture. The credit allowed is 10 percent of the total payroll for residents employed in the production if the total qualified payroll is \$300,000 or more during the taxable year or 20 percent if the total qualified payroll is \$1 million or more during the taxable year. Effective July 1, 1998.

Act 61 (HB 259) amends the fiduciary and personal income tax statutes, R.S. 47:300.2, 300.6(B)(1)(a), 300.7, and 300.10 and repeals R.S. 47:300.5, 300.6(B)(1)(c), and 300.8, to continue taxing nonresident individual's income from estates and trusts rather than tax the estate or trust, which allows the nonresident taxpayer to take credit on their resident state tax return for taxes paid to other states; and to make other technical and substantive changes from the amendments enacted by Act 41 of the 1996 Regular Legislative Session. Effective for taxable periods beginning after December 31, 1997. For taxable periods beginning prior to January 1, 1998, the tax shall be as required by law in effect prior to the effective date of Act 41 of 1996.

Act 68 (HB 302) extends the deadline for employers who provide alcohol and substance abuse treatment programs for employees to receive a tax credit against their state income tax, as provided by

Baton Rouge Regional Office Moves to New Location

 The Department of Revenue's Baton Rouge Regional Office has moved out of the main headquarters building (330 North Ardenwood Drive) and into new office space located at 8490 Picardy Ave., Building 600.

The mailing address for the Baton Rouge Regional Office remains the same, P.O. Box 80519, Baton Rouge, LA 70898-0519. The new telephone numbers are as follows: Collection - (225) 763-5700; Audit - (225) 763-5721; and fax - (225) 763-5733.

Regional Director Kent LaPlace says taxpayers coming from the outlying parts of the region or from other parts of the state will benefit from the office's strategic new location and easy access from the interstate.

The Baton Rouge Region of the Department of Revenue covers the following parishes: East Baton Rouge, West Baton Rouge, Ascension, Iberville, Pointe Coupee, East Feliciana, West Feliciana, St. Helena, Tangipahoa, and Livingston.

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R.S. 47:6010(B), from June 30, 1998, to June 30, 2000. Effective June 24, 1998.

Sales Tax

Act 1 (HB 126) continues through June 30, 2000, the suspension of most state sales tax exemptions at the 3 percent rate, which has been in effect since July 1, 1997. Exemptions for items such as drugs, ships and vessels, offshore, etc. that are sheltered from the suspension will remain fully exempt. Effective July 1, 1998.

Act 21 (HB 229) amends Section 2 of Act 29 of the 1996 Regular Legislative Session to extend the effective date of the exemption provided by R.S. 47:305(D)(1)(h) for "all energy sources when used for boiler fuel except refinery gas" until June 30, 2000. Because Act 1 of the 1998 Regular Session partially suspended most state sales tax exemptions, including this one, until June 30, 2000, the tax rate on the sale or use of energy sources for boiler fuels, except refinery gas, will be 3 percent. Refinery gas will remain taxable at 4 percent. Effective June 29, 1998.

Act 22 (SB 8) amends R.S. 47:301(18)(i) and (ii) to exclude both the state and parish use tax on the donation of food items to food banks, as defined by R.S. 9:2799(B). R.S. 47:301(10)(j), enacted by Act 514 of 1992, already excluded sales of tangible personal property to qualified food banks from the definition of taxable "sale at retail." This act will allow tax-free donation of food and the 1992 statute will continue to allow the tax-free sale of property to food banks. Effective July 1, 1998.

Act 24 (SB 41) enacts R.S. 47:306(B)(10) to make an exception to the collection of the advance tax in certain cases when drop-shipment sales are made. Currently, when a Louisiana manufacturer sells property to an out-of-state buyer but delivers the property to the buyer's customer in Louisiana, the manufacturer is required to collect the advance tax from the out-of-state buyer, who then must register and file a return to claim the advance tax credit.

This act, which applies to building material dealers only, will allow manufacturers to sell to an out-of-state wholesale dealer that is not registered for Louisiana sales tax and to drop-ship the

materials to a registered Louisiana building material dealer who holds a Louisiana wholesale sales tax registration ("W" number) without collection of the advance tax. Effective June 24, 1998.

