



Summer 2009

Issue 2, 2009

LATA NEWSLETTER

LEGISLATIVE REGULAR SESSION 2009 ENDS

The following is a recap of enrolled legislative measures affecting state and local sales tax, ad valorem and other related issues in the regular session ended June 25, 2009. The entire text of each bill can be located and downloaded on the Louisiana Legislative web site (www.legis.state.la.us).

The following symbols are used for brevity: S= applies to state only S & L= applies to state and locals LO= Local Option LFN= local fiscal note amount

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HB 734 Exempts state sales, use, lease and repairs of capital equipment and software used to operate same by qualifying radiation therapy centers. Defines “capital equipment” and “qualifying radiation therapy center”. Provides for local adoption. [S, LO]

Comment: the bill as currently written put the local option in LRS 47:337.9. The Law Institute needs to redirect the option to LRS 47:337.10.

HB 756 A “multipurpose” bill that affects certain domed stadiums, farm equipment, charitable organizations—

Amends LRS 39:467. Exempts events, activities, admissions from state sales and use tax at domed facilities, under the operation of any political subdivision or commission, with a seating capacity of a least 12,500 located in a parish with a population of at least 185,000 but less than 250,000 (latest U.S. census. [S]

Amends 47:305.14 Specifies that guest speaker fees, table and chair rentals, food and beverage utility related items are “necessary expenses” in the determination of the exempt gross proceeds at qualifying events [S&L]

Amends 47:305.25 Requires purchaser of certain farm equipment to provide certificate attesting that purchaser is a farmer or is purchasing for an agricultural facility and that the purchaser will be held responsible for any tax due. [S]

Reminder!

**Third
Quarter
Conference**

**Sept 2-4
Marksville**

Amends 47:305.59 Adds Fuller Center for Housing covenant partners located in this state as eligible for charitable residential construction material exemption. [S&L, LFN=\$45,000 FY10, increasing by 10% thereafter]

Enacts 47:305.62 Exempts construction materials for new construction, rehabilitation and renovations of dwellings destroyed by Hurricanes Katrina and Rita purchased by Hands on New Orleans and Rebuilding New Orleans from state & local sales and use tax. Caps the exemption at \$500,000 annually. [S&L, LFN=\$5,600 annually] See also identical SB 338.

SB 9 Another “multipurpose bill which:

Amends 47:305 D. to add new boats, vessels or other water craft withdrawn from inventory by factory authorized dealers for demonstration purposes. Also provides for qualifying terms and usage of said boats.

[S&L] Comment: the bill carried no fiscal note under the explanation that the boats will not be considered “used” until sold and they are currently receive “demonstrator” status from the La. Dept. of Wildlife and Fisheries.

Amends 47:305.50 Exempts from state and local sales & use tax purchases by railroads of railroad ties prior to long term preservative treatment which are installed on a track system outside the taxing jurisdiction where sold.

[S&L, LFN=can not be estimated]

Comment: this bill offers a special treatment outside the normal scheme of sales and use tax administration in that we can not tax the “sale” of this type of TPP at the time of purchase, and only impose a “use” tax in the jurisdiction where and when the ties are actually installed as part of the owner’s rail system.

Enacts 47:301(16)(q) Provides that for state and local sales tax purposes, “tangible personal property” shall not include property considered immovable prior to the enactment of Act 632, July 1 2008. Established a “working group”, on which the LATA has representation, to “assist in developing policy” regarding which items shall be considered “movable or immovable” for sales tax purposes.

[S&L, LFN=Unknown]

Comment: This provision, originally filed as HB 882 was defeated in the Senate Revenue & Fiscal Affairs committee, at the strong urging of LATA members. However, it was added as a “rider” to SB 9 at the urging of the proponents and notwithstanding that the author indicated that he would strip the 882 amendment from the bill prior to Senate concurrence.

For the benefit of the La. Hospital Association, I can find no evidence that local tax administrators were considering taxing anything different after the enactment

of Act 632 of 2008.

SB 10 Enacts exclusion from definition of “sale at retail” sale of anthropogenic carbon dioxide for use in qualified tertiary recovery projects approved by the La. Dept. of Natural Resources. Applicable to state and local sales and use taxes.

[S&L, LFN=Not verifiable]

SB 52 Enacts 47:305.62** called the “Annual Louisiana Second Amendment Act”. Exempts from state & local sales and use tax consumer purchases of firearms, ammunition and hunting supplies on the first consecutive Friday through Sunday of September each year. Defines “consumer purchases”, “hunting supplies”, “firearms” and provides for certain sales arrangements.

[S&L, LFN=\$143,000 annually] ** 305.62- will be re-designated another section number as this number was used for more than one bill.

