Louisiana
# Tax Topics
Department of Revenue and Taxation

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*The mission of the Louisiana Department of Revenue and Taxation is to serve the citizens of Louisiana by efficiently collecting the state's tax revenue in a manner that will generate the highest degree of public confidence in our integrity and fairness.*

## Appeals court rules on sales tax issues

A recent ruling by the state of Louisiana, First Circuit Court of Appeal in **Comdisco, Inc. versus Secretary of Department of Revenue and Taxation** [93-1695 (La. App. 1 Cir., 10/7/94)] addressed the issue of the authority of the department in the area of issuing estimates of taxes due and also addressed the use tax liability of a lessor holding tangible personal property for lease or rental in this state.

The transaction as presented in this litigation involved Comdisco, Inc., a Delaware corporation domiciled in Illinois, who purchased an aircraft and subsequently leased the aircraft to a business located in Louisiana. In July 1989, the department, after becoming aware of the plane's situs in Louisiana, notified Comdisco that as the owner of tangible personal property being leased in Louisiana, a use tax was due on the property. A questionnaire was forwarded to Comdisco requesting information concerning the date of purchase of the aircraft, the date of importation into Louisiana, the original state of purchase, the purchase price, and information concerning taxes paid to another state. Comdisco eventually notified the department, based on the lessee's use of the aircraft in and outside Louisiana, the aircraft qualified for an interstate commerce exception.

When the department was unable to obtain further information, an assessment of estimated taxes due was issued using the best available information concerning the tax period. As a result of this assessment, Comdisco filed a petition with the Board of Tax Appeals contesting the period shown on the assessment notice and also asserting that the department was prohibited from levying a tax on "bona fide interstate commerce."

The Board of Tax Appeals upheld the assessment as did the District Court. Comdisco appealed the district court's decision to the First Circuit Court of Appeal. The First Circuit held that the Department of Revenue and Taxation is authorized by Revised Statute 47:1562 to determine tax, penalty, and interest by "estimate or otherwise." The Court reasoned that, in order to estimate the tax, penalty, and interest, the department is implicitly authorized to estimate the date the tax became due.

The Court of Appeal further held that Comdisco's aircraft was not exempt from taxation under R.S. 47:305(E) as engaging in bona fide interstate commerce. The transaction being taxed was the act of importation by Comdisco for the purpose of leasing the aircraft to a lessee in Louisiana. The tax was not a charge for engaging in interstate commerce, but was rather a tax assessed by the state in which the aircraft was domiciled and on which no other state had the right to levy a tax. In fact, no taxes had been paid to another state. The department's assessment of use tax against Comdisco for the importation of the aircraft for the purpose of leasing or renting was upheld.

## Extra! Extra! Tax Topics goes monthly

**In the interest of providing taxpayers with tax information on a more frequent basis, the department is publishing the *Louisiana Tax Topics* on a monthly basis. T*ax Topics* will remain free of charge.**

Note: At the time of this writing, the First Circuit Court of Appeal has denied a rehearing and the department is awaiting a determination as to whether or not this matter will be heard before the Louisiana State Supreme Court. ■

## Substitute forms manual available

The manual outlining the **1994 Requirements for Designing and Printing Certain Substitute or Computer Generated Forms** is available for use by software developers.

Purchasers of commercially available software packages used for tax return preparation do not need to get approval for the forms produced by the software package. The original developer's software package should already have been approved before selling the software to others.

***Continued on page 2***

## Rate of judicial interest determined

In accordance with Louisiana Civil Code Article 2924(B)(3), the rate of judicial interest for calendar year 1995 has been calculated at 8.75 percent.

Under provisions of Revised Statutes 47:1624 and 47:1576, interest payable on refunds made by the Department of Revenue and Taxation will be payable at this judicial rate during the 1995 calendar year.

The rates are as follows:

| | |
|---|---|
| 1995 | 8.75% |
| 1994 | 7.00% |
| 1993 | 7.00% |
| 1992 | 9.00% |
| 1991 | 11.00% |
| 1990 | 11.50% |
| 1989 | 11.50% |
| 1988 | 9.75% |

From October 1, 1982 through March 27, 1988, the interest rate on refunds was set at 15 percent regardless of the judicial interest rate.

Interest on taxes owed to the department remains at 15 percent per year on any tax amounts owed. ■

# Inheritance tax update

### Tax waivers

Tax Waiver and Consent to Release forms (R-3313) are provided by the Department of Revenue and Taxation as a courtesy to holders of property standing in the name of a deceased person. Tax waivers will be approved only in those cases meeting one or more of the following criteria:

1. it is substantiated that the property to be released does not form a part of the decedent's Louisiana gross estate;
2. any inheritance tax due has been paid on the property to be released;
3. it is substantiated that the property to be released is exempt from tax;
4. a signed court order authorizing the release of the property is received; or,
5. Letters Testamentary empowering the succession representative to collect all property of the deceased is received.

