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A Publication for
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ACCOUNTANTS

Relief or Grief?

Comparing Modified Carryover Basis
Versus Estate Tax Regime

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- ▶ Federal, State and Local Tax Reports
- ▶ New Reporting Requirements for Uncertain Tax Positions
- ▶ Tax Season Resources to Promote CPAs' Qualifications

plus . . . Bare-Bones Tips for Practitioners of Louisiana Income Tax

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Pursuant to IRS Circular 230 and IRS regulations we inform you that any federal tax advice contained in this publication is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties imposed under the Internal Revenue Code.

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Cover Story

Relief or Grief?

Comparing Modified Carryover Basis Versus Estate Tax Regime

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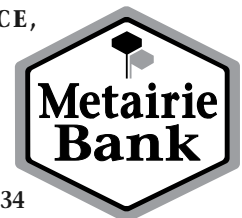
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Highlights

LDR Will Not Require E-filing of Extensions and Payments in 2011

The Louisiana Department of Revenue (LDR) announced Jan. 27 that it will not require the electronic filing of corporate and individual income tax extensions and payments for 2010 tax returns due in 2011.

On November 20, 2010 notices of intent for the following were published in the Louisiana Register: Corporate Income and Franchise Tax Filing Extensions (LAC 61:III.1503), Corporate Income and Franchise Tax Filing Extension Payments (LAC 61:III.1505), Individual Income Tax Filing Extensions (LAC 61:III.2501), and Individual Income Tax Filing Extension Payments (LAC 61:III.2503). The proposed rules would have required electronic filing of corporate and individual income tax extensions and extension payments beginning with returns due on or after January 1, 2011. LDR will not proceed with rulemaking for these four notices of intent.

LDR does intend to mandate electronic corporate and individual income tax extensions and extension payments beginning with the 2012 filing season/2011 tax year. The department will publish an advance notice of proposed rulemaking in the Potpourri section of the March or April 2011 issue of the Louisiana Register to allow stakeholders to participate in the rulemaking process well before the implementation date.

LDR encourages all taxpayers and tax professionals to take advantage of the benefits of electronic filing of extensions and extension payments. For more information about electronic filing and payment options, including extensions and bulk filing, visit the LDR E-services page at: <http://www.revenue.louisiana.gov/sections/eservices>.

IRS Honors LCPA for Efforts

At the January IRS-Tax Practitioners Liaison Meeting held at LCPA's Kenner office, Stakeholder Liaison Sharon Evans recognized the Society for our partnership with the IRS Small Business/Self-employed Division and our efforts to educate and serve America's taxpayers. Ms. Evans presented LCPA with an "Excellence in Partnering" certificate which is now proudly on display at the LCPA office.

Legislators Income Tax Guide Updated

The Society published its 2010-2011 *Income Tax Guide for State Legislators*. The Guide provides an overview of the income tax laws unique to members of the Louisiana Legislature. It features a Q&A format to address the frequently raised questions.

Copies were mailed to all Louisiana representatives and senators in January. The Guide also is available on the LCPA's website (lcpa.org) under the Members, Member Publications and Resources, Legislator's Income Tax Guide. Hard copies can be requested by contacting Ann Lupo at (504) 904-1125 or alupo@lcpa.org.

Get It When You Need It – Tax Season Resources on LCPA.org

To give you easy access to the information you need the most during tax season, LCPA has posted the following links or documents on the Society's homepage:

- ▶ LDR Tax Practitioner Issues FAQs
- ▶ IRS Video Portal – Learn about tax topics through video and audio presen-

tations. Includes archived versions of live panel discussions, archived webinars, video clips, and audio archives of national phone forums

- ▶ IRS Louisiana Telephone Directory for Tax Practitioners

Deadline Extended for 2011 Public Service Award Nominations

LCPA is seeking nominations for our 2011 Distinguished Public Service Award. The award is the highest honor for public service leadership, impact, involvement and innovation of a Louisiana certified public accountant. The LCPA member may work in public practice, industry, government or education, and may volunteer with community and/or civic organizations.

If you know of a deserving LCPA member you would like to nominate for the Public Service Award, please download and complete a nomination form from the LCPA's home page, lcpa.org. The deadline for submitting completed forms has been extended to February 28. The recipient will be selected by the Society in June, 2011. ❖



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Relief or Grief?

Comparing Modified Carryover Basis Versus Estate Tax Regime

By Carl S. Goode, Esq.

How is the tax basis of assets acquired from a decedent who died in 2010, determined? The Tax Relief Act of 2001 enacted I.R.C. Section 1022, which provides for a carryover basis regime, effective for decedents dying after December 31, 2009. Under this carryover basis regime, property acquired from a decedent is treated as if acquired by gift, and the recipients of such property will receive a basis equal to the lesser of the decedent's adjusted basis in the property or the fair market value of the property on the date of decedent's death.

Section 1022(b) permits an increase of basis to fair market value for assets transferred from a decedent, as determined on an asset-by-asset basis, up to a total of \$1,300,000 and to further increase the basis of assets by the amount of the decedent's unused capital losses, net operating losses, and certain built-in losses.

Section 1022(c) allows an additional \$3,000,000 increase to the basis of the property transferred outright to a surviving spouse and for qualified terminal interest property transferred to the surviving spouse.

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "2010 Act") repealed I.R.C. Section 1022. The 2010 Act provides, in part, that the estates of decedents who died in 2010 must decide whether to accept the estate tax (\$5,000,000 exemption and a 35 percent tax rate) or to elect to proceed under the prior 2010 law (no estate tax, but with carryover basis). If the estate is less than \$5,000,000, in most cases it would be best to accept the application of the estate tax and thereby acquire a basis step-up on the assets. Application of the estate tax regime is automatic if no election to use carryover basis is made timely.

In the case of an estate of more than \$5,000,000 an analysis should be done to determine whether the heirs are better off with a step-up basis or the carryover regime. This determination will include an analysis of the total value of the estate, a comparison of the cost basis in the estate assets and the fair market value of such assets, and a determination

of what future actions will be taken with respect to the assets (i.e. will the assets be sold or held). Tax attributes of particular beneficiaries/legatees may also be considered.

For instance, assume an estate value of \$5,025,000, in which the fair market value of the estate assets is \$5,025,000 and the cost basis of such assets is \$1,000,000. That would certainly be a situation where the estate tax regime should be accepted. Note that the new "portability" contained in the 2010 Act with respect to the applicable credit only applies to decedents who die after December 31, 2010, not during 2010. If the estate is valued at \$10,000,000, and the basis in the assets is \$5,000,000, electing carryover basis would save \$1,000,000 in federal tax if the assets were sold (15 percent capital gain tax on \$5,000,000 vs. 35 percent), or cost nothing while the assets are held. If the estate tax regime/step-up basis is accepted (no election is made to use carryover basis), an estate tax will be owed if the estate exceeds \$5,000,000 (assuming no marital deduction available or used on the excess).

The decision to elect out of the estate tax must be made correctly. No one knows yet how the election will be made, or when it must be made. It is most likely that the election will be due at the time of the 2010 income tax return but that is not certain without further guidance from the Treasury Department. If carryover basis is elected, and the fair market value of the assets exceeds 1.3 million, the executor must file Form 8939 describing all property which is acquired from the decedent. Presumably, Form 8939 will be due when the decedent's final income tax return is due (April 18, 2011, or October 17, 2011 where a 6 month extension is requested). The 2010 Act granted an extension of nine months from enactment (or to September 19, 2011 since September 17 is a Saturday) for filing federal estate tax returns but does not appear to extend the filing date for the Form 8939. Form 8939 is still in draft form and the form number may change.

If the election is made to use carryover basis, the tax basis of property acquired from a decedent will be equal to the lesser of the decedent's basis or the property's fair market value at the date of the decedent's death. The holding period may be affected by the carryover basis regime if the fair market value of the property is less than the decedent's basis, since the basis has not been determined "in whole or part" by the decedent's basis (I.R.C. Section 1223(2)).