Comment: See also HB 128 which an identical bill except that the applicable exemption dates are the Friday through Sunday period after Thanksgiving. I don't know bill will be signed by the governor, but I would assume one will and not the other.

SB 268 This three-part bill pertains to private counsel, attorney fees and alternative remedies for payments under protest.

The Uniform Local Sales Tax Code was amended to provide for the retention of private (outside) counsel, to provide for the imposition of 10% attorney fees when an attorney is retained for a collection action, except with respect to amounts timely paid under protest on a return or to a vendor under existing law, and that the reasonableness of such fees shall be subject to the discretion of the court.

47:337.13.1 (Note: Locals had previously relied on the provisions of LRS 47:1512 for this authority)

While the UTC, at 47:337.64, had previously provided for an alternative to payment under protest by the posting of a bond “or other security”, SB 268 delineates the types of “other security” that a court may consider in lieu of the payment under protest or posting of a bond.

LRS 47:1512 was amended to provide for the payment of private attorney fees not to exceed 10% of the aggregate tax, penalty and interest due and for the imposition of 10% additional charges to a taxpayer for attorney fees when a final assessment is referred for collection purposes.

Comment: The intent of the bill, as explained to us by Sen. Donahue was to provide relief to taxpayers, when faced with an arbitrary assessment, who would be financially impaired by having to pay under protest and having to hire an attorney to pursue relief. But the language in the original bill was fraught with potential undue risks to the tax collector: protests could be filed with no security provided and the court could award up to 10% attorney fees to the “prevailing party”. The original bill was redrafted and “amended” several times, right up to minutes before being heard before the House Ways & Means committee. To their credit, the Senator and LABI representative John LeBlanc kept their word as to every change agreed upon. But I look for similar legislation to be filed in the future as “taxpayer fairness” is an issue that is gaining momentum among many lawmakers.

HB 9 Excludes from the definition of “hotel” temporary lodging facilities operated by non-profit 501(3)(c) for no longer than 30 day duration, exclusively for homeless transients, and said facility cannot charge more than \$20 per day for such service.

[S&L, LFN=minimal. According to the LFO, bill aimed at relief of one such facility in Houma, LA, but could be impacted by other future sites]

HB 251 This bill amends 47:301(16)(g) as follows:

For state & local sales tax purposes, changes the applicable exemption of “manufactured home to “factory built home”. Defines “factory built home”.

Adds “travel trailer” as a type of non-qualifying “self-propelled vehicle”.

Deletes obsolete provisions of current law (the “phase in” portion of current law already expired).

Effective January 1, 2010, the provisions of the proposed law apply notwithstanding LRS 9:1149.1 relative to immobilization of a manufactured home.

Requires payment of state and local sales taxes to La. Dept. of Public Safety, Office of Motor Vehicles.

Declares correctly computed taxes not paid under protest shall not be refunded.

[S&L, LFN=\$1.1 million FY 09, \$2.5 million annually thereafter]

Comment: Calculations used for local purposes are not explained and vary from that used to determine state tax impact. Estimate could be highly overstated.]

Other **“State only” sales tax legislation** and subject matter includes: HB 5 Crawfish bait and feed, HB 189 Sale of meals by educational institutions, HB 307 Food sold for preparation & consumption in the home, HB 320 Glass container manufacturing equipment, HB 473 Farm irrigation equipment, HB 818 Manufacturing equipment

for certain industry classes.

Although there were over fifty bills introduced concerning ad valorem taxes, the following tracked bills were enrolled for passage:

HB 261 Increase homestead exemption from seizure from \$25,000 to \$35,000 and prohibits seizure if judgment is based on credit card charges, provides relative to judicial mortgages, exceptions, and prescription

HB 446 Authorizes all parishes with regards to use of attorneys for tax collection purposes, authorizes collection of penalties, provides relative to title for sale of undivided interests, and penalty bid down procedures, and form of tax sale certificates

HB 509 Constitutional amendment relative to bidding procedures at property tax sales, payment of penalties by a bidder at tax sales, payment of interest, penalties and other charges with respect delinquent tax on movables; all to be put before the voters on November 2, 2010.

HB 563 Provides relative to assessment challenges, bid procedures at tax sales, tax sale title to undivided interests, public sale or donation of tax parcels, sales of adjudicated property to adjoining property owners and effectiveness of certain suits filed

HB 902 and **SB 903**, a constitutional amendment (substitutes for HB 38 and 375 respectively) provide for restrictions of non-elected taxing authorities to increase millage rates without voter approval

Comment: My apologies to our member Ad Valorem collectors for my unfamiliarity with your collection laws and being restricted to a repetition of the preambles of the above cited bills.