In the case of a Letters Testamentary, it is also necessary to provide the address and social security number of the succession representative.

***Continued on page 4***

# Inventory tax credit

A refundable tax credit is allowed for ad valorem taxes paid to political subdivisions on inventory held by manufacturers, distributors, and retailers. The credit can be applied to corporation income and franchise taxes or individual income taxes. If the credit exceeds the income and franchise taxes due on the return, the balance is refunded as an overpayment, or may be used as a credit carryforward to the next tax period.

An amendment to Revised Statute 47:6006 clarifies that dealers of motor vehicles, boats, etc., who have collected this tax from persons to whom they sold the inventory, may not take a credit for the tax on their income tax returns. Returns filed by these dealers must exclude any of those amounts of inventory tax. Otherwise, all manufacturers, distributors, and retailers paying an inventory tax are allowed to claim the credit as follows:

| |
|---|
| 20% of the taxes paid between July 1, 1992 through June 30, 1993 |
| 40% of the taxes paid between July 1, 1993 through June 30, 1994 |
| 60% of the taxes paid between July 1, 1994 through June 30, 1995 |
| 80% of the taxes paid between July 1, 1995 through June 30, 1996 |
| 100% of the taxes paid on or after July1, 1996 |

For additional information concerning the inventory tax credit, contact the Income and Corporation Franchise Taxes Division at (504) 925-4611. ■

## Substitute forms manual available *(continued)*

The manual contains record layouts for reproducing the scannable IT-540 and IT-540B individual income tax forms and schedules, and the LA 8453 Electronic Filing Form. It also contains requirements and specifications for producing nonscannable forms. These include, but are not limited to, the 1994/95 Corporation Income and Franchise Taxes return, the Estimated Tax Return for Individuals, the Estimated Tax Return for Corporations, the Partnership Tax Return, the Fiduciary Tax Return, and extensions for filing certain tax returns.

The sales tax return, withholding tax return (L-1), and annual reconciliation form (L-3) are being developed for inclusion in the manual later this year. Until this development has been finalized, sales tax and withholding tax forms must be filed on the department's officially printed forms. Completion of the record layouts and requirements for these forms will be announced in **Tax Topics**.

You may request copies of the current specifications manual by writing to the following address:

Department of Revenue and Taxation
Research and Technical Services Division
Attention: Danny Brown
P.O. Box 201
Baton Rouge, LA 70821-0201

# Taxable Value of "Coke-on-Catalyst"

The department recently issued Policy and Procedure Memorandum No. 70.17 - "Taxable Value of "Coke-on-Catalyst" to clarify the calculation of the use tax on the "cost price" of "coke-on-catalyst" when used or consumed by the producer.

In BP Oil Company v. Plaquemines Parish Govt. [642 So.2d 1230 (La., 1994)], the Louisiana Supreme Court considered the taxability of a product used by petroleum refineries known as "coke-on-catalyst." Coke-on-catalyst is a solid by-product of the refining process that accumulates on the catalyst, a solid material used to enhance chemical reactions in the refining process.

The Court determined that this by-product of the petroleum refining process is not eligible for exemption from sales or use tax as tangible personal property for further processing and resale, but is eligible for sales and use tax exemption under Revised Statute 47:305(D)(1)(h) when used as a boiler fuel energy source. The sales and use tax exemption provided by R.S. 47:305(D)(1)(h) for boiler fuel energy sources has been suspended for several years. Users of coke-on-catalyst are required to calculate a use tax on the "cost price" of the product.

Because of the complexities involved in calculating all of the cost components that must be included in the "cost price" of each use of coke-on-catalyst, the department will allow the taxable "cost price" of coke-on-catalyst to be determined by the use of the formula provided by R.S. 47:305(D)(1)(h) that is used in determining the taxable value of refinery gas. Under that formula, the taxable value of refinery gas for each calendar year shall be 52 cents per thousand cubic feet (MCF), multiplied by a fraction, the numerator of which shall be the posted price for a barrel of West Texas intermediate crude oil as of December first of the preceding calendar year, and the denominator of which shall be $29.00. Because an MCF of refinery gas has been determined to have a value approximately four times greater than the value of a ton of coke-on-catalyst, the value of coke-on-catalyst will be one-fourth of the amount determined under the refinery gas formula. However, because a ton of coke-on-catalyst has more BTUs than an MCF of refinery gas, the number of tons of coke-on-catalyst that are used by the refinery must be multiplied by a ratio, the numerator of which shall be the BTU contents of a ton of coke-on-catalyst, and the denominator of which shall be the BTU contents of an MCF of refinery gas. This adjustment must be made prior to the application of the 25 percent refinery gas formula to determine taxable value.