Act 28 (SB 64)

- amends R.S. 47:305.41 to exempt from the sales and use tax, sales, purchases, leases, and rentals of property or services by the Bass Life organization. Previously, this Section applied only to Ducks Unlimited.

- amends R.S. 47:305.43, which exempts fund-raising sales by an organization dedicated to migratory waterfowl wetland habitat, to add an exemption for organizations dedicated to the conservation of fish.

- enacts R.S. 47:305.51 to exempt the state and local sales and use tax on utilities used by steelworks and blast furnaces, including coke ovens and rolling mills, which are classified as SIC 3312 by the Standard Industrial Classification Code. This exemption does not apply to coke production or the use of coke in oil refineries and other chemical processes. This exemption will be effective when two or more entities classified under SIC 3312 locate in Louisiana.

Because these exemptions are partially suspended, a 3 percent tax will be due through June 30, 2000. Effective July 1, 1998.

Act 37 (SB 115)

- amends R.S. 47:301(10)(o) to exclude from the definition of taxable "sale at retail" fire fighting equipment purchased by public fire departments. These purchases were already exempt from the sales tax by the exclusion of governmental agencies from the definition of "person" under R.S. 47:301(8)(c).

- enacts R.S. 47:305(D)(1)(u) to exempt adaptive driving equipment and motor vehicle modifications prescribed for personal use by a physician, licensed chiropractor, or licensed driver rehabilitation specialist. Because Act 1 of the 1998 Regular Session of the Legislature partially suspended most state sales tax exemptions until June 30, 2000, the tax rate on these items will be 3 percent. Effective June 24, 1998.

Act 38 (SB 119) amends R.S. 47:305(D)(1)(s), relative to the state sales and use tax exemption for medical de-

vices, to provide an exemption for all medical devices used exclusively by the patient in the medical treatment of various diseases or administered exclusively to the patient by a physician, nurse, or other health care professional or health care facility in the medical treatment of various diseases under the supervision of and prescribed by a licensed physician. Effective June 24, 1998.

Act 40 (HB 16)

- amends the definition of "hotel" in R.S. 47:301(6) and R.S. 33:4574.1(A)(1)(b) to exclude camp and retreat facilities owned and operated for religious purposes by nonprofit religious organizations, including domestic nonprofit corporations organized for religious purposes, as long as all of their net revenues are devoted to religious purposes. The exclusion will apply *only* to room receipts from guests who participate in the camps' or retreat facilities' religious activities.

- amends R.S. 47:301(14)(b)(4) to exclude such camp and retreat facilities from the definition of "places of amusement."

- enacts R.S. 47:301(8)(e) to exclude the Society of the Little Sisters of the Poor from the definition of "person" for sales tax purposes, which allows the Society to be excluded from the payment of state or local sales or use tax on purchases or rentals of tangible personal property or services. Effective August 15, 1998.

Act 41 (HB 25) amends R.S. 47:305.50(A) to extend from July 1, 1998, to July 1, 2000, the expiration date of the exemption for trucks and trailers of 26,000 pounds or more that are used at least 80 percent of the time in interstate commerce.

- limits the availability of the exemption to only those trucks and trailers whose activities are subject to the jurisdiction of the U.S. Department of Transportation.

- adds a similar exemption for contract carrier buses used at least 80 percent in interstate commerce. A qualifying bus is defined to mean a commercial vehicle with a minimum passenger capacity of 35 persons, and with a gross vehicle weight of 26,000 pounds or more. The exemption for contract carrier buses is also slated to expire on June 30, 2000.

- and amends R.S. 47:305.50(B) to extend the sales tax exemption for manufac-

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turing rolling stock in Louisiana from June 30, 1998, to June 30, 2000. Effective June 30, 1998.

Act 46 (HB 97) enacts R.S. 47:301(16)(d) to exclude from the definition of "tangible personal property," certain work products created by professionals licensed under Title 37 in the normal course of their professional business. Excluded work products include items such as the preparation of legal documents by lawyers, the production of architectural drawings by architects, and the production of financial reports by certified public accountants. The exclusion does not apply to work products that are duplicated without modification for sale to multiple purchasers or to work products that consist of the creation, modification, updating or licensing of computer software by licensed professionals or others. Sales of software remain taxable under all circumstances. Effective June 24, 1998.

