



Summer 2011

Issue 14, 2011

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Upcoming Events:

Third Quarter Conference
Sam's Town Hotel
Shreveport, LA
Sept 14-16, 2011

Annual Conference
Clarion Inn
Monroe
Dec 6-9, 2011

Sales/Use Tax Seminar

LATA NEWSLETTER

Legislative Edition

The 2011 Regular Session of the Louisiana Legislature officially ended at 6:00 pm June 23rd. For a so called “fiscal year” session, there were very few enactments that affected local tax collections or administration.

There were no major new exemptions that had a statewide impact and only a few that had a regional impact.

The following is a summary of monitored bills that have been signed by the Governor. The entire Act can be downloaded from the Legislative website at www.legis.state.la.us utilizing the “Bill Search” feature, entering either the Act number or bill number:

	<u>State & Local Sales Tax:</u>	<u>Effective:</u>
Act 387 HB 35	Exempts sale of construction materials to "Make It Right Foundation" (Enacts LRS 47:305.66 and LRS 457:337.9 (D)(31))	7/1/2012
Act 385 SB 254	Exempts sale of construction materials to "Make It Right Foundation" in addition to Habitat for Humanities and Fuller Center for Housing (Amends and reenacts LRS 47:305.59 and 47:337.9(D)(27))	7/1/2012
Act 372 HB 247	Exempts nonprofit organizations at certain cultural events Note: Intended to apply to N.O. Jazz Fest only	10/1/2011
Act 296 HB 606	Amends 47:305.64 to include certain medical physicist facilities Note: RS 47:305.64 is an optional local exemption. See 47:337.10 O.	8/1/2011
Act 154 SB 219	Local tax only/Optional exemption for motion picture production companies in certain parishes (St. Martin, Vermillion, Iberia, St. Landry, Lafayette)	6/24/2011
Act 379 HB 508	State only: exempts certain motor vehicles adapted for use by persons with orthopedic disabilities, effective 1/1/10 through 6/30/13	10/1/2011

<u>Act 331</u>	SB 82	State only: exempts certain breastfeeding items	10/1/2011
<u>Hotel-Motel:</u>			
<u>Act 230</u>	HB 207	Authorizes hotel occupancy tax, certain municipality, approved by voters Note: applicable to Town of Bunkie, not to exceed 5% of rental fee	6/27/2011
<u>Occupational License</u>			
<u>Act 326</u>	SB 41	Amends 47:342(3)(b) definition of contractor in certain parishes Note: as written, would apply only to Jefferson Parish, based on 2010 census	See Act
<u>Ad Valorem</u>			
<u>Act 275</u>	HB 335	City of New Orleans- requires reimbursement of certain property improvements	6/28/2011
<u>Administrative</u>			
<u>Act 61</u>	HB 37	Requires certain tax collectors to report and remit within 10 business days Note: although intended to apply to sheriffs, may be interpreted to apply to any tax collector	6/20/2011
<u>Act 207</u>	HB 639	Abolish certain boards/ commissions Note: HFA #1955, No. 4 deleted ULERRAC from those to be abolished	6/24/2011
<u>Act 171</u>	HB 209	State only: Sampling, managed audits, waver of interest	6/24/2011
<u>Constitutional Amendment:</u>			
n/a	<u>HB 135</u> <u>(CA)</u>	Prohibits any new tax or fee upon sale or transfer of immovable property	Filed

In addition to these measures, the House passed Concurrent Resolution 80, by Rep. Rosalind Jones, urging and requesting the LATA to conduct a survey of local collectors regarding collection of sales and use taxes over the Internet.

Unfortunately, Sen. Dan Morrish, author of the mandatory arbitration law (Act 1003 of 2010), was unable to find an acceptable bill to attach amendments fixing certain problems with the process. He left the door open to work with us before/during next year's session.

What follows is an abstract of additional bills monitored by the LATA and other local governmental organizations. With the exception of HB 641 (see

succeeding article), several were opposed in one fashion or another, deferred in the face of such opposition, or deferred at the request of the author.

Sales/Use

<u>Bill No.</u>	<u>Author</u>	<u>Explanation</u>	<u>Comments:</u>
HB 114	Tucker	Definition of "Hotel"	Voluntary deferred
HB 486	Greene	Exempts pay-per view, on-demand from sales tax	Passed House, stalled in Senate
HB 641	R. Jones	Dealer: Defines "substantial ownership", activities	Stalled in Senate on 3rd reading Vetoed by Governor; \$8.3 million state revenue loss
SB 21	Riser	Exempt containerized water	Voluntary deferred
SB 29	Alario	Exempt Certain NPOs-Golfing Events	Voluntarily deferred
SB 49	Mills	Exempt certain medical inhibitors/ biologics	Voluntarily deferred
SB 51	Alario	Exempts Fore!Kids Foundation golfing events	Voluntary deferred
HB 616	Baldone	Exempts components of vessel reconstruction	Voluntarily deferred
HB 627	G. Jackson Willard-	Exempts construction matls. NOLA Motorsport	Voluntarily deferred
SB 258	Lewis	Exempt mfging matls.-orbital environments	Returned to calendar

Insur. Prem.

