

LATA Newsletter

Publication of the Louisiana Association of Tax Administrators

Issue I, 2008

Its back...

Well its not back just yet, but it will be by the end of the month. Fresh off of two Special Sessions, the Legislature is scheduled to reconvene on March 31, 2008. Having met twice in back to back special sessions to address campaign issues, those once considered to be freshman legislators might now be veterans of the process.

Due to term limits, approximately 62 of the (144) total legislative members are, or should we say were, freshman members serving their first term. Proposals being brought before the 2008 Regular Session covers a wide range of topics extending from as how much we pay in property taxes to the cost of a college education. And certainly our new governor will be challenged with some of his issues on ethics. With the deadline for pre-filing rapidly approaching there has been almost 1800 bills filed.

The 85 day session will get kicked off at noon on March 31, 2008 and extend to June 23, 2008.

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Auto collision damage payments...

Courts found that sales taxes do apply to the amount paid for collision damage waivers that lessees purchase as an option from lessors in rental transactions. The collision damage waivers were found to be properly includable as part of the taxable gross proceeds from auto rentals.

Because the waivers arise from the rentals and can only be contracted with the auto rental the tax was found to be applicable under the authority of LRS 47:302(B) and local ordinance.

Legislative intent to subject the collision damage waivers to sales taxation seems to be addressed via LRS 22:2091.10, which exempts such charges from insurance taxes if applicable sales taxes are collected and remitted.

Auto lessors are compensated for selling collision damage waivers to lessees, they are an integral part of rental contracts whose real object is the taxable temporary possession of motor vehicles, and the waivers cannot be contracted for separately or through another party.

(Enterprise Leasing v Curtis, La Ct App, 1st Cir CA0354)

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LATA Sales and Use Tax Seminar

Alexandria, LA., May 10, 2008

LATA Leadership for 2008...

During the 2007 Annual Conference, the organization's membership elected its leadership for the incoming year. Three Officers and eight Board Members were selected to serve in 2008.

Those persons elected were:

Officers

President	Michael Curtis	Livingston Parish School Board
1 st Vice President	Tim Cefalu	Caddo-Shreveport Tax Commission
2 nd Vice President	Neshelle Nogess	St. James Parish School Board

Directors

1 st District	Ron Carter	Morehouse Parish Tax Commission
2 nd District	James Brabham	Allen Parish School Board
3 rd District	Michael Veillon	Evangeline Parish Tax Commission
4 th District	Kathy Vincent	Vermilion Parish School Board
5 th District	Bobby Craig	EBR Parish/City of Baton Rouge
6 th District	Jerry Moore	Lincoln Parish Tax Commission
7 th District	Gregory Ruppert	Jefferson Parish Sheriff's Office
8 th District	Ronnie Richard	St. Landry Parish School Board

Affiliate Organization

Representatives

Raymond Tangney	Louisiana Department of Revenue
George Marretta	Louisiana Municipal Association
Barbara Belaire	Louisiana Sheriff's Association
Roy Austin	Louisiana Business/Industry Group

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Electronic filing of income taxes...

Through an administrative rule, codified by LAC 61:III.1501, tax preparers will be required to file certain individual income tax returns electronically. The rule requires tax preparers who prepare more than 100 income tax returns to do so electronically. During calendar years 2008 and 2009, the filing requirement will be 30 %, during years 2010 and 2011 the requirement becomes 60%, and in 2012 the rate increases to 90 percent.

Tax preparers who are subject to the electronic filing mandate must be accepted in the IRS e-file program, have an electronic filing identification number, and use Department approved software.

An tax preparer who is subject to the this mandate will be required to continue to do so in subsequent years regardless of the number of returns filed.

Federal court prohibited...

A federal tax injunction and the U.S. Constitution prohibits a federal court from considering lawsuit in which taxpayers challenged an Orleans Parish assessor’s method of calculating property assessments.

The taxpayers sought a declaratory judgment that the assessor’s methodology, which differed from other parish assessments, relied on a Multi-Listing Service and a database by researchers at a local university, violated the Equal Protection Clause of the Constitution. The taxpayer also asked for a writ of mandamus compelling the assessor to assess property uniformly with other such districts.

The taxpayers argued that they were challenging the district’s method of collecting taxes rather than their own liability, they were seeking federal orders enabling them to avoid paying a state subdivision tax and thus came within the scope of prohibitions of the Federal Injunction Act. Additionally, the Constitution prohibited federal court litigation of claims that a state officer, the local assessor, violated a state law.

The taxpayers suit was remanded to the state system which could provide an efficient remedy in the form of a judicial hearing based on state statutory authority without reaching the federal claims.

(Jalvia v Marshall, US Dist, E.D. LA, No 07-5563)

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Replace vehicle under lemon law...