The executor (as defined in IRC Section 2203 – generally, the executor, administrator or if none, any person in actual or constructive possession of any assets) making the carryover basis election will need to establish the decedent's basis in properties, as well as the properties' fair market value. A zero basis may apply if the basis cannot be established (i.e. in case of a gift where no purchase records are available). It may be possible to estimate the basis of the property on the date it was acquired and prove the property was acquired by gift or inheritance. There is no consistency requirement for basis on informational returns. A beneficiary may take an inconsistent position when reporting gain on the sale of an asset if he has independent information.

I.R.C. Section 1022 provides three (3) opportunities for increasing basis:

1. A \$1,300,000 increase is available to all decedents, except for non-resident aliens, who are limited to \$60,000;
2. An additional \$3,000,000 basis increase is available for "Qualified Spousal Property." Qualified Spousal Property is of two (2) kinds, (i) outright transfers to the surviving spouse and (ii) qualified terminable interest property; and
3. Basis may also be increased by any unused capital or net operating losses of the decedent.

Other Individual Tax Highlights of Tax Relief/ Job Creation Act of 2010

By Aimee Buchanan, CPA

Since Louisiana is a community property state, we must also determine how community property is treated under I.R.C. Section 1022. Under 1022(d)(iv), property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse shall be treated as owned by, and acquired from, the decedent and is eligible for the \$1,300,000.00 basis increase and the \$3,000,000.00 spousal basis increase.

Under I.R.C. Section 1022, property must be "owned by and acquired from the decedent." Some assets are ineligible for basis increase, including property acquired by the decedent by gift within three (3) years of death (but excluding gifts from a spouse if that spouse did not receive the property by gift within the same 3 year period); stock of certain foreign entities; and other property not considered "owned" by the decedent (QTIP trusts, QPRTs, and GRATs with no reversionary interests).

This optional regime treatment for decedents who died in 2010 will be challenging to practitioners, especially mid-sized estates (\$3 - \$5 million), but does provide some interesting planning opportunities. Careful consideration of whether to opt out of the estate tax regime for persons who died in 2010 should begin now – the election may be due as soon as April 18, 2011. Pay close attention to any forthcoming guidance. A crystal ball, if you have one, will be particularly useful when it comes to making this election and for tax planning in the years to come. ❖



Editor's Note: Carl S. Goode is a partner with Seale & Ross, PLC in Baton Rouge. He is a board certified tax law specialist and a board certified estate planning and administration specialist. He counsels clients on all

areas of estate planning, including wills, powers of attorney, living wills, and all types of trusts. He received his Bachelor's Degree in accounting and his J.D. degree from Louisiana State University, and he received a Master's of Law in Taxation (LL.M.) from Washington University in St. Louis in 1979. He was admitted to practice law in Louisiana in 1974 and in Missouri in 1979. Carl was named a Louisiana Super Lawyer for 2010. You can reach Carl at carlgoode@sealeross.com.

Individual Income Tax Rates

The individual income tax rates were scheduled to revert to the five rates falling within the range of 15 percent to 39.6 percent from the six rates falling within the range of 10 percent to 35 percent. The 2010 Tax Relief Act keeps the current rates in place for years 2011 and 2012.

Qualified Capital Gains/Dividend Rates

The act extends the Bush-era qualified capital gains/dividends cuts for all taxpayers for two years. Generally, the capital gains/dividends rate is 15 percent. For lower income taxpayers whose taxable income falls in the regular income tax brackets of 10 percent and 15 percent would qualify for the capital gains/dividends rate of 0 percent. Retirees and students may be the largest group of taxpayers who benefit from this 0 percent rate.

Partial Social Security Tax Holiday Begins January 1, 2011

The 2010 Tax Relief Act will provide a one year payroll tax cut for employees' portion of the Social Security tax from 6.2 percent to 4.2 percent for wages earned in calendar year 2011 up to the taxable wage base of \$106,800, a possible maximum savings of \$2,136. The additional Medicare rate of 1.45 percent that makes up the familiar total of 7.65 percent that is withheld from employees' wages is unchanged. Some employees that participate in government retirement plans will not benefit from this new act because they do not have social security tax withheld. Employers' matching Social Security tax rate is unchanged for 2011 at 6.2 percent. Self-employed individuals are required to pay on their earned income what represents both the employee and employer portions. The combined Social Security and Medicare taxes that make up the present self-employment tax rate of 15.3 percent will drop to 13.3 percent for 2011 only.

Personal Exemption Phaseout

The personal exemption phaseout (PEP), which was repealed for 2010 by EGTRRA, is provided a two-year extension repeal under The 2010 Tax Relief Act through December 31, 2012. Prior to this

repeal, taxpayers whose income exceeded set thresholds saw their personal exemptions phased out by 2 percent for each \$2,500 their AGI exceeded their applicable threshold.

Itemized Deduction Limitation

The 2010 Tax Relief Act provides for an additional two-year extension of the repeal of the "Pease" limitation which took effect in 2010 now through December 31, 2012. Thus, individuals with high incomes will recognize full deductions on certain items.

Miscellaneous Items

The following items which were all set to expire at December 31, 2010 were granted a two-year extension through December 31, 2012 with the same rules that governed them through 2010:

- ▶ Child Tax Credit – The \$1,000 per child credit applies for taxpayers whose AGI if MFJ is below \$110,000 and \$75,000 for all others. The same dependency, residency, age, relationship, and citizenship tests still apply.
- ▶ Child and Dependent Care Credit – The same rules apply that were in effect through 2010, a maximum of \$3,000 of eligible expenses with a credit rate of 35 percent phased out not below 20 percent for AGI in excess of \$15,000.
- ▶ Earned Income Credit – All the same rules apply that were in place for enhanced EITC; however, there is no longer an advanced payment option.
- ▶ Employer Provided Child Care Credit – Same rules apply.
- ▶ American Opportunity Credit – This replacement for the Hope credit will remain in effect with the same income limitations.
- ▶ Coverdell Education Savings Account – Same rules apply.
- ▶ Qualified Scholarships Exclusion – This will continue to be excluded from income as were under EGTRRA.
- ▶ Student Loan Interest Deduction – Same rules apply.
- ▶ Employer-Provided Educational Assistance Exclusion – Same rules apply. ❖

Editor's Note: Aimee Buchanan, CPA is tax manager with the CPA firm Allen, Green & Williamson, LLP in Monroe. She is a member of the LCPA's Federal Taxation Committee.

Federal Tax Report *By Gerard H. Schreiber Jr., CPA*

Summary of the National AICPA/IRS Tax Issues Meeting

The annual National AICPA/IRS Tax Issues Meeting was held on October 26, 2010 in Washington, DC as part of the AICPA National Tax Conference. The program was arranged by the AICPA Practice and Procedures Committee and attended by conference registrants, representatives of various state CPA societies and the National Office of IRS.

The tax issues meeting is generally attended by the IRS operating division commissioners and some additional IRS executives. It provides the membership with an update of what is happening at the IRS and allows time for participants' questions.

Introduction

Danny Snow, Chairman of the AICPA Practice and Procedures Committee, started the sessions with an introduction and general comments on the program.

Small Business/Self Employed Division (SBSE)

Farris Fink, SBSE Deputy Commissioner, was the first speaker. SBSE services 57 million taxpayers and businesses of less than \$10 million. The Division's current focus includes the IRS High Income/High Wealth Initiative and the National Research Program on Employment Tax/Independent Contractor.

High Income/High Wealth Initiative – This is an IRS-wide initiative geared toward individual Schedule C filers with more than \$1 million in income. Also included in this focus will be structured transactions, flow-thru entities, and multiple-layered entities. These have been identified as more likely to be abused by taxpayers.

National Research Program on Employment Tax – IRS wants to understand the characteristics of taxpayers who file employment tax returns. Since the program's start, only 10 percent of the cases have closed. IRS will not release any information until all examinations have been completed.

