

LATA Newsletter

Publication of the Louisiana Association of Tax Administrators

Issue IV, 2008

Telecommunication franchises...

Louisiana's Municipal and Police Jury Associations challenges the validity of Legislative Act 433. The challenge was aired before a state district court in Baton Rouge on October 27, 2008.

The associations content that the new law that allows telecommunications firms to offer cable television service through a statewide franchise, rather than seeking city or parish franchises is unconstitutional.

As is quite often in situations such as this, the state and a group of cable and telecommunications companies seem to think of it as not only being legal, but it promotes competition by offering better service, new technology and competitive pricing.

Currently, cable companies negotiate with local governments on franchises, and pay varied fees in accordance with such negotiations. Under Act 433, telecommunications companies can file an application with the Secretary of State's Office for a 15 year, renewable statewide franchise. Under such an arrangement, local governments would be paid a percentage of the gross proceeds.

The LMA and Police Jury Association filed suit against the state just days prior to the effective date of the act, contending that local governments with home rule charters are to be exempt from the provisions of the new law. And, that the act contains provisions that any incumbent service provider shall have the option to terminate an existing franchise that was issued by a local governmental subdivision. *(See additional coverage via reprint from the Louisiana Municipal Review, on page four)*

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Administrative provisions held unconstitutional...

An additional \$5 for court costs pursuant to LRS 32:57(G) have been deemed to be an unconstitutional tax improperly levied through the judicial system that violated the Separation of Powers Doctrine of the Constitution.

The additional cost was a charge imposed on persons who pled guilty or was found guilty, of a motor vehicle offense occurring on the Hue Long Bridge or the Causeway, if the citation was issued by a police officer that was employed by the Greater New Orleans Expressway Commission.

This additional amount was collected for the purpose of supplementing police salaries and the acquisition of police equipment. The court found that those objectives were deemed to be the responsibility of local tax collection authorities, rather than the judiciary.

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The court also found that while there was a logical connection between the police department and the criminal justice system, police salaries and uniform equipment was just too far removed from the “administration of justice” to be considered a legitimate court cost.

(State v Lanclos, S. Ct., Dkt #07-ok-0082)

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Property reappraisal and assessments...

The Department has adopted an amendment to an administrative rule (LAC 61:V.303) to reflect the Louisiana Tax Commission’s order for property to be reappraised in all parishes for the 2008 tax year.

As adopted an amendment to the administrative rule (LAC 61:V.101) to update the income threshold amount for persons who are 65 years of age or older, to qualify for the special assessment level for residential property receiving the homestead exemption.

To qualify for the special assessment level, claimants’ adjusted gross income, as reported on their federal income tax return for the year before they apply for the special assessment, cannot exceed \$62,180 for tax year 2008. For persons whose income tax filing status is married filing separately, the adjusted gross income is determined by combining the adjusted gross income on both spouses’ federal tax returns.

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No rebate of dedicated sales taxes...

Recently issued Attorney General Opinion indicates that local sales and use taxes, which have been dedicated to a particular use, or purpose in the tax proposition imposing such taxes, cannot be rebated. Although the Louisiana Enterprise Zone Act allows for the rebate of local sales and use taxes, there are certain situations where no local tax can be rebated, as in the event that all such taxes are dedicated.

In this case, the proposition setting forth the sales and use taxes paid to the Lafourche Law Enforcement District specifically set forth the use of the proceeds of the respective tax and dedicated the proceeds to be used for such purposes. As a result, the proceeds of such taxes cannot be rebated under the provisions of LEZA.

(OAG, #07-0284)

(While we certainly are not going to take exception to this AG Opinion, we will say that we don’t believe this to have been in the spirit of the Louisiana Enterprise Act. We also don’t think that there are a lot of local sales taxes passed anymore that does not carry some type of designation of use.

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For reasons that can only be peaked by your imagination, our people are just too smart to pass a tax, that will be totally controlled by a group of politicians and therefore; only being those taxes subject to Enterprise Zone rebates.)

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Development district hotel occupancy tax...

The court found the Vidalia Riverfront Development District hotel occupancy tax, to have been constitutionally imposed and levied, although it was not submitted to the people for a vote prior to implementation.

The provisions of the Constitution that required certain legislatively authorized local taxes to be submitted to the voters were limited to taxes enacted by local governmental subdivisions and school boards, and did not apply to enactment of taxes by special districts.

Accordingly, Act 54 of 2007, as codified at LRS 33:4709.1, authorizing the issue, and the District Authority’s resolution imposing the tax, did not violate the Louisiana Constitution.

