



Fall 2010

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LATA NEWSLETTER

Act 442 CWG

Stumbling Towards Conclusion

The Act 442 Collaborative Work Group (CWG) is nearing the final stages of its mission to make recommendations to the 2011 Legislature regarding “developing policy regarding the determination of which items should be considered as moveable or immovable property” for the purposes of state and local sales and use tax.

In its initial meeting on August 26, 2009, the appointed business and governmental representatives received an overview of Open Meeting laws and established some operational procedures and elected officers.

Subsequent meetings in 2009 consisted of general discussions concerning issues related to several specific property categories, including industrial commercial structures as well as industry-specific discussions/presentations related to hospitals, and new concepts such as the “functionality” of a building and its component parts. The CWG also received summaries of jurisprudence in which Civil Code Article 466, Component Parts of Immovables, issues were present as well as a report on selected statutes and regulations regarding movables in other states. During all of these sessions, input from non-committee members was received during the “public comments” portion of the meetings.

Following a break for December holidays, the CWG re-convened in January and received its first comprehensive “legislative proposal” drafted by the state/local representatives of group. The “local proposal” closely mirrored pre-Act 442 construction of most forms of immovable property but allowed for some liberalization of “other constructions” but did not include adoption of any of the functionality concepts previously discussed by the group. At this meeting, the CWG Chairman appointed a “drafting subcommittee, consisting of three attorneys from the business members and three from the state/local members to attempt to develop a consensus, using the local proposal as a starting point.

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Reminder!

**Annual
Conference**

**Dec 7-10
New Orleans**

At its March 31st meeting, a new document prepared by the drafting subcommittee was introduced to the full CWG (hereafter the “3/30/10 draft”). The new proposal, also attempting to define immovable property by definition for sales and use tax purposes, introduced new terminology for “permanent construction”, “legal component” and “permanent component” thereof and a series of subjective tests to determine the existence of “substantial damage”. The document also introduced the “special purpose building” theory for the first time.

No action was taken on the proposal and the CWG adjourned for the duration of the 2010 Legislative Regular Session, as several CWG members were involved with that process.

Upon reconvening its work with an August 11th, 2010 meeting, the group voted to adopt rules regarding the acceptance/denial of amendments to the 3/30/10 work draft. It was adopted that a 2/3rds approval of those present was required to adopt any changes to the 3/30/10 document and that 2/3rds of the entire CWG (10 members) must approve any final recommendation to the Legislative committees having oversight of the project.

It was at this meeting that the state/local delegation introduced sixteen amendments to the 3/30/10 document, mostly to override the drafting committee proposals concerning the substantial damage tests (changed to a general statement that in each case, a fact based analysis is required) and deletions of all references to “special purpose building” or other “functional use” criteria.

The amendments signaled the chairman that the 3/30/10 document did not have sufficient consensus to move forward and the document was recommitted back to the drafting group for further work. The rewrites, if any, was to be considered by the entire CWG at its regular scheduled September meeting, now rescheduled for later in October.

If no consensus recommendation can be reached by January 1, 2011, a determination will have to be made, based on the language of Act 442, as to what tax collectors/taxpayers/practitioners are to look to in determining what are component parts of buildings/other constructions for sales and use tax purposes.

[Editor’s note: if and when a “final document” is presented for CWG consideration, it will be forwarded to all local administrators for input and comment before the LATA, LMA and LSBA appointees cast their vote.]

LDR Announces Creation of Audit Protest Bureau

Effective July 1, 2010, protests of state sales tax audits filed by taxpayers will fall under the jurisdiction of the Louisiana Department of Revenue's Audit Protest Bureau (APB). Protests of income tax assessments will be considered as of January 5, 2011. LSA-R.S. 47:1563 gives the Secretary of the Louisiana Department of Revenue (LDR) the authority to grant protest hearings.

In response to a request for information concerning the new Division, the LDR writes:

“Taxpayers wanted a fair and impartial review of audit protests. To answer the needs of those we serve, LDR formed the Audit Protest Bureau (APB) to act as an independent, impartial branch of LDR. APB's main function is to review audit protests. Prior to the formation of APB, the Field Audit Services Division (FAS), the same unit responsible for conducting and reviewing audits, handled audit protests. This separation provides the taxpayer with a sense of fairness and an opportunity to be heard. The process simply shifts the audit protest process to APB, an independent division separate from FAS. APB's process does not affect the taxpayer's rights of appeal if they disagree with APB's decision. The Taxpayer will retain the rights of appeal to the Board of Tax Appeals or the right to pay under protest and file suit.