Mr. Fink also indicated that the SBSE Division would focus in the following areas:

- ▶ **Estate and Gift Tax** – With the Estate Tax repealed for 2010, IRS will be looking at back years. The requirement for carryover basis returns is April 15, 2011 for decedents dying in 2010 with estates

of \$1.3 million. This will determine tax basis for heirs.

- ▶ **Abusive Transaction and Promoters** – There will be continued emphasis in this area.

- ▶ **Fictitious 1099-OID** – There is a fictitious refund scheme around the Form 1099-OID.

- ▶ **Disguised Corporate Ownership** – IRS will be looking for the responsible party. Abusive transactions, non filers, employment tax pyramiding, offshore transactions will be included. The Form SS-4 has been changed to do away with nominee applications for this.

- ▶ **New schemes are being created and IRS will continue to focus on this.**

- ▶ **Return Preparer Compliance** – This included the 10,000 letters and 2,500 site visits in 2010. IRS learned it needed to modify training in this area. Discretion and judgment will be used to determine when to visit practitioners. The goal, objective, and purpose of the visits will be communicated. Feedback from the practitioner community will be evaluated. Focus will be on Schedules A, C, and E preparers. There may be a similar number of preparers selected in 2011. Letters will emphasize education, basic preparer responsibilities (copy of return to taxpayer, sign return, etc.). Covering expectations of a preparer is the goal. Violations will result in penalties. Program is expected to start December 1, 2010 and go to April 30, 2011.

- ▶ **Affordable Care Act** – SBSE is responsible for administering the 10 percent excise tax on tanning salons. The Form 720 has been modified.

- ▶ **QuickBooks Audits** – This was requested by IRS agents because of the large number of businesses using QuickBooks. IRS has trained agents in QuickBooks.

Large Business and International (LB&I)

LB&I Commissioner Heather Maloy made the presentation.

This operating division's name was changed from Large and Medium Size Business (LMSB) to Large Business and International (LB&I) effective October 1. The name was changed to reflect the increased focus on international activities including international individual returns.

Statistics furnished included that more

than 50 percent of filings result from flow-thru entities, and audit time has decreased to 26-27 months. The number of continuous audits also has decreased. Ms. Maloy also mentioned the focus on reporting of undisclosed tax positions and the new UTP reporting form.

The focus for LB&I for the future will be in three areas:

- ▶ **Selecting the best cases for audit based on information and technology.** Areas being looked into include how to use the information received and listing and ranking of undisclosed tax positions.

- ▶ **Working on efficient and effective audits including the Quality Exam Process(QEP) and the CAP being open to all customers.**

- ▶ **Getting to resolution and settling matters in the audit process as soon as possible.** Use of safe harbor values for such matters as repairs versus capitalization. Encouraged use of the Fast Track program where 80 percent of cases are settled within 120 days.

Wage and Investment Operating Division (W&I)

Commissioner Richard E. Byrd Jr., who leads the W&I, made the presentation.

W&I represents the largest number of taxpayers, servicing 118 million taxpayers and includes 50,000 employees at 400 locations. It has the largest workforce of the IRS operating divisions. W&I handles returns with Form 1040s without Schedules C, E, F, and Form 2106, all the tax processing sites (service centers), and operates the toll-free numbers.

Commissioner Byrd's comments on W&I's operations during 2010 included:

- ▶ **Increased use of *IRS.gov* by taxpayers and more Questions and Answers on the website.** The website experiences 300 million visits per year with 4.8 million visits on April 15.

- ▶ ***IRS.gov* receives more than 5,000 visits a second and is the most popular search topic on Yahoo on April 15.**

- ▶ **The most popular tool on the IRS website is "Where is my Refund?"**

- ▶ **Web-based applications are being developed including the Schedule M search tool used during the 2010 filing season.**

- ▶ **"What if" questions are being developed for taxpayers on the website.**

- ▶ An increased effort to improve the ability to furnish information is under constant revision.
- ▶ A 3 percent growth in e-filed returns.
- ▶ 142 million individual returns and 46 million business returns were e-filed in the last filing season (excluding 10/15 filings).
- ▶ Phone operations included 37 million calls with 15,000-16,000 employees devoted to this task.
- ▶ Practitioner Priority Service included over 1 million calls.

- For W&I, FY 2011 focus will be on:
- ▶ The retirement of baby boomers will require resources.
 - ▶ Immigration
 - ▶ I-10s
 - ▶ Communication with those for whom English is not the primary language.
 - ▶ Relieve the burden on the unemployed.

- Priorities for W&I include:
- ▶ Filing season (this topic was stressed by Commissioner Byrd as his most important task and concern).
 - ▶ Faster refunds (4-5 days).
 - ▶ More seamless taxpayer and compliance services.
 - ▶ Safety and security for employees (the Austin plane incident).
 - ▶ Information protection
 - ▶ Workforce advancement
 - ▶ Implementation of the Affordable Care Act.

Commissioner Byrd also noted that there would be no more mailing of tax forms and the implementation of late legislation poses a challenge. The W&I Division has experienced an increase in requests for transcripts, which has an effect on the transcript-delivery system.

Electronic Tax Administration and Refundable Credits (ETA)

ETA Director David Williams provided an update on ETA's activities. His comments started off with the PTIN registration system:

- ▶ Identifying who is a preparer overseas.
- ▶ IRS acknowledges it needs to learn more about the tax preparation community.
- ▶ There will probably be some returns prepared this filing season without PTINs.

- ▶ ETA's phone system has been overwhelmed as a consequence of registration.
- ▶ The definition of who needs a PTIN is, "Any individual who is compensated for preparing or assisting in the preparation of all, or substantially all of a return."
- ▶ The online system is being used, and much information is available online.
- ▶ Non-Circular 230 regulated preparers will be fingerprinted with a minimally evasive process.
- ▶ The competency test will begin in mid 2011. IRS is looking into who will be exempt from testing. The test will be administrated online at a physical location. It will be an open-book format with access to IRS forms and instructions. There will be no access to tax software.
- ▶ The term will be "IRS Registered Tax Return Preparer."

- ▶ Continuing education for unenrolled preparers will be 15 hours, which must include three hours of federal tax law update, two hours of ethics, and 10 hours of federal tax law. The effective date has not been determined.
 - ▶ The PTIN process requires reconciliation of all the existing PTINs in the system with the new registrations.
- Mr. Williams also commented on the e-file mandate for preparers, noting guidance is being developed and some exceptions and waivers will be granted.

Appeals

Diane Ryan, Chief of Appeals, gave an update on the Appeals Division.

Ms. Ryan stressed the independence of Appeals and indicated the majority of cases (more than 50 percent) are collection related and under 50 percent examination related.

The number of cases, including docketed cases, as well as no shows are increasing each year.

Appeals has 700 new employees with one third of the staff having been hired within the last three years.

Taxpayer Advocate

National Taxpayer Advocate Nina Olson reported on her Office's focus.

According to Ms. Olson, the Advocate's office is experiencing more cases than ever before, more cases per employee, and local advocates elevating an increas-

ing number of cases. As a consequence, more Taxpayer Assistance Orders (TAOs) are being issued. There are monthly calls with local advocates and an increased "push" on the role of "advocacy."

Questions also are arising as to whether the Advocate's office is getting cases that IRS could handle.

The lien issue continues to be a priority of Ms. Olson. Items mentioned include:

- ▶ The Uncollectible/Hardship Issue – If a balance due is over \$5,000, IRS files a lien. The Internal Revenue Manual (IRM) requires manager approval to *not* file a lien. Revenue Officers and ACS personnel are automatically filing liens. Ms. Olson considers this unproductive with very little collected as a consequence of the lien filing.

- ▶ Lien Withdrawal – This action eliminates the lien record on the taxpayer's credit report. The three credit reporting agencies have different policies on the length of time liens stay on a taxpayer's credit report, with one agency reportedly never removing such information. This information is coming up on taxpayers' employment applications and is harmful to both their credit and employment status.

- ▶ Ms. Olson expressed the need for more lien withdrawal versus lien release by IRS. A lien withdrawal is when the lien information is withdrawn after it is released by IRS. The lien notation should then be eliminated from the taxpayer's credit report.