HB 147	Roy	IPT Tax Credit changes	Voluntary deferred; request study resolution
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Hotel-Motel

SB 256	Crowe	Exempts certain campgrounds/ Occupancy tax	Voluntary deferred
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Ad Valorem

SB 54	Amadee	AVT: Prohibits certain transfers w/o consent	Passed House, stalled in Senate
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Administrative

HB 223	Smiley	Tax Court (see with HB 181)	Voluntary deferred
HB 410	Landry	Protects receiverships from pre-seizure tax due	Voluntary deferred
HB 488	Greene	LDR: Requires regulation prior to enforcement	Voluntary deferred
HB 538	Richard	Public Records: Production formats	Voluntary deferred

Commentary:

Despite the usual trials and tribulations of any legislative session, overall, local taxing authorities fared very well in the recent session. That can be attributed to, in no small measure, to the interaction of several groups and individuals.

Legislative liaisons from the La. Municipal Assn. (George Marretta, John Gallager), the Police Jury Assn. (Ty Bromell), and the School Board Assn. (Lloyd Dressel) were extremely helpful in lobbying on behalf of local interests.

Our LATA Legislative Committee also played an important part in the process. Committee Co-chairs Rufus Fruge (Calcasieu parish) and Greg Ruppert (Jefferson parish and with the Multiparish Tax Commission) were this year's leaders. Romy Samuel (Orleans) headed the Sales Tax subcommittee while Ken Kirspel (Bossier) led the OLT/AVT subgroup.

Co-chair Mr. Ruppert made several trips from his home base to attend hearings and meetings. Local administrators that made frequent attendance at committee hearings included Tiffani Delapasse and Bobby Craig (East Baton Rouge) and Mark West (Ascension). Area LATA administrators who came for support included Neshelle Nogess (St. James), Melanie Moore (West B.R.), Carl Meche (Lafayette) and Susan Whitaker (on behalf of St. Tammany). To others I may have missed, forgive my faulty memory.

Not resting on this success, the Executive Director, Legislative Committee leaders and several LATA officers are meeting the week of July 25th to review the process and discuss ways and means of improving our effectiveness.

Nexus Expansion Bill Falls Just Short

One of the few tax-related bills that had unanimous support from the LATA and MTC was HB 641 by Rep. Rosalind Jones (D-Monroe). Rep. Jones' bill sought to expand the definition of a "dealer" in Louisiana law by requiring out-of-state, remote sellers, by virtue of an ownership or activity connection to an in-state affiliate, to collect state and local use taxes on their resulting LA retail sales.

The concept is commonly referred to as "attributional nexus" and is an extension of the well-established requirement of a bright line "physical presence" test in several U.S. Supreme Court cases on the issue. Attributional nexus asserts that even though the vendor does not have a direct physical presence in the receiving state, its ability to reach the in-state consumer market is enhanced by the activities of an in-state affiliate, commonly acting as an independent contractor, paid for its referral services. Some higher courts in other

states have ruled favorable on the issue, some state legislatures have followed suit with enactments adopting the rulings as law. The U.S. Supreme Court however has yet to take up a case, and issue an ultimate, binding decision on the arguments.

Rep. Jones worked with local representatives to amend to the bill to require the resulting new class of dealers to file their use tax returns by “electronic filing options available”, which would include Parish E-File.

She ably made the case for her bill twice before the House Ways & Means Committee, endured two votes on the House floor, got favorable consideration from the Senate Revenue & Fiscal Affairs committee, got a third reading on the Senate floor on June 21st, only for the clock to run out before a final passage vote could be held.

The bill advanced despite obvious opposition expressed by representatives from the Governor’s office, which asserted passage would be to the detriment of those in-state contractors, which would potentially lose the remote sellers’ business. That sentiment seemed to outweigh the competitive disadvantage placed on in-state sellers under the existing system.

Association Announcements

Several veteran LATA administrators have been appointed to committees to represent the Association on matters that affect local tax administration.