A replacement vehicle under a manufacturer’s warranty, due to defect in the original sold vehicle is considered to be part of the original sales transaction. The Department does not consider a substitution as this to be a “return” and “sale” to the customer.

If the substitute vehicle has the same value and is a bona fide replacement under the warranty or the Louisiana Lemon Law, the replacement is not subject to taxation. However, if the original vehicle has been used to a extent that an addition sum of money will become due, that sum will become subject to taxation.

Additionally, if the purchaser upgrades the replacement vehicle, the cost of such upgrades constitute a sale, and taxes are due of such cost to the purchaser.

(LA Private Letter Ruling 07-015, 12/07)

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Refinery gas value...

In accordance with LRS 47:301(3)(f) and LRS 47:301(13)(d), the Department is to adjust the taxable value of refinery gas annually. For calendar year 2008, the taxable value of refinery gas for state and local sales and use tax calculation purposes is \$1.601 per 1,000 cubic feet (MCF).

(continued from previous page)

The 2008 value figure is based on the average of the posted prices for West Texas Intermediate Crude Oil for November 30, 2007 and December 3, 2007. The average was \$89.32 per barrel for those periods.

This value is the maximum value that can be set for refinery gas by state and local authorities for sales and use tax purposes.

(LA Revenue Bulletin 8-004, 12/07)

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Payment by debit cards...

The Department has adopted an emergency rule, effective December 12, 2007, to provide special provisions for the payment via debit and credit cards. The rule is to remain in effect for a period of 120 days, or until the rule takes effect through the normal promulgation process, whichever comes first.

The rule provides that when such cards are used as a method of payment for a tax liability, matters concerning the payment are subject to the resolution procedures of the Truth in Lending Act, the Electronic Fund Transfer Act and any other similar provisions of state law. Such provisions are applicable for the purposes of resolving issues of the card account only, not errors or disputes relating to the actual tax liability.

(Admin Code 61:III.1532)

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Oil spill contingency fee suspended...

The Department has announced the suspension of collection of the oil spill contingency fee under LRS 30:2486, effective January 1, 2008. Marine terminal operators are required to collect these fees, from the crude oil owners based on transfers to and from a vessel at their terminals.

Any such actions taking place prior to the effective date of January 1, 2008, should have been collected and remitted to the Department on or before the end of the month of January.

(Revenue Information Bulletin 8-003, January 08)

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Income tax assistance...

Once again, the Department will participate in the Volunteer Income Assistance (VITA) program. Personnel will be available at the regional offices to assist taxpayers in completing their federal and state tax returns with free electronic filing for middle and low income tax payers.

Secretary's appointment...

Ms. Cynthia Bridges has been re-appointed by Governor Bobby Jindal. Ms. Bridges has served as Secretary of the Department of Revenue since being appointed by Governor Foster in June, 2000.

Ms. Bridges has been employed with the Department of Revenue since 1979 and has previously served in a number of positions, including Deputy Secretary, Director of Excise Tax Division, and Assistant Director of Research and Technical Services.

Our heart felt graduations go out to the Ms. Bridges on her re-appointment.

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Sales tax holiday for hurricane supplies...

Act 429 of the 2007 Regular Legislative Session enacted RS 47:305.58 to create an annual state sales tax holiday on the last Saturday and Sunday of each May exempting the sales of hurricane preparedness items.

The sales tax exemption covers the first \$1,500 of the sales price of each portable self-powered light source; portable self-powered radio, tow-way radio, or weather band radio; tarpaulin or other flexible waterproof sheeting; any ground anchor system or tie-down kit; any gas or diesel fuel tank; batteries, excluding automobile and boat batteries; any non-electric food storage cooler; any portable generator used to provide light or communications or preserve food in the event of power outage; any carbon monoxide detector or blue ice product.

The first sales tax holiday for hurricane preparedness supplies will be on Saturday and Sunday, May 24 - 25, 2008.

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Leased containers...

A synthetic rubber plant cannot recover local lease taxes paid under protest on shipping containers leased out of state, delivered to its plant in the locality, and stored and maintained there while periodically used for interstate commerce.

The court held that the containers did not qualify for an interstate commerce exemption. The situs of the lease and delivery occurred the moment the containers came into the taxpayer's possession and taxable moment occurred.

*(Firestone Polymers v Calcasieu School Board,
Ct. App., 3rd Cir., No 07-0501)*

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MEMBERSHIP INVITATION AND APPLICATION

Name _____ Title _____

Representative of _____ Dept/Div _____

Mailing Address _____ City _____ State _____ Zip _____

Phone _____ Fax _____ E-Mail _____

Annual Dues: \$150.00 (Government Employees)

\$125.00 (Business/Industry Representatives)

Please make checks payable to: Louisiana Association of Tax Administrators
P.O. Box 398, Vidalia, Louisiana 71373

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