- ▶ IRS is to issue new lien withdrawal guidance.

- ▶ Ms. Olson's June report makes reference to this issue.

- ▶ IRS may not deviate from the IRM in this process. This is resulting in premature lien filing.

- ▶ Even though some Revenue officers may recommend no lien filing, this decision is being overruled by managers.

- ▶ All Taxpayer Advocate employees are trained on this issue.

Ms. Olson is conducting a research study on the Correspondence Audit process. The focus is within the SBSE and W&I divisions and is to recommend best practices for this process. Some ideas in this area are:

(Continued on page 8)

Internal Revenue Service Contact List

Stakeholder Liaison

Sharon Evans
(504) 558-3371 • Fax (504) 558-3296
sharon.m.evans@irs.gov

Stakeholder Liaison

Aaron Steele
(504) 558-3069 • Fax (504) 558-3296
aaron.steel@irs.gov

Small Business/Self Employed (SB/SE)/Compliance/Collection

(225) 923-4161

SB/SE – Compliance – Exam

(404) 388-8521

Wage & Investment

(504) 558-3363 • Fax (504) 558-3424

Large & Mid-Size Business

(504) 558-3039 • Fax (504) 558-3366

Criminal Investigation

(504) 558-1505

Employer Identification Number (EIN), Business and Specialty Tax Help Line

1-800-829-4933

Tax Exempt/Gov. Entities (TE/GE) Help Line

1-877-829-5500

TE/GE (Employee Plans) – Examinations

(504) 558-3135 • Fax (504) 558-3189

Taxpayer Advocate

(504) 558-3001 • 1-877-777-4778

Practitioner Priority Line

1-866-860-4259

For additional resources, visit IRS's website at irs.gov.

(Federal Tax Report cont. from page 7)

- ▶ One person, one telephone number on the notice.
- ▶ Getting information quicker.

Other noteworthy issues for the Taxpayer Advocate are:

- ▶ The use of automation by IRS and whether IRS is using the automated functions in the right way. There will be more machine driven functions.
- ▶ The need to do more research studies.
- ▶ The “Reasonable Cause Assister” by service center personnel. This is an automated process for use in penalty abatement. It is machine driven with an override function. Generally, there would be first-time abatement for certain penalties. This is not in the IRM.
- ▶ The Taxpayer Advocate’s annual report will address the need for IRS to change its mission statement as a consequence of administering benefit programs and will include the need for funding and staffing for this function. This could include creation of a program to oversee the benefit programs and enforcement employees to administer health care.

The program ended with Ms. Olson saying “the time for tax reform is now.”

Summary

This meeting again presented valuable information on all IRS operating divisions and their activities. It is important to point out IRS is changing rapidly to meet taxpayers’ and practitioners’ needs. The complexity of the tax laws and the needs of taxpayers will make the interrelation between the tax practitioner community and IRS even more essential for practitioners in the future. ❖



Editor’s Note: Gerard H. Schreiber Jr., CPA is a partner with the firm Schreiber & Schreiber, CPAs in Metairie. He is chairman of the LCPA’s Federal Taxation Committee and the Society’s New Orleans Chapter MAP

Roundtable. He is also a member of the AICPA Practice and Procedures Committee.

Tax Planning for Real Estate Investors

In general, Section 1031 of the Internal Revenue Code allows an owner to exchange one property for another and defer payment of state and federal capital gains taxes, as long as both properties are of “like-kind”.

Any investment real estate is “like-kind” to any other investment real estate.

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New Reporting Requirements for Uncertain

Tax Positions for TY 2010 *By Jessica Caldwell, Ambrose Ogu and Dr. Valrie Chambers*

In response to corporate use of tax shelters, Congress enacted the Substantial Understatement Penalty (now the Accuracy-Related Penalty) in 1982. With proper tax return disclosure, this penalty could be avoided. The IRS also put in to place the Listed Notice Regime, requiring taxpayers, promoters and practitioners to disclose certain listed transactions that the IRS believes are a high non-compliance risk. The IRS also sought and won the right to view Tax Accrual Workpapers,¹ but until IRS Announcement 2002-63, used a Policy of Restraint, requesting the auditor's workpapers only under rare and unusual circumstances. Then, the accounting profession released FIN 48 (now FASB ASC 740-10), Accounting for Uncertainty in Income Taxes, requiring companies to evaluate and disclose uncertain tax positions in its audited financial statements under U.S. GAAP. The IRS now has its own version of FIN48, Schedule UTP, for the reporting of uncertain federal income tax positions.

In September 2010, the IRS released its final draft of the Schedule UTP, which is to be filed by corporations along with Form 1120 (or 1120L, 1120PC and 1120F) beginning this year. An entity needs to attach this schedule only if it reports assets equal to or exceeding \$100 million on Item D of the Form 1120 for 2010. A phase-in will occur over the next five years to include smaller corporations. In 2012, corporations with assets of \$50 million will be required to file the Schedule, followed by corporations with assets of \$10 million in 2014.² A corporation with a short tax year ending in 2010 is not required to file the schedule.

An uncertain tax position occurs when a corporation or related party files a return³ (for the current or prior tax year) containing federal income tax positions for which a corporation 1) records a reserve in their financial statements to cover income tax, interest, and/or penalties regarding this position under either U.S. GAAP or IFRS, or 2) expects to litigate the position and no reserve was made because the position was either clear and unambiguous, or immaterial. These reserves will be reported on Schedule UTP. Even if a corporation does not record a reserve on their audited financial statements due to pending litigation, each separate tax position must still be reported on the schedule. It is not required that firms report highly certain

or immaterial positions on expected litigation, nor must one report positions for which a reserve was not established due to an IRS administrative practice.

Corporations must report their tax positions on Part I of Schedule UTP in ranking order by size, but are not required to disclose the expected amount of tax disclosure or odds that an adjustment will occur anywhere on the form. Taxpayers must indicate whether the estimated size of the position exceeds 10 percent of the estimated size of all UTPs reported (is a "major tax position"), and whether the position creates temporary or permanent timing differences. Part II will not be used in 2010, but in future years will be used for prior year information. For every position listed in Part I, a concise and relevant description must be included in Part III. Filing Schedule UTP will be treated as filing Form 8275, Disclosure Statement, and satisfy the requirements of section 6662(i) regarding economic substance disclosure. Initial recording of a reserve triggers a reportable event for Schedule UTP, but a subsequent change in the amount of that reserve does not. However, if a transaction is repeated over several years, that transaction should be reported on each year's Schedule UTP.

According to IRS Commissioner Doug Shulman, the purpose of adding this Schedule is to help prioritize the selection of issues and taxpayers selected for exam. He goes on to explain that it will "cut down the time it takes to find issues and complete an audit...help [the IRS] prioritize taxpayers for examination... [and] help identify issues where there is uncertainty and where [the IRS] will need to develop further guidance."⁴

While some understandably question whether it is the taxpayer or practitioner's job to draw the IRS an "audit road map," the overall trends of transparency with preparer assistance appears entrenched in the IRS mindset, at least for now. However, the IRS did listen to comments, eliminating the disclosure of the rationale for uncertain positions and description of the uncertainty that was found in earlier drafts of the schedule. Further, in Announcement 2010-76, the IRS said it would refrain from requesting certain workpapers prepared in connection with completing Schedule UTP, and that working drafts of concise descriptions and computations relating

While some understandably question whether it is the taxpayer or practitioner's job to draw the IRS an "audit road map," the overall trends of transparency with preparer assistance appears entrenched in the IRS mindset, at least for now.

to a ranking of tax positions are protected under the policy. The advantage to the taxpayer of ready compliance is that if selected for a tax audit, the audit will likely be more focused and perhaps shorter, and further guidance from the IRS might be more quickly forthcoming on common issues. ♦

¹ See IRM 4.10.20.2(2) for the IRS's broad definition of tax accrual workpapers.

² See IRS Announcement 2010-75.

³ The related party rules are somewhat complex, and outside the scope of this article.