APB provides a forum for taxpayers and LDR to resolve tax audit disputes in a timely manner without resorting to litigation.

APB is staffed and managed by legal and tax administration experts who are professionally trained in dispute resolution.

The audit-protest process works in three steps:

- After a proposed tax assessment is issued, but before formal assessment, APB will have control of the Audit Protest process.
- Taxpayers must file protests with APB. Previously, this step occurred in the Field Audit Services Division.
- APB determines the facts, identifies unresolved issues and renders a written determination.

APB is an independent unit. Our dispute-resolution professionals are prohibited from engaging in ex parte communication with other LDR employees to the extent that such communication appears to compromise the independence of APB.”

The Division is staffed by protest officers with collectively over 87 years experience in tax matters and 47 years of legal experience in field of tax. The new Division is under the direction of Monica Doss-Washington, who is scheduled be a featured speaker at our LATA Annual Conference in New Orleans this December.

Bossier City Hosts Third Quarterly Conference

Bossier City/Parish Tax Administrator Ken Kirspel and staff recently hosted the membership at the Diamond Jacks Casino and Resort September 8-10. Conference Coordinator Michael Collins directed the events throughout the session. Program highlights included presentations from Scott Peterson, Executive Director of the Streamline Sales Tax Governing Board, Warren Townsend, Director of Sales & Use Taxes, Wal*Mart, Inc., Pamela Fair, Louisiana Department of Revenue, and Donna Andries, Rapides Parish Sales & Use Tax Director. The attendees also received a final update on key 2010 tax legislation from Legislative Committee members.

Ken reports 168 members along with 42 guests attended the conference.

In addition to the Thursday evening Dinner/ Dance , avid New Orleans Saints fans were treated to a big screen broadcast of the Saint's victorious season opener versus the Vikings in the hospitality room. Although the game was in the N.O. Superdome, several LATA fans must have felt like they were in the “Froz'n Nawth” as evidenced by some “snuggling” throughout the frosty room.

LATA Committee News

Certified Testing: The committee has announced that certified testing for CTA and CTE candidates will be conducted on October 28th, 2010 at the Hampton Inn in Jennings, LA. All applications for testing must have been received by the committee no later than September 30th. Results will be announced and certificates awarded at the Annual Conference.

Business & Industry: Chairman David Moore, with American Electric Power, reports that the B & I committee is still narrowing down appointments to the arbitration registry required by Act 1003 of the 2010 Regular Session as well as the LATA voluntary arbitration/mediation policy.

Local Audit: The committee has drafted an audit services cooperative endeavor agreement in anticipation of a pilot program in which local taxing authorities have agreed to perform reciprocal audit services. The committee has also updated the Local Audit Best Practices document to include audit-related legislation effective after the conclusion of the 2010 Regular Session (with the exception of Act 1003 which becomes effective 1/1/11).

Education: The committee met at the Bossier City conference to evaluate the recently held LATA Annual Sales Tax Seminar. Chairman Ron Carter reported that 164 people attended the seminar in Lafayette in August. The committee held further discussions about the seminar content, make-up of presenters, and future seminar sites. In conjunction with the certified testing event, the committee will hold a special meeting on October 27th in Jennings, LA.

Nominating: Chairperson Cynthia Boudreaux has opened nominations (by August 31st) for submission of nominations by voting members to fill two upcoming vacancies to the LATA Board of Directors as well as for the Second Vice President, all to serve during the 2011 organizational year. The slate of officers and board members selected by the committee will be placed for a vote by the membership at the annual conference in December. Nominations from the floor during the business meeting are also permissible under the LATA By-Laws.

TRIALS: Chairman Rufus Fruge reports that his committee has made excellent progress towards updating the TRIALS reference materials and is on schedule for its December completion date.

Membership: Committee chair Tiffini Delapasse informs that her committee is producing a recruitment document that explains the benefits of LATA membership and furnishes an application for prospective new members for 2011.