Act 47 (HB 99) extends the expiration date from July 1, 1998, to July 1, 2000, for the sales tax exclusions for schools provided by Act 15 of 1996. Act 15 enacted R.S. 47:301(7)(f), (10)(q), and (18)(d) to exclude qualifying parochial and private schools from paying the sales tax on rentals, purchases, or use of books, workbooks, computers, software, film, videos, and tapes and to exempt these schools from collecting sales tax on certain sales made for the purpose of supporting their programs. Effective July 1, 1998.

Act 49 (HB 114) enacts R.S. 47:301(7)(h) to exclude from the definition of taxable "lease or rental," motor vehicles furnished by licensed motor vehicle dealers and manufacturers to their customers at no charge in the performance of warranty agreement obligations or, if the warranty has expired, as long as the motor vehicle is furnished at no charge. Effective August 1, 1998.

Act 50 (HB 125) extends the termination date of the Louisiana Tax Free Shopping Program from July 1, 1999, to July 1, 2001. Effective June 24, 1998.

Act 58 (HB 233) provides that sales of prepaid telephone cards and prepaid telephone authorization numbers are to be considered sales of tangible personal property rather than as sales of telecommuni-

cation services. Sellers will be required to collect the 3 percent state sales tax levied by R.S. 47:302(A) and 331(A), but not the additional 1 percent tax levied by R.S. 47:321(A). For the purposes of collecting the sales tax, sales that do not occur at a vendor's place of business, shall be presumed to have occurred at the customer's shipping address. Sales should be reported on the "Other transactions subject to 3 percent tax" line (currently line 22) of the sales tax return. These sales are not subject to the local sales and use tax levies.

Previously, these sales were not taxed when sold, but were subject to the 3 percent telecommunication sales tax when the cards were used for Louisiana intrastate calls. Under the new provisions, telecommunication service providers will discontinue reporting the intrastate receipts on their sales tax returns. Effective July 1, 1998.

Act 62 (HB 260) enacts R.S. 47:306(B)(10)(a) to allow the Department to issue advance sales tax exemption "W" numbers to dealers who have been registered and timely filing sales tax returns and remitting the taxes due for at least one year and whose sales were at least \$3 million for a 12-month period. Such "W" numbers issued under these provisions will be effective for a two-year period but can be revoked whenever a business no longer meets the required standards. Dealers whose sales tax filing records indicate that they are eligible for this exemption will be contacted by the Department. Effective January 1, 1999.

Severance Tax

Act 7 (HB 7) amends R.S. 47:633(7)(c)(iv)(aa) and 648.2(1)(c) to extend the period for severance tax suspensions for inactive and new discovery wells from 1998 to 2000. Effective June 22, 1998.

Act 43 (HB 62) amends R.S. 47:633(7)(b) and (c)(I), relative to the severance tax exemption, to authorize the Department of Revenue, rather than the Department of Natural Resources, to certify incapable and stripper oil wells and to provide that the same value used as a basis to impose the severance tax, under R.S. 47:633(7)(a), be used to determine the exemption for

certified stripper production. Effective June 24, 1998.

Act 67 (HB 298) amends R.S. 47:633.5(B), relative to the severance tax on oil and gas, to provide that the severance tax rate established for wells using produced water to enhance oil and gas recovery is not limited to wells using water from the same reservoir and field. Effective for periods beginning after June 30, 1998, and ending June 30, 2000.

REMINDER!

Unclaimed Property reports are due by November 1.

Any business holding outstanding checks or money due a person or another business is required by law to report that as unclaimed property if the rightful owner has not claimed it within a certain period of time. Unclaimed Property can include bank accounts, any outstanding checks, insurance payments, royalties, utility deposits, payroll, stock and dividends. If you need report forms or if you have any questions, please call the Unclaimed Property Section (225) 925-7407 or check our website at www.rev.state.la.us.

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