⁴ IRS News Release – Prepared Remarks of IRS Commissioner Doug Shulman, 9/24/10.

Editor's Note: Jessica Caldwell is a graduate student at University of Texas-San Antonio, majoring in accounting and pursuing her CPA exam.

Ambrose Ogu received an electrical engineering degree from TSU in 1988 and associate degree in computer engineering in 2005 from Del Mar College Corpus Christi Texas and currently a student at Texas A&M Corpus Christi majoring in accounting. He is also a certified peace officer and work for Texas A&M Corpus Christi police department as security officer for seventeen years.

Dr. Chambers is a Professor of Accounting at the College of Business, Texas A & M University-Corpus Christi, USA. Prior to receiving a Ph.D. concentrating in taxation in 2000, she had over a decade of public accounting experience as owner/partner-in-charge of a CPA firm in Houston that had a concentration in accounting issues for small business owners. Dr. Chambers has been published articles in such journals as *Journal of Legal Tax Research*, *Tax Notes* and *Tax Adviser*. Dr. Chambers can be reached at (361) 825-6012 or Valrie.chambers@tamucc.edu.

Summary of the Liaison Meeting with the Louisiana Department of Revenue

The annual liaison meeting between the Louisiana Department of Revenue (LDR) and the LCPA's State and Local Taxation (SALT) Committee was held November 18, 2010 in Baton Rouge, Louisiana. LDR was represented by staff from its Baton Rouge headquarters and district offices. The LCPA was represented by members of the SALT Committee.

This year's meeting was different from years past in that LDR set the agenda, as opposed to joint LCPA-LDR agendas in the past. In addition, it was a joint meeting where LDR also invited members from the Louisiana Society of Independent Accountants, Louisiana Society of Enrolled Agents, and the Louisiana State Bar Association, Tax Section. LDR Deputy Secretary Earl Millet explained during his welcome that the changes in format were intended as a cost savings to LDR due to budget constraints. While LDR's budget issues are certainly understandable at this time, the LCPA SALT committee will continue to seek opportunities with LDR for meaningful discussions on issues of importance to the LCPA membership.

LDR has added a Liaison Meeting page to their website where all LCPA members have access to the handouts and information provided by LDR at the meeting. The address is www.revenue.louisiana.gov/liaison2010.

Recent Judicial Decisions

LDR staff attorney Fred Mulhearn discussed a few recent cases and provided a handout titled *Recent Decisions in Tax Litigation*, detailing the following cases and others.

St. Martin v. State – This decision held that the Louisiana State Board of Tax Appeals can hear class action cases. As a result, they are currently hearing several such cases.

Bridges v. Amedisys – This case focused on whether a specific transaction was a lease or a conditional sale and furthermore, whether such sale would be considered an exempt isolated or occasional sale. The court ruled the transaction to be both a sale and a qualifying occasional sale.

Scientific Drilling International v. Meche – Court ruled that the local government could not impose use tax on property imported into a parish and stored, but not used within that parish.

ConAgra Foods v. Bridges – The court ruled that ConAgra was entitled to NOLs as the acquiring corporation after it sold the stock of three wholly-owned subsidiaries as the purchasing corporations made §338(h)(10) tax elections.

Recent Legislative Changes

Ted James, confidential assistant to the Secretary, provided a handout titled *Recent Legislative Changes*, and brief update on legislative changes from the 2010 session.

Act 960 authorizes the Secretary of Revenue to require electronic filing of certain returns when the IRS requires electronic filing of similar returns or reports. Act 214 changes the due date of a non-profit organization's income tax return to June 15th for calendar year filers or the 15th day of the sixth month following the close of a fiscal year.

Mr. James also discussed a couple of administrative issues, including the fact that the Private Letter Ruling (PLR) service is temporarily suspended as of January 1, 2011. LDR is rededicating the resources previously used for PLRs to other needed taxpayer programs. No indication of a time period for the suspension was provided. The second issue was notification that a policy statement was being prepared with regard to the individual income tax exemption for net capital gains. The notice was issued as Revenue Information Bulletin No. 10-017. The bulletin essentially provides a formula for offsetting the qualifying capital gains against other capital losses that may be claimed on the return.

Transaction Taxes in the New Millennium

Emily Toler, staff attorney in the Policy Services section, provided a handout titled *Transaction Taxes in the New Millennium*, and discussed recent developments.

Ms. Toler's discussion focused on digital products and whether or not they are tangible personal property. Two rulings had recently been issued that changed department policy on the treatment of items digitally downloaded to a computer or television. Ms. Toler stated that a new ruling would temporarily suspend both of these rulings and based on this the two rulings would not be implement-

ed at this time. While the rulings are temporarily suspended they still must be discussed because LDR is forming a working group that will discuss the taxability of digital products. It is expected that LDR will develop some type of guidance making digitally received goods taxable when the same goods would be taxable if received in tangible format. Shone Pierre, Assistant Secretary for the Office of Legal Affairs, stated that when the decisions regarding taxability are made, any new policy would most likely be applicable prospectively.

Revenue Ruling No. 10-001 examined the taxability of transactions involving the purchase or use of software, stored data, and other tangible personal property. Statutes have established the situs of taxation as the customer's place of primary use. LDR will apply the same principle to transactions of downloaded content. Additionally, licenses acquired for the use of software are taxable where they are intended to be principally used.

The ruling states that tangible personal property includes, but is not limited to, all electronically delivered products, including computer software and applications, stored media, and entertainment media or products, to equipment located in Louisiana. Thus, taxable transactions include remotely accessed software, information materials, and entertainment media or products, whether as a one-time use or through ongoing subscription, and whether capable of only being viewed, or being downloaded when that transfer requires payment of consideration in any form. Any consideration paid for electronic receipt or access to data, information, materials, media or other form of communications that are converted to readable, viewable, or usable form by browsers or software installed on mobile hardware or system hardware located in Louisiana is subject to sales, use or lease tax in this state.

Revenue Information Bulletin No. 10-001 examined the sales tax treatment of transactions involving pay-per-view and on-demand movies leased by viewers from cable television and satellite providers. Such transactions were determined to be subject to sales tax when consideration was paid and the movies viewed within Louisiana.

Audit Protest Bureau

Monica Doss Washington, Director of the new Audit Protest Bureau (APB), presented a handout titled *APB Overview & Process*, and discussed details of what APB is and how it works. She also introduced Marcus Gaudet and the other members of the APB staff. APB is a newly created division within LDR. APB's main function is to resolve audit protests. APB is a forum for taxpayers and LDR to resolve tax audit disputes prior to resorting to litigation. Taxpayers who utilize APB still retain their right to appeal to the Board of Tax Appeal or the right to pay under protest and file suit for recovery. LDR reviewed how cases are accepted, how to prepare an audit protest petition and the procedures used to set up status conferences and hearings. Practitioners must use Form R-7006 "Power of Attorney and Declaration of Representative" form. Status conferences are held in Baton Rouge or can be held on the phone. All of this is detailed in the handouts on the website. (Form R-8100i, "Protest Instructions" and Form R-21001, "Audit Protest Bureau Protest Petition"). On July 1, 2010, APB began hearing sales tax cases. By June of 2011 it is expected that APB will be hearing protests for other taxes administered by LDR including income/franchise and withholding tax cases.

The APB will be used when protesting audit findings following the receipt by the taxpayer of a "Notice of Proposed Tax Due." This notice has a 30-day protest period and it was stressed that the application for hearing before the APB must be made within the thirty-day period. The goal is to move the process along as timely as possible. To date the APB has received 148 applications and fourteen were rejected because they were not remitted timely.

The APB will not consider applications in certain cases such as suspected fraudulent or criminal behavior or where LDR is already committed to litigate the issue.

Recent Customer Service Changes

Kent LaPlace, Director of the Customer Service Division, moderated this presentation. Mr. LaPlace started by introducing Barbara Reeves, who is the new CPA Liaison.