Mike Curtis (Livingston Parish, past LATA president) has been nominated by President Ron Carter and appointed by Secretary Cynthia Bridges to serve on the Louisiana Department of Revenue Advisory Council. According to RIB No. 11-008, the Secretary seeks to appoint members from several groups and associations to provide input and recommendations regarding state tax administrative policy and procedural matters. We trust Mike will be an effective voice for local tax administration views.

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Likewise, Rufus Fruge (Calcasieu Parish, LATA 1st Vice President) has been appointed to serve on a work group formed by the LDR to study transactions

involving the delivery of a variety of digital products and the taxable nature thereof. The study group follows the recent repeals by the LDR of previous rulings on the subject matter.

Rufus advises that the group has scheduled a meeting on August 2, 2011 in Baton Rouge.

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The LATA Education Committee is planning for two State/Local Sales Tax Seminars in 2011. The dates are set for October 6th and 11th.

The October 6th session will be held at the North Shore Harbor Club in Slidell, LA. Presenters will include Gary Dressler, CPA, KPMG, Shawn McManus, Administrator, St. Tammany Parish, Rick Mekdessie, E-Gov Systems and Roger Bergeron, LATA Executive Director.

Details for the Lake Charles session are still being developed. Registration information will be circulated by the Committee beginning in September.
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The Continuing Education Committee has announced October 13th as this year’s Certified Testing date. Applications for testing and re-certifications, due September 20th, may be obtained from the Association website, under the Administrator’s forms link.

From the Editor’s Desk

“Episodes from the Twilight Zone”

Many of our age-advanced members may remember the popular 30-minute TV series from the 1960’s involving characters caught up in weird circumstances beyond their control, often ending in unexplainable phenomena. The 2011 Regular Session had its own “twilight” moments as well.

Lets begin with HB 491 (Act 365), a bill which would require the Ways & Means and Revenue & Fiscal Affairs committees to review the state’s so-called “ exemption budget” before sessions beginning in odd numbered years. Presumably, the committees

could use the opportunity to weed out exemptions that are costing the state coffers millions of dollars for which the state (and locals) are not receiving a corresponding economic benefit. The committees “may” issue a report and make recommendations to the full legislature on the worthiness of the exemption (s). Strangely, the review is limited to exemptions “in any one of the last three fiscal years”. This implies if any suspect exemption was passed prior to 2010, it was safe from scrutiny. But here comes the twilight moment...

In almost the next breath, the author of HB 491 urged favorable consideration by the committee on HB 597, (Act 414) which would re-enact a refundable income and corporate tax credit for individuals who invest in “Louisiana Entrepreneurial Businesses”. According to the Legislative Fiscal office, the prior program had expired in December 2009 and some \$22 million in credits had been awarded from 2005-2009 and the proposed legislation would probably result in an exposure of \$6 million over the next five years, but has a \$20 million allowable cap. The LFO offered no analysis on the benefits of the previous program.

Then there was the champion of an effort to repeal the state’s individual and corporate income taxes. The Senator, an able country lawyer from my home district, proposed a “plan” to replace the multibillion dollar revenue loss by eliminating multiple exemptions entrenched in the “exemption budget”, either targeting some directly or phasing them all out over a period of years. To illustrate the magnitude of the existing “special interest” free rides, the Senator had his staff tape together, page by page from the exemption book, a long train of paper, and proceeded to mount a 12-foot step ladder and had the train extended out to the length of the Senate chamber.

I couldn’t help but admire the theatrics, the old fashioned style of La. politics, but at the same time asked myself would the good Senator be willing to part with his own “Second Amendment Holiday” law, which he authored, and has undoubtedly cost state and local governments an indeterminable, but surely sizeable, amount of sales tax since its enactment in 2009.

Often, TZ stories involved encounters with alien presences. Perhaps the most “out of this world” bill considered in the session was SB 258. The bill would take presumed exempt transactions (tangible personal property purchased for further processing or manufactured in this state for export), make them taxable if the TPP was destined for “orbital environs” (defined to be 500 miles above the earth), and the resulting tax collections placed in a special fund to make grants to manufacturers of such space-bound equipment. The bill was grounded in the Senate.

To this observer, such goings-on brought some measure of levity to the otherwise daily grind of legislative monitoring. And, as we anticipate the 2012 regular session, the words of series creator Rod Serling come to mind:

*“You're traveling through another dimension, a dimension not only of sight and sound but of mind; a journey into a wondrous land whose boundaries are that of imagination. That's the signpost up ahead — your next stop, the **Twilight Zone.**”*

J Roger Bergeron, Editor
jrbergeron@cox.net

Quote of the Quarter:

“A mule will work tirelessly and patiently for ten years just for the opportunity to kick you once.”

- William Faulkner

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



LATA
P.O. Box 398
Vidalia, Louisiana 71373

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