

LATA Newsletter

Publication of the Louisiana Association of Tax Administrators

Issue III, 2008

LMA President...

Minden's Mayor, Bill Robertson, succeeds Pineville's Mayor Clarence Fields as the president of the Louisiana Municipal Association. Mayor Robertson was installed as the association's leader, during LMA's Annual Convention, recently held at the Cajundome.

President Robertson's career in public service began in 1975 as a city councilman. He has served as Minden's Mayor for a total of five terms, a position in which he was first selected in 1990.

As the LMA President, Mayor Robertson will lead the Executive Board and chair the Executive Committee for the upcoming year.

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Sales tax holiday...

Louisiana's tax holiday for its sales tax, has been designated for August 1 & 2, 2008. This benefit will apply to most consumer purchases for personal use. Such purchases will be exempt from the four percent state sales tax.

During this period, the first \$2,500 of the purchase price of most tangible property items, for non-business use, will be exempt from the tax.

The exemption applies to all consumer purchases of tangible personal property, other than motor vehicles, meals and taxable services. All businesses are required to participate, and these exemptions apply to both residents and nonresidents alike.

In order for purchases to qualify for this exemption, they must meet one of the following:

- ◆ Customer buys and accepts delivery of property during the set aside period,
- ◆ Customer places an order for immediate delivery or delivery during this period, or if delivery is delayed without being at the request of the purchaser,
- ◆ Customer places property on layaway during the holiday period; or
- ◆ Customer purchases property that was previously placed on layaway during the holiday period.

Local sales tax does not apply to such purchases; the holiday is only applicable to the state sales tax.

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Don't hesitate to give out advice. It passes time, and nobody will notice it anyhow...

Advance sales tax payments...

In our last issue, we touched on this very important issue, but after viewing a recent Tax Topic, we did not do it justice. Act 393 of the 2007 Regular Legislative Session has brought about these changes.

This enactment brought about major changes to the process that requires the collection and payment of the advance sales tax, on purchases by retail dealers of tangible personal property for resale. These changes are scheduled to be implemented in two stages, with the first having been January 1, 2008.

With the above referenced date, the minimum annual sales volume required of retail dealers to qualify for the exemption, from the payment of the advance sales tax, on purchases of tangible personal property for resale, is reduced from \$3 million to \$500,000.

Retail dealers that qualify for the exemption certificate under the new lowered threshold, are required to complete an application, Form R-1318, and return it to the Department's Taxpayer Services Division.

Dealers that qualify for the exemption will be issued a state sales tax exemption number and certificate. That exemption number must be provided to manufacturers, wholesalers, jobbers, and suppliers upon making purchases for resale. The exemption certificate cannot be used to make tax-free purchases of property or services.

Dealers, who are delinquent in filing or payment of sales taxes will be disqualified from receiving an advance tax exemption.

Effective January 1, 2009, the state advance sales tax on purchases of tangible personal property for resale will be repealed in its entirety.

In addition, the authority of certain local governments to levy advance sales taxes will also be repealed.

For additional information, see RIB #07-028, which is posted on the Department's website. Concerns should be directed to LDR Taxpayer Services Division in the Baton Rouge office.

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Property tax collections...

A New Orleans Ordinance providing guidelines and procedures for collecting delinquent city property taxes was held to be unconstitutional. The provisions of the Ordinance that allowed the city's collection personnel to file suit to collect delinquent taxes violated the provisions of the 1974 Constitution, which provided for tax sales of delinquent taxpayer's property to recover delinquent taxes.

The court interpreted the referenced section as prohibiting the tax collector from filing lawsuits against delinquent taxpayers for nonpayment of tax.

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By allowing the city's taxing authority or its agents to file suit, to foreclose liens on the property to satisfy the payment of taxes, the Ordinance essentially stripped taxpayers of the right of redemption after tax sale granted in the State Constitution.

(Fransen v New Orleans, La Ct App 4th Cir, Dkt 2006-CA-1325)

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Natural gas for compression engines...

The court found that sales taxes applied to the portion of a natural gas mixture that a compression company obtained from its customer's wells and consumed in its engines during the compression of the rest of the mixture for the customer.

There was a taxable transfer of possession of the mixture consumed. Although the sales contract indicated that the compression company was to receive the fuel it consumed at no cost, a barter for taxable consideration existed through an inference that the company's monthly charge to its customers reflected its savings in not having to obtain compressor fuel from a third party.

It was noted that a contrary decision had been issued in a similar case, involving Hanover Compression v Department of Revenue in the 3rd Circuit in 2003. The case was held not binding since the case was decided in a different appellate circuit jurisdiction, and the Department refused to acquiesce in that decision.