*(Jackson v Vidalia Riverfront Develop Dist.,
3rd Cir. Ct. App., Dkt # 07-1569)*

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Manufacturing property exemption...

Its addition, of a new continuous barge unloader to the operations of the taxpayers agricultural commodities supply business, was found to be eligible for the industrial manufacturing exemption under the Constitution.

Although only approximately 25% of the unloading operations were dedicated to the taxpayer’s soybean processing facility, which engaged in manufacturing, the remainder of the unloading operations involved the non-manufacturing activity of unloading grain destined for the taxpayer’s grain elevators.

The exemption provision did not require the continuous barge unloader to be exclusively used in manufacturing. The local tax assessor who challenged the exemption, as approved by the state, failed to meet the burden of rebutting the taxpayer’s evidence, which showed that the dual purpose of the continuous barge unloader’s use, was an integral part of the taxpayer’s soybean processing operations.

*(Bunge North American v Department of Economic
Development, 1st Cir. App., Dkt #2007 CA 1746)*

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***The better in math you are, the happier you are. Why?
Because you’re an expert at counting your blessings...***

Attorneys argue constitutionality of Act 33
In hearing at 19th Judicial District Court...

(By Tommy Darensbourg, LMA Communications Director)

A ruling is pending on a lawsuit filed in August by the Louisiana Municipal Association and the Police Jury Association of Louisiana that challenges the constitutionality of a new law that changes the way telecommunications companies obtain franchises to provide cable and video services in the state.

Act 433 of the 2008 Louisiana Legislature allows telecommunications firms to offer cable television services or video services through a statewide franchise rather than seeking individual municipal or parish franchises. Under the new law, telecommunications companies can file an application with the Secretary of State's Office for a 15 year, renewable statewide franchise. The law provides that local governments can collect up to five percent of the company's gross revenue from providing the service within their jurisdictions.

The LMA-PJAL lawsuit was filed on August 13, two days before the effective date of the legislative act. The lawsuit targets R.S. 1365(B) that states that "any incumbent service provider shall have the option to terminate an existing franchise previously issued by a local governmental subdivision."

In the hearing before State District Judge Janice Clark on October 27, LMA Staff Attorney John Gallagher and PCAL General Counsel Dan Garrett said that Act 433 is an unconstitutional cancellation of local and parish governments' contract with cable companies – a violation of Louisiana Constitution Article VII, Section 15, which prohibits the Legislature from extinguishing any indebtedness, liability, or obligation owed to the state, parish, or municipality. The negotiated franchise agreements between an incumbent cable provider and the municipality or parish are obligations as defined by the Louisiana Civil Code and protected under the provisions of Article VII, Section 15.

After the filing of the suit, the parties involved in the litigation agreed to suspend the opt-out provision until the judge could rule on the merits of the suit. An AT&T attorney said all revenues due to municipalities and parishes as of the opt-out date must be paid.

Attorneys representing the State of Louisiana, the telecommunications and cable industry, and AT&T Louisiana said the law, termed the "Consumer Choice for Television Act," is legal and will promote competition through better service, new technology, and competitive prices.

A ruling on the lawsuit is expected soon and will be conveyed to the LMA membership through its electronic-mail broadcast service as soon as feasible and in this publication's next issue.

*(A reprint of Mr. Darensbourg's article in the November
Issue of the Louisiana Municipal Review)*

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*Noticing my grandson admiring his new watch, I remarked,
"That sure is a nice watch. Does it tell you the correct time?"
"No, Grandpa," he said. "Its old-fashioned. You have to look at it."*

E-Filing is here...

For Louisiana taxpayers this is a new era, and for those persons having been involved in this very long process, it may be a dream come true. While a hand full of local authorities have had these means of filing returns, this is in fact a one stop shopping concept that has been on a lot of folks wish list, most of which may have been from our friends of business and industry.

On October 1, 2008, the Louisiana Department introduced an innovative new tool for filing and paying of sales taxes to the state and all local collectors from one location. It's called "Parish e-File" and the site is www.parishe-file.com it is a free service, its safe and it's easy to use. Its biggest benefit to Louisiana's Taxpayers is the ability to file electronically and remit sales and use taxes to the state and multiple parishes simultaneously if need be.

This is a result of a combined effort of business leaders, state and local government officials working together to address common issues. The group known as the "Uniform Electronic Local Return and Remittance Advisory Committee," was composed of the Secretary of Revenue, representatives of local governments as appointed by the Municipal Association, the Police Jury Association, the School Boards Association and the LATA. Those that were appointed to represent the business interest were appointed by the Society of CPA's, Retail Dealers Association, Business and Industry Association.