Scholarship: Chairman Tom O’Neal has announced that the 2010 LATA Scholarship Award, to be announced at the annual conference, will be in the amount of \$4,000. This year’s stipend includes a donation in the amount of \$500 from the Gary W. Lambert Company, a long time associate member of LATA.

Uniform Reporting & Remittance: The committee met prior to the opening of the Third Quarter Conference for a general discussion of recent developments concerning the Parish E-File system. The PEF system operates under the management of the LA Dept. of Revenue and receives guidance from the URR Advisory Committee. The local committee has requested a meeting with the Secretary of Revenue for further discussions of PEF operational concerns.

Miscellaneous Announcements:

President Neshelle Nogess, St. James parish sales & use tax administrator, has announced tentative plans for the 44th Annual LATA Conference in New Orleans, to be held December 7th through December 10th at the Astor Crowne Plaza. Conference registration, tentative agenda and hotel registration information can be obtained directly from the LATA Website. See www.laota.com for details.

From the Editor's Desk:

“Random Shots”

After several days of suffering from “writer’s block”, I am dedicating this editorial title to the late Bud Montet, distinguished sports writer for many decades at the Baton Rouge *Morning Advocate*. “Random Shots” was the title of his column in the sports section, a potpourri of goings-on in the sports world.

Sad to hear of the passing of former Secretary of Revenue, Mrs. Shirley McNamara, this past Thursday. “Ms. Mac”, as she was known in Revenue circles, served under three governors and if I am not mistaken, was the first “career employee” to serve as Secretary. She also played a pivotal part in my career. In the mid-70’s I was working at the LDR in Lafayette and going to school (USL) at night in order to finish my degree. My

last 6 hours were not offered at night so I applied for a partial “leave without pay” absence to attend classes in the morning and work in the afternoon. An undersecretary, at the time, declined my request. At the urging of some of my friends in the Lafayette office, I wrote to Ms. Mac for reconsideration. She not only approved my request but encouraged me to continue my career in Revenue after graduation.

Am I the only one to notice so many new faces at this year’s quarterly conferences? Somewhere in these crowds are the next generation of LATA leaders. After two-plus decades with the organization, several of us have no doubt moved from the “young turks” to the “exhausted rooster” membership category.

I attended a “People in Government Service” (PIGS) meeting a couple of weeks ago, and the primary focus of discussion was action taken by the legislature near the end of the session that resulted in so-called “sweeping” of surplus funds in various state agency reserve accounts. Presumably the move was to aid the state in addressing its deficit cash flow. It wasn’t too long ago that local leaders expressed concerns that, under state-centralized collection of local sales taxes, local funds could be diverted for state purposes without us knowing about it. To wit, remember the Avants case a few years ago involving the Office of Motor Vehicles. Now imagine, say, the legislature having access to the near-billion dollars that have flowed through the Parish E-File system?

Next year’s regular (and perhaps special) session will no doubt focus on the state’s anticipated \$2 billion dollar projected deficit. The governor has consistently said that raising taxes is not an option to solve the problem. But what about a temporary suspension of state sales tax exemptions, as was done in the mid-80’s to address a similar situation? If the transactions covered by the exemptions would otherwise be taxable but for the exemption, is the suspension of the exemptions really a tax increase? I admit if you are on the paying side of the equation you would call it an tax increase. The 2008-2009 Tax Exemption Budget, prepared annually by the La. Department of Revenue, reports that there existed \$4,274,216,153 of statutorily imposed sales tax exemptions on the books for FY 2007-2008.

I would submit that all the exemptions (including those disguised as an “exclusion”) need to be reviewed by the legislature and a determination made as to the “cost benefit” initially intended versus what is the reality of today’s economic circumstances.

In the meantime, the LDR, after having to close a regional and a district office, pull back on time available for taxpayers to obtain face-to-face service, and enduring the loss of some 53 experienced employees to retirement recently, now announces that it is temporarily suspending its “private letter ruling” services. At least they are not yet at the point of having to pull auditors out of the field to open mail, as was done in 1989 (at a cost of \$40 million in lost production/collections it can be argued).

J Roger Bergeron, Editor
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Quote of the Quarter:

“I am a little pencil in the hand of a writing God who is sending a love letter to the world.”

--- Mother Theresa

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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