(Bridges v Production Operators, Ct. App., 4th Cir. Dkt #2007-CA-0648)

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Chemicals used in manufacturing...

It was found that sales and use taxes did not apply to a paper manufacturing company's purchases of sodium chlorate, hydrogen peroxide, and elemental oxygen for use in manufacturing white paper products.

Those chemicals qualified for the tax exclusion under LRS 47:301(10)(c)(i) for materials bought for the further processing of items for resale, which may also be referred to as the reprocessing exclusion.

The test known as "three-pronged" for determining the application of the reprocessing exclusion had been met. Those test were: (a) the raw materials become recognizable and identifiable components of the end products; (b) the raw materials were beneficial to the end products; and (c) the raw materials were material for further processing, and as such, were purchased with the purpose of inclusion in the end products.

During the paper manufacturing, a chemical reaction process involved adding oxygen atoms whose origin could be traced to the chemicals at issue.

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Even though the purpose of those chemicals was to process the lignin in wood pulp ingredients in making the paper products.

Accordingly, the company's purchase of the chemicals at issue was for the further processing of the chemicals into an item for sale at retail.

*(International Paper v Bridges La S.Ct, Dkt #2007-C-1151/
La Ct. App, 2nd Cir, Dkt #42023-CA)*

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Waiver authority...

The act of surrendering or waiving a corporation's legal right, such as prescription, is the type of act that requires express power. A waiver signed by a taxpayer corporation's employee, who was not expressly vested with the authority to sign for the taxpayer, was insufficient to extend the statute of limitations within which an assessment could be imposed for unpaid taxes.

The trial court concluded the Department was not justified in relying on what it perceived to be the employee's apparent authority. Although the employee stated that he was the taxpayer's director of tax audits to whom such waivers were to be addressed, and he had represented the taxpayer at a Board of Tax Appeals hearing in previous audits, he was not an officer, or director of the corporation. Without that status, there were no provisions of the corporation's charter, bylaws, or resolutions authorizing him to sign such prescription waivers.

*(Bridges v Hertz Equipment Rental,
La Ct App, 5th Cir, Dkt #07-CA-717)*

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Nonprofit clubs...

The Department recently issued Revenue Ruling 08-002, relative to issues of taxability concerning country clubs. This ruling addressed issues such as the taxability of membership dues, nonprofit fundraising and the taxability of capital construction projects.

Because such clubs are not considered to be civic organizations, dues that are paid by its members are subject to sales tax. A club's fundraising activities are also taxable because the statutory exemption provided for under RS 47:305.14, addresses events held especially for the purpose of educational, charitable, religious or historic restoration events. It does not contemplate an exemption for fundraising efforts that are not dedicated to those enumerated public interests. Finally, there are no statutory exemptions from sales tax on materials used in construction or repair projects of immovable property.

Solar energy tax credits...

With an effective date of this past April, the Department adopted a revised administrative rule codified at LAC 61:I1907 to implement, administer and clarify the statutory wind or solar energy system tax credit as codified at LRS 47:6030. As it pertains to personal income tax credits, the revised rule clarifies that system costs qualifying for the credit includes state and local taxes having been paid.

The revised rule requires a solar or wind energy system receiving the credit, to remain on the structure to which it was originally attached, or on another structure located in the state, that is owned and operated by the individual receiving the credit.

As of June 1, 2008, a contractor duly licensed by, and in good standing with the Contractors Licensing Board must perform installations of systems qualifying for the credit. The contractor must also maintain a classification of Solar Energy Equipment and a certificate of training in the design and installation of solar energy systems.

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Natural gas severance rate...

The Department of Revenue is statutorily required to adjust the severance tax rate annually by multiplying the tax base rate of 7 cents per MCF, by the current “gas base rate adjustment” figure.

The Department announced an increase in the severance tax rate on natural gas, effective for the period of July 1, 2008 through June 30, 2009. The new rate is to be 28.8 cents per 1,000 cubic feet (MCF), measured at a base pressure of 15.025 lbs. per square inch absolute with a temperature base of 60 degrees Fahrenheit.

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Manufacturing equipment exemption...

Act 12 of the 2008 Special Session, accelerates the phase out of state sales tax on manufacturing machinery and equipment by one year. This change will make the purchase or lease of such fully exempt effective July 1, 2009.

The original phase out date was scheduled for July 1, 2010.

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*Too many people waste time wishing upon a star
when they could be working to make their dreams come true...*

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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Vidalia, Louisiana 71373

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