Thanks to the efforts of all, the Parish E-File seems to incorporate the concerns of all parties, and is certain to provide an efficient tool for the payment of state and local sales taxes.

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Denying discovery procedures...

This is sort of a revisit as this case was discussed with our last issue of the newsletter. The trial court was held to have abused its discretion, in denying the Department additional discovery requests, in its recent suit to recover unpaid assessments. The court ruled that a waiver signed by a taxpayer's employee was not expressly vested with the authority to sign for the taxpayer, was insufficient to extend the statute of limitations.

The Department asserted that the discovery requests were relevant, whether or not the employee had the authority to act on behalf of the taxpayer or not. The Department sought copies of the corporation's charter, by-laws, resolutions and other such documents, that might bring light as to the employee's authority and information concerning any other such agreements.

Such information was relevant to the issues raised by the corporation's prescription argument. Accordingly, the judgment was vacated and set aside, and the case was remanded to the trial court for further proceedings.

(Bridges v Hertz Equipment Rental, La. S.Ct., Dkt #08-C-0400)

Pharmacist services...

Act 582 (HB383) of the 2008 Legislative Session, provides that upon the sale of prescription drugs and pharmacist services, a pharmacy or pharmacist is responsible for collecting and remitting local sales and use taxes.

The bill provides that it is the responsibility of the health insurance issuer to reimburse the pharmacy or pharmacist the amount of such tax in cases in which health insurance coverage for prescription drugs and pharmacist services exist, depending on the terms and conditions of the insured agreement.

All contracts executed by a health insurance issuer after January 1, 2009, that includes health insurance coverage for prescription drugs and pharmacist services, must clearly define the responsibility of the issuer and the insured.

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Business incentive tax rebates...

Act 720 (HB416) of the 2008 Legislative Session, provides procedures for the submission and payment of taxpayer requests for rebates of state and local sales and use taxes under the Louisiana Enterprise Zone and Quality Jobs Programs. It provides for the payment of interest to the taxpayer whose request for rebates are not timely processed.

Within 10 business days of the receipt of a properly completed state tax rebate request, the Department must rebate 80% of the total amount of the rebate claimed. Within three months after the request is filed, the Department must audit the request and disallow items determined to be ineligible for rebate. Within 10 business days after the 3 month audit period, the Department must rebate the remaining 20% of the amount claimed, minus items of disallowance.

Local authorities must review and process requests for rebates of local taxes within 90 days after rebate request is submitted.

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Authorized signatures...

Act 750 (HB 1188) of the 2008 Legislative Session, provides that returns, statements, declarations, waivers, agreements, forms, and other documents required or permitted to be made, relative to matters subject to the jurisdiction of the Department, must be signed by an individual, a person, or persons having the authority to sign such documents.

The signature of a representative of a legal entity on such documents, entered into, or executed with the Secretary, creates a conclusive presumption that the representative is authorized to sign on behalf of the entity.

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This conclusive presumption cannot be invalidated as to the legal entity by the signing representative's lack of authority, power or capacity. The effective date of this bill is July 7, 2008, and is applicable prospectively.

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Newspaper exclusion...

The Department has clarified that state and local sales and use taxes should not be collected on the sale of newspapers, as of July 1, 2008, since newspapers are excluded from the definition of taxable tangible personal property under Act 480 of the 2007 Legislative Session.

Until July 1, 2008, a tax exemption from state and local sales and use taxes was provided for newspapers, but the state tax was fully suspended, and therefore, newspapers were subject to the 4% state tax.

Act 480 repealed statutory tax exemption provisions that applied to the sale of newspapers and replaced them with statutory tax exclusion provisions.

(Revenue Inform Bulletin # 08-017)

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User fee requirements...

Without legislative action or electoral approval, a parish police jury cannot legally impose a user fee based on a residence or business as a supplement to the parish sales tax, to offset increases in waste collection and disposal cost.

Such a fee is properly classified as a tax because its primary purpose is to raise revenue to offset costs, it applies across the board indiscriminately on residences and businesses, when its benefits are intended to be shared by all of the parish's members.

Accordingly, the fee must meet the authorization and approval requirements generally provided for local taxes.

(Attorney General Opinion #08-0084)

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Publication changes...

While it has been a good ride, effective with the next issue of the LATA Newsletter, there will be, for a lack of a better description, an editor change. As the newsletter's only author, with tenure of approximately 21 years, it's clearly time for a change. Roger B. has a great pen, he will make up proud and will move us into the future. Thanks, for the memories...tho

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