For additional information concerning this policy, contact the Sales Tax Division at (504) 925-7356. ■

# Timber tax rates for 1995 established

Timber values for use in determining severance tax timber rates for 1995 have been established by the Office of Forestry and the Louisiana Tax Commission.

The values and tax rates are as follows:

| ***Product*** | ***Tax value per ton*** | ***Tax rate per ton*** |
|---|---|---|
| Pine Sawtimber | $36.68 | $.83 |
| Hardwood Sawtimber | $19.09 | $.43 |
| Pulpwood Pine | $ 9.02 | $.45 |
| Pulpwood Hardwood | $ 3.65 | $.18 |
| Pine Chip-n-saw | $25.12 | $.57 |

Revised forms are available. Any questions concerning timber tax rates should be directed to the Severance Tax Division at (504) 925-7500. ■

# Annual refinery gas value set for 1995

The cost price for use tax purposes on refinery gas has been determined to be $.32 per thousand cubic feet (MCF) for the calendar year 1995. This year's value is based on posted price of West Texas Intermediate Crude Oil of $17.80 per barrel. By applying this price to the statutory formula, the following value is determined: $17.80 divided by $29.00, multiplied by $.52, equals $.32 per MCF.

Revised Statute 47:305(D)(1)(h), as amended by Act 476 of 1990, provides the annual valuation formula and denies refinery gas the exemption that is given to other boiler fuels. Refinery gas is subject to both state and local use taxes, regardless of the circumstances of its use.

Refinery gas that is sold, exchanged, or bartered (instead of being used by the producer) is subject to sales tax based on the selling price or the value of the consideration involved.

The cost price amounts for refinery gas in previous years are as follows:

| | |
|---|---|
| 1994 | $.25 |
| 1993 | .34 |
| 1992 | .36 |
| 1991 | .56 |
| 1990 | .34 |
| 1989 | .25 |
| 1988 | .336 |
| 1987 | .25 |
| 1986 | .50 |
| 1985 | .52 |
| 1972-84 | .04 |

For additional information concerning the taxation of refinery gas, contact the Sales Tax Division at (504) 925-7356. ■

# Inheritance tax update continued

## Returns must be filed

Revised Statutes 47:2425 requires that an inheritance tax return be filed in every instance where tax is due, or the gross value of the estate is $15,000.00 or more. In either case, the fact that an heir or legatee *(including a surviving spouse)* is totally exempt from tax does not relieve the heir or legatee of the obligation to file a return.

## United States Treasury obligations

Federal Treasury regulations provide that the survivor co-owner of any United States Treasury obligation (*savings bonds*, *notes*, *bills*, *etc.*) is recognized as the sole and absolute owner entitled to immediate possession without necessity of probate proceedings or any other formality. [***Free v. Bland,* 369 US 663, 8 L ed 2d 180, 82 S et 1089 (1962)]**. The value of the obligation is excluded from the property subject to inheritance tax in the estate of the first co-owner to die. However, its value, less any applicable exemption, will be fully taxable in the estate of the survivor co-owner.

## Usufruct calculated on net estate

Louisiana Civil Code Article 890 confers on the surviving spouse of a decedent the right to hold in usufruct that portion of the decedent's share of the community inherited by his descendants. In determining the inheritance tax due, consideration must be given to the decedent's entire estate, making no distinction between separate and community property. If a decedent has left no separate property, the interest of his heirs, subject to inheritance tax, is in the residuum of his net share of the community after the deduction of debts, including expenses created after death. ***[Succession of Lewis,* 12 So 2d 7 (1939)]**. Therefore, all debts of a decedent, both separate and community, must be deducted from his gross estate prior to computation of the value of any usufruct being received by the surviving spouse. ■

# Sales tax law book available

The sales tax law and regulations are available on request from the department at no charge. State law requires a written request to mail publications over 10 pages in length. The coupon below is for your convenience in requesting the law book.

Please send a copy of the **Louisiana Sales Tax Law and Regulations** to the following address:

Name ____________________

Company ____________________

Address ____________________

City, state, ZIP ____________________

Mail this coupon to: Research and Technical Serivices Division
Louisiana Department of Revenue and Taxation
PO Box 201
Baton Rouge LA 70821-0201

Or FAX this coupon to: (504) 925-3855

### Baton Rouge – Main Office

| | |
|---|---|
| Central Registration | 504•925•7318 |
| Collection | 504•925•7448 |
| Excise Taxes | 504•925•7656 |
| Income & Corporation Franchise Taxes | 504•925•4611 |
| Inheritance & Gift Taxes | 504•925•7424 |
| Sales Tax | 504•925•7356 |
| Severance Tax | 504•925•7500 |
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| TDD | 504•925•7533 |

### Regional Offices

| | |
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| Alexandria | 318•487•5322 |
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| Monroe | 318•362•3151 |
| New Orleans | 504•568•5233 |
| Shreveport | 318•676•7505 |
| Thibodaux | 504•447•0976 |

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