Ms. Reeves provided an update on recent LDR organizational changes that were required due the retirement of 54 experienced employees during 2010. The regional offices have been consolidated into three districts. The regional offices are open on Tuesday and Wednesday by appointment only, except for New Orleans which is first come first served and Baton Rouge which is open five days a week. Use of the mobile tax service is advised for resolving client tax issues. The mobile tax service has an LDR tax officer come to your office with a computer that will access taxpayer records to research and resolve tax notices. To set up a visit with the mobile tax service practitioners should call the district office or Barbara Reeves. There is a current LDR contact list on the Liaison Meeting website. Ms. Reeves also encouraged use of the tax practitioner email boxes for assistance on taxpayer issues.

Ms. Reeves also mentioned several items as reminders or as consistent problems encountered by LDR with regard to processing returns. For 2010, all individual and corporate returns must have a Louisiana extension form filed for extending. LDR is experiencing delays in issuing Citizens refunds due to duplicate filings and not including proper documentation. Original returns should not be sent when filing amended returns. The amended return simply needs to be marked as amended. Never use red ink on returns as the scanning will not pick up items in red and delays will be caused. Only black or blue ink should be used.

E-Services Application Manager Stacy Garrett provided an update on electronic filing. For the 2009 tax year 55 percent of all returns were filed electronically. This included 66 percent of individual returns, 1.6 percent of corporate returns and 60 percent of withholding returns. There are currently over 125,000 taxpayers registered and using the Louisiana Taxpayer Access Point (LATAP). LATAP is used to file returns and provide taxpayer access to their accounts through the LDR website. There is currently a three-day hold on refunds for first time e-filers. Beginning next year all refunds will be held for five days for e-filers. Refund status can be viewed through LATAP two days after the return is transmitted. There was a 16 percent increase for 2010

in taxpayers' use of the Parish E-File system, which is used for filing state and local sales tax returns.

Boyd Winn, Director of the LDR Revenue Processing Center, discussed coordination on LLCs with the Secretary of State. Current practice has LDR downloading information from the Secretary of State weekly. LDR does not automatically register new LLCs. Thus if an LLC has elected to be taxed as a corporation, it must apply for a tax account through the LDR website. If a taxpayer changes their filing status, such as electing "S" status, they should notify LDR in writing so that the taxpayer's account can be updated.

Geraldine Kelly, Director of the Collections Division, and Tax Enforcement Officer Bryan Peters, discussed the billing process and notices. A handout is provided at www.revenue.louisiana.gov/liaison2010. Tax notices will be changing within the next few months in an effort to make them clearer to the taxpayer. Rather than just sending bills for non-filers of income tax returns, LDR will begin sending a "Notification of Non-Filing." The notice will request information to determine whether or not a filing is required. The taxpayer will be required to submit supporting documentation when claiming that no return filing is required.

Dawn Bankston, Director of Office Audit, discussed refund and credit issues. For the 2009 filing season, 88 percent of all individual income tax refunds were issued within thirty days. The average was 10 days for returns filed electronically. Approximately four percent of returns are stopped for manual review. Half of these are for name problems, social security number errors or other linking errors. She stated that it is important to file the return with the names in the same order each year to avoid delays. The 2009 rate was about half of previous years, which LDR attributes to increased use of e-filing.

The most common errors that hold up refunds are as follows: Difference in estimated payments and credit carry forward reported on return compared to LDR records; Citizens insurance credit and schedule G; "other" being claimed on Schedules E, F or G; Amended returns being filled out incorrectly, do not include original return when filing.

(Continued on page 13)

Bare-bones Tips for Practitioners of Louisiana Income Tax

By Karen A. Dawson, CPA

Check your email. Check your voice mail. Check your calendar. Enter your billable time. Read the current tax legislation headlines. Open your mail. Answer phone calls from clients. Schedule appointments. Go to meetings.

The daily tasks required by CPAs are seemingly endless, especially during Tax Season. In fact, I'm surprised that you even found the time to read this article! But at the end of the day, what you really need the most as a Louisiana Income Tax Practitioner are some very basic, bare-bones tips to make your life a whole lot easier. If you can spare the next five minutes, this article will save you many long hours of leg work. Relax – this is time well spent.

LDR Website

Website for the Louisiana Department of Revenue (LDR):

<http://revenue.louisiana.gov>

On the right-hand side of the home page is a link to a page for Tax Professionals/Tax Preparers.

Tax Preparer Billing and Refund Inquiry Email Boxes

Any employee of LDR will tell you that the quickest way for a tax practitioner to get an answer to a Louisiana tax question from a knowledgeable LDR employee is to send an email to one of the following four Practitioner Email Boxes:

1. Individual Income Tax Billing Inquiries
CPABilling.Inquiry-Ind@la.gov
2. Business Taxes Billing Inquiries
CPABilling.Inquiry-Bus@la.gov
3. Refund Inquiries
CPARefund.Inquiry@la.gov
4. General Tax Questions
CPAGeneral.Questions@la.gov

They can also be accessed at: <https://esweb.revenue.louisiana.gov/ContactUs/default.aspx>



Mobile Tax Service

LDR is encouraging the use of its "Mobile Tax Service" as an option for preparers who have multiple clients with issues and/or problems. Contact your Regional Office at the number below:

- ▶ Alexandria (318) 487-5333
- ▶ Monroe (318) 362-3151
- ▶ Shreveport (318) 676-7505
- ▶ Lake Charles (337) 491-2504
- ▶ Lafayette (337) 262-5455
- ▶ Baton Rouge (225) 219-5500
- ▶ New Orleans (504) 568-5233
- ▶ Thibodaux (985) 447-0976

E-fax Number

For electronically-filed individual and corporate Louisiana income tax returns, tax preparers may fax the attachments that would normally be submitted with a paper return to LDR using the E-fax number: (225) 231-6221. The attachment will be uploaded to the taxpayer's account. If the return is later selected for examination, the auditor will access the taxpayer's account and the attachment will be available for review.

The documents should be E-faxed at the time the return is electronically filed. The taxpayer's account, the taxpayer's name, account number, and tax filing period must be printed at the top of the first page of the fax. A cover page can be used but is not required.

Tax Topics Blog

The official weblog of the LDR is located at: <http://taxtopics.revenue.louisiana.gov>

If you would like to be notified by email whenever the Department posts a new Tax Topic on its website, please visit the website listed below and specify 'subscribe': <http://revenue.louisiana.gov/sections/publications/tss.aspx>

Policy Statement Subscription Service

If you would like to be notified by email whenever LDR posts a notice of intent, rule, revenue ruling, redacted private letter ruling, statement of acquiescence or revenue information bulletin on its website, please visit: <http://www.rev.state.la.us/sections/LawsPolicies/psss.aspx>

Suspension of "Private Letter Ruling" Service

The temporary suspension of the issuance of Private Letter Rulings (PLRs) takes effect on January 1, 2011 but will not affect any PLR requests received on or before December 31, 2010. According to Secretary of Revenue Cynthia Bridges, "This suspension is taking place due to budget constraints. Reviews of our processes demonstrated the need to re-dedicate our resources to other critical taxpayer programs."

Louisiana Citizens Insurance Assessment Credit

In December 2006, the Louisiana Legislature authorized a refundable income tax credit to people who paid the LA Citizens assessments in addition to their homeowner's or property insurance premium. These assessments were used to partially fund the \$1.2 billion deficit resulting from the massive losses on insured property caused by Hurricanes Katrina and Rita.

The Citizens "Louisiana Citizens FAIR Plan Assessment" is the only charge listed on the policy's declaration page or supplemental schedule that will be eligible for the credit or refund for the 2010 tax period.

School Expense Tax Deduction

A deduction for 50 percent of the amount paid to a qualifying public or non-public elementary or secondary school, for each dependent child, not to exceed \$5,000, for the purchase of the following which must be REQUIRED by the school:

- ▶ Tuition and fees required for enrollment
- ▶ School uniforms for general day-to-day use
- ▶ Textbooks, curricula, or other instructional materials
- ▶ School supplies

Extracurricular fees, including but not limited to the following, do NOT qualify: athletic fees, band fees, club fees, fees for field trips, meal plans, school lunches, before and after school care.