Committee News:

Education Committee Hosts Third Annual Sales Tax Seminar

Held at the Lod Cook Conference Center on the L.S.U. campus in Baton Rouge, 89 tax practitioners and local collectors attended. The day-long seminar provided an in depth review of state and local sales tax law, policy and practices. Presenters included Messrs. Kerry Alley, with the La. Department of Revenue, Timmy Hulin, with Ryan & Company, Roger Bergeron, LATA Executive Director, Jack Bone, Ryan & Company and Rick

Mekdessie, RAMware LLC.

Many thanks to committee chair Neshelle Nogesse and her committee members who put in lots of hard work to make this another successful LATA project.

AUDIT COMMITTEE PRODUCES “BEST PRACTICES” DRAFT

The LATA Local Audit Committee has presented to the membership its initial draft of a set of guidelines for the successful conduct of local sales and use tax audits. The presentation was forwarded to the membership prior to the Second Quarter Conference to provide feed back at the committee meeting held in Lake Charles.

The document consists of twelve sections devoted to what should produce the optimum outcome for audits, from the perspective of the tax administrator, the tax auditor (be they in-house or contracted) and the taxpayer being audited. Early responses indicate the document is being highly praised, especially by our business and industry members.

Chaired by Mark West and Donna Andries, committee members who have worked on the project since January include Jeanine Theriot, Rufus Fruge, Ken Kerspel, Lisa Broussard, Donna Cleary, Neshelle Nogess, Barry Dufrene and Roger Bergeron.

Membership Committee Kicks Off Pictorial Drive

Led by Kathy Vincent and Krewe, the membership committee initiated its effort to produce a pictorial membership directory by having members attending the Second Quarter Conference pose for snap shots. Let's hope Kathy got most of us on camera early in the day when we were at our most presentable condition.

OLT Committee Completes Two Year Project

The Occupational License Committee, co-chaired by Steve Thomas and James Bowie, recently completed an update to the LATA OLT Tax Guide with the distribution of a CD at the Lake Charles conference. Unfortunately many of the discs were compromised and will have to be re-worked. In the interim, the Guide will be posted on the LATA website or can be obtained from Steve in a Word format. The update is through the 2008 Legislative session. As there were no new OLT laws changed in the session just ended, the manual is current.

From the Editor's Desk:

“How I Spent My Summer Vacation”

It's funny how the oddest things come to one's mind at the oddest of times. Such was the case on the last night I was at a session at the capitol, walking back to my truck, exhausted but relieved it was almost over. Many of us “baby boomers” can recall the annual school house ritual when we had to write or present an essay to the class on what we did on our recently ended summer vacation. I had to chuckle out loud at the prospect of having to tell the class what I did this past summer, technically late spring, early summer. If I had to do so today, it would be in the nature of a “heck of an adventure”.

So many images: the constant blur of people moving about, pressing their interests to those who would listen, the long hours put in by legislators and those interested in their handiwork, the waiting around and the stress that comes with it, but also at the swiftness things can change, even the occasional humor that would lighten up a serious subject at a hearing. And, perhaps not surprisingly, the majesty of the capitol building itself.

So many people to thank: Mark, Bobby, Paula, Greg, Rufus, Neshelle, Melanie, Carl, and others who spent time on the “battlefield” on more than one occasion. To all of you who sent in opposition letters to committee members and your own legislative delegations. For the invaluable guidance about the process I received from George. For the skill and unrelenting assistance received from Bob Rainer.

And issues still to be resolved: if the Association is to remain involved with the legislative process, a “system” needs to be devised that best projects the will and consensus of the organization on issues that affects one or all of us. How to do that without compromising the autonomy many of you want to protect as individual administrators will be the overriding issue.

Often I was put in the position of having to (1) determine the motivation of bills introduced that seemed detrimental to local interests, (2) trying to negotiate a better outcome with the proponents of the bill, and (3) trying to determine whether that outcome was acceptable to the membership, without any assurance

of what was acceptable to all, most, or maybe just some.

This inability to assimilate a position also frustrated many of those with whom I had to try to work with during the process. Absent the ability of the Association to speak with “one voice”, our credibility as a group will be viewed as suspect in the future.

Enjoy the rest of your summer and thanks for listening!

J Roger Bergeron, Editor
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“Far and away the best prize that life offers is the chance to work hard at work worth doing.”

–Theodore Roosevelt

MEMBERSHIP INVITATION AND APPLICATION

Name _____ Title _____

Representative of _____ Dept/Div _____

Mailing Address _____ City _____ State _____ Zip _____

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Annual Dues: \$150.00 (Government Employees)
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