In addition, for situations in which home-schooling has been approved by the State Board of Elementary and Secondary Education (BESE), amounts

expended for the purchase of textbooks and curricula necessary to home-school your dependent child also qualify.

E-Filing Mandate

In an effort to encourage Louisiana e-filing, the 2006 Legislative Session mandates electronic filing for those tax preparers who prepare and file more than 100 individual returns. For returns filed after January 1, 2010, 60 percent are required to be e-filed. By January 1, 2012, 90 percent should be e-filed returns.

Software Vendors Approved for Electronic Filing for the 2010 Tax Year

- ▶ 1040Now
- ▶ Lamson Tech
- ▶ 2nd Story
- ▶ CCH, a Wolters Kluwer Business
- ▶ Crosslink/ CrossLink (TaxBrain – Online)
- ▶ Drake Software
- ▶ EZTAXRETURN.COM, LLC
- ▶ H&R Block TPS
- ▶ Jackson Hewitt
- ▶ Libtax
- ▶ OLTDTPROTS
- ▶ OLTSOFTPRO
- ▶ Online Taxes
- ▶ Rhodes Computer Services
- ▶ Rhodes Computer Services Online

- ▶ Taxhawk
- ▶ Taxware Systems Inc.
- ▶ Wintax – 1040

Individual Income Tax Changes

Deduction for Capital Gain from Sale of Louisiana Business – Taxpayers are allowed a deduction on Schedule E for net capital gains resulting from the sale or exchange of an equity interest or from the sale or exchange of substantially all of the assets of a non-publicly traded corporation, partnership, limited liability company, or other organization commercially domiciled in Louisiana. Attach a copy of your federal return and supporting forms and a schedule showing the calculation of the deduction.

Business Income and Franchise Tax Changes

Phase-out of Borrowed Capital from the Louisiana franchise tax base is now complete – Borrowed capital is no longer included in the franchise taxable base effective for taxable periods beginning on or after January 1, 2011 (Louisiana franchise tax is one year ahead).

New Due Date for Non-profits Corporation Income Tax Returns – Now due the 15th day of the 6th month following the close of the organization's tax year.

Proof of Payment no longer required for the Louisiana Citizens Insurance Assess-

ment Credit – Corporations are no longer required to submit proof of payment (i.e. cancelled checks, etc.) along with their declaration page (which is still required) when claiming the credit.

Ease the Pain?

Don't you feel much better going into Tax Season already knowing the new rules and services that Louisiana Department of Revenue has to offer? With these bare-bones tips, you should have the tools to tackle almost any Louisiana tax question or problem that comes your way. Now get back to work. ❖



Editor's Note: Karen A. Dawson, CPA is a staff accountant with the firm Provost, Salter, Harper & Alford, LLC in Baton Rouge. She is a member of the LCPA's State and Local Taxation Committee.

(State Tax Report cont. from page 11)

An update on credit documentation issues was provided. For the Citizens insurance credit the cancelled checks are no longer required. Declaration pages are required with paper returns. If a return is e-filed, the declaration pages should be retained for documentation if requested. For the capital gains exemption, a copy of the federal return and supporting forms are required along with a calculation of the deduction per RIB 10-017. Proof of payment is required when taking the child care credit if selected for review. For the wind and solar credit Form R-1086 should be completed and receipts must be attached.

Conclusion

LDR realizes it has lost some significant experience within its ranks due to retirements and resignations, and that the agency is working with reduced resources. However officials also seem to realize that LDR's duty to collect the taxes due to the State of Louisiana requires the cooperation of many constituencies. Louisiana CPAs are certainly one of those constituencies and it is apparent that LDR realizes this. While the format of this year's meeting was different, the information provided by LDR demonstrated a desire to increase efficiencies and serve the taxpayer, and that it knows the practitioner community is important to its success. ❖



Editor's Note: Gary R. Dressler, CPA is Senior Manager, Tax with the New Orleans office of the national CPA firm KPMG LLP. Minutes from the LCPA / LDR liaison meeting used in the preparation of this article were compiled by Clifford J. Giffin Jr., CPA, Partner, Duplantier, Hrapmann, Hogan & Maher, LLP, CPAs, New Orleans and Patricia M. Schreiber, CPA, Partner, Schreiber & Schreiber, CPAs, Metairie. Gary, Cliff, and Patricia are members of the LCPA's State and Local Taxation Committee.

Summary of Liaison Meeting with the Louisiana Association of Tax Administrators

The annual liaison meeting between the LCPA's State and Local Tax Committee (SALT) and the Louisiana Association of Tax Administrators (LATA) was held on December 8, 2010 in New Orleans, Louisiana.

The meeting was chaired by Roger Bergeron, Executive Director of LATA, and Susan Breaux with the LCPA's State and Local Tax Committee. This is the eleventh annual meeting between the two groups, and there was general agreement among those present that the annual meeting is very beneficial and informative for both groups.

LATA was formed in 1966 as a way for the local tax administrators to communicate and share information that promotes uniformity and provides efficiencies in tax collection among the membership. More information about LATA as well as information helpful for practitioners can be found at their website, www.laota.com.

Uniform Local Sales Tax Code

Roger Bergeron began the discussion with a brief update of changes and possible future changes in the Uniform Local Sales Tax Code (UTC). Mr. Bergeron indicated that there were very few changes in the UTC for 2010, other than a new regulation promulgated that provides for a local exemption for cancer and chemotherapy drugs. According to Mr. Bergeron, this was the third regulation added to the UTC by the local tax administrators since the UTC was established. Previous regulations added to the UTC dealt with the "storage for use" issue and with due date uniformity. LATA is not currently proposing any new regulations for the UTC in the new year.

An issue that is currently being discussed and reviewed by both LATA and the Louisiana Department of Revenue (LDR) is the "point of sale" issue. The local tax administrators are concerned with this issue as it relates to interparish transactions and would like to have additional guidance that would provide for uniformity in taxation between parishes. The state is concerned with this issue from an interstate commerce perspective. In the past, the delivery destination would normally determine where a sale is taxed; however, this can be complicated by other issues such as title transfer. There continues to be much

discussion in this area and the hope is to find a resolution that will provide for uniformity and clarity.

Mark West, with Ascension Parish, reported to the group on the status of the Parish E-File system. The system has been in place since October 1, 2008 and continues to be a tremendous success. Parish returns filed since the inception of the program totaled 958,568 or 91 percent of all returns filed. In excess of \$1.5 billion in local sales taxes have been collected through the program. According to Mr. West, the program has exceeded their expectations for both taxes collected and taxpayer usage. The number of calls and emails with questions regarding the program have been less than expected considering the number of users. A future update to the program will allow for a business to prepare multiple jurisdiction returns on a single interface.

Legislation

Mike Curtis with Livingston Parish updated the group on the 2010 legislative changes. The first item discussed was Act 1003 which provides for the possible use of arbitration in order to resolve state and local tax disputes. The arbitration committee will be composed of three persons, one each from government, business, and a neutral person. The tax administrator and the taxpayer will each select an arbitrator with these two then selecting the third neutral arbitrator. From these three, the chief arbitrator will be selected. Once a decision has been reached by the arbitration committee, either party will have 30 days to accept or appeal the ruling. A decision must be put in writing by an arbitration committee in order to establish a precedent.

Act 1029 established rules and guidelines with respect to contract auditors. According to LATA, many of the guidelines have already been established in LATA's best practices. One of the provisions in the new law deals with the confidentiality of a taxpayer's records. The law prevents contract auditors from contacting other jurisdictions with information found in the audit. It also provides for minimum education and experience requirements for the lead contract auditor on a case. There also are requirements that a taxpayer's documents used in the audit must be returned, and that

contract auditors must sign a statement that they are in compliance with this law.

Act 1019 is legislation dealing with arbitrary assessments. Roger Bergeron reviewed this new law with the group. According to Mr. Bergeron, an assessment will not be considered arbitrary if the tax collector follows all of the notification requirements for assessments and jeopardy assessments. If these requirements are not met, then the assessment can be considered arbitrary and a court can annul the assessment and award attorney fees and invoke prescription.

Rufus Fruge' with Calcasieu Parish led the discussion of Act 929 dealing with the recovery of attorney's fees. This legislation provides for the potential recovery of a taxpayer's attorney's fees in certain cases. The attorney's fees are limited to 10 percent of the tax, interest and penalties in the case if the position of the prevailing party is "substantially justified". The judge in the case will have discretion in determining whether a party's position is "substantially justified." The parties in the case can agree in advance that the prevailing party will not seek recovery of attorney's fees.

According to LATA, all of this legislation was the result of a collaborative effort between tax administrators and various business and industry groups to enact legislation that is beneficial to all parties.

Litigation

Rufus Fruge' gave a report to the group on litigation that has been ongoing or has concluded in the past year. According to Mr. Fruge', it was an active year for litigation.

The first case he discussed was *Harrah's Bossier City Investment Company, LLC v. Cynthia Bridges*. This case went all the way to the State Supreme Court. The case dealt with the issue of whether purchases made while constructing a casino at a racetrack facility fell under the paramutual betting purchases sales tax exemption. LDR took the position that even if the purchases did fall under the exemption, this exemption was suspended at the time in question. The court determined that the purchases fell under an "exclusion", not an "exemption", and, therefore, it did not matter that the exemption was suspended. The Court also determined that not all of the

purchases fell under the exclusion and said there had to be a formula to allocate the purchases between the racetrack and other gaming areas because only the racetrack purchases fell under the sales tax exclusion.

The second case Mr. Fruge' discussed was *Cynthia Bridges, Secretary, Louisiana Department of Revenue v. Hertz Equipment Rental Corporation*. This case involves the question of who has authority to sign a waiver of prescription. Hertz argued that the person who signed the waiver of prescription did not have the authority to sign, and therefore, the periods in question were closed. The Court ruled in favor of the taxpayer saying the person signing the waiver was required to have express authority to sign on behalf of the taxpayer through being an officer or having approval by means of corporate documents or board approval. Mr. Fruge' indicated that this case should be of concern to the local tax administrators because of the uncertainty of how far the administrators have to go to determine whether an individual is authorized to sign on behalf of a company. LDR has appealed this decision to the Louisiana Supreme Court and it was recently learned that the Court will hear the case.

The next case addressed by Mr. Fruge' was *Scientific Drilling International, Inc. v. Carl Meche, Director of Lafayette Parish School Board Sales Tax Division*. This case deals with the use tax on items temporarily stored in Lafayette Parish. Mr. Fruge' said this issue was dealt with in a prior regulation in the Uniform Tax Code. He stated that the 3rd Circuit Court of Appeals found that a parish cannot tax tangible personal property stored but not used in the parish. He went on to say that this ruling ignores the prior requirements of earmarking property or obtaining a certificate that indicates the property is to be used out-side of the jurisdiction.

Another case addressed was *Lafayette Parish School Board v. Reginald Simmons*. Mr. Fruge' said this case addressed the issue of whether the owner of an LLC can be held personally liable for failure to remit sales tax. The Court held that in order for the LLC veil to be pierced, the collector has to establish that the taxes had been collected from the customers and secondly, the individual "willfully" failed to remit the taxes. The parish

failed to establish these facts in the case record and, therefore, the 3rd Circuit Court of Appeal found in favor of the defendant.

Mr. Fruge' also discussed *J.W. Power v. State of Louisiana*. He stated that this case involves who can apply for a refund of sales taxes and whether an agent can be appointed to apply for a refund. Two subsidiaries of J W Power paid sales taxes to J W Power on compressor services provided by J W Power. The State had ruled these services were taxable so the two subsidiary customers paid the tax under protest. When J W Power filed suit to have the taxes refunded the LDR argued that J W Power was not the taxpayer and did not have the right to file for a refund. The First Circuit Court of Appeal ruled that there was no basis to prevent an agent, J W Power, from filing a suit to claim a refund of the taxes paid under protest.

The last case Mr. Fruge' discussed was an ongoing case titled *Rent-a-Center, Inc. v. Lincoln Parish*. This case revolves around whether or not the loss damage waiver on rented items is taxable. The taxpayer is arguing that it is a separate transaction and the parish is claiming the damage waiver is part of the gross proceeds on the sale. The Enterprise Leasing case has provided a precedent in which the courts held that the damage waiver was includible in the taxable base. The 3rd Judicial District Court has ruled in favor of the local collector and an appeal has been filed with the 2nd Circuit Court of Appeal.

Legislative Wish List and Other Items

Susan Breaux, with the LCPA Committee, discussed the possible need for legislation in connection with refund assignments. She stated that Texas has such a system currently in place. A refund assignment form is prepared including both the retailer that remitted the tax and the customer that paid the tax. The form states that the retailer is receiving the refund on behalf of the customer and will remit the refund to the customer.

Rufus Fruge' indicated that he would like to see legislation that would limit the tax-free donation of vehicles to family members. According to Mr. Fruge' there may be some abuse in this area that legislation would rectify.

There was a general discussion regarding the due dates and extensions of due dates in parishes following natural disasters. The tax administrators present at the meeting felt that most, if not all, of the parishes were being consistent in allowing extensions of due dates in these cases.

Roger Bergeron gave a brief report to the group regarding Act 442. This Act from the 2009 Regular Session of the Legislature established a collaborative working group of state and local tax administrators and industry representatives for the purpose of developing policy regarding the determination of what items of property are considered moveable versus immovable for state and local sales and use tax purposes. According to Mr. Bergeron, the group has been meeting since August 2009 and is to issue a report to the Legislature by January 31, 2011.

Earl Millet with the LDR discussed with the group the Department's plans to implement managed tax audits at the state level. These audits would allow a taxpayer to perform a type of "self audit" on their own business. Mr. Millet extended an invitation to the LATA members present to work with the department and LCPA in implementing these audits. ❖



Editor's Note: Mark D. Eldredge, CPA is a partner with the firm Heard, McElroy & Vestal, LLP in Shreveport. Minutes from the LCPA/LATA liaison meeting were used in the preparation of this article and were compiled

by Stuart L. Reeks, CPA, a tax manager with the firm Cook and Morehart, CPAs in Shreveport.

Both Mark and Stuart are members of the LCPA's State and Local Taxation Committee.

Wellness: Healthy Heart

Each day about 2,300 Americans die from cardiovascular disease; or one death every 20 seconds. February is heart disease awareness month and people nationwide will be supporting heart health awareness. Don't be left out!

A Healthy Heart Is a Happy Heart

The heart beats an average of 100,000 times each day, pumping 2,000 gallons of blood through your body. Your heart is one of your body's most complex systems, and if you don't take care of yourself, you increase your risk for future heart problems.

Poor diet, lack of exercise, high cholesterol, diabetes, high blood pressure, HIV, metabolic syndrome, peripheral artery disease, and strokes will all increase your risk of heart issues down the road.

Good Stuff vs. Bad Stuff

Did you know there are two types of cholesterol? They are HDL, or good cholesterol, and LDL, or bad cholesterol. High cholesterol is one of the major

Heart Healthy Substitutions

Avoid this....

Whole milk (1 cup)
Unsweetened baking chocolate (1 ounce)
Heavy cream (1 cup)

Cream cheese

Butter (1 tbsp)

Egg (1)

Try that....

1 cup fat-free or low-fat milk, plus one tbsp of liquid vegetable oil
3 tbsp unsweetened cocoa powder plus 1 tbsp of vegetable oil or cocoa

1 cup evaporated skim milk or 1/2 cup low-fat yogurt and 1/2 cup plain low-fat unsalted cottage cheese

4 tbsp soft margarine (low in saturated fat and 0 grams trans fat) blended with 1 cup dry, unsalted low-fat cottage cheese

1 tbsp soft margarine (low in saturated fat and 0 grams trans fat) or 3/4 tbsp liquid vegetable oil

2 egg whites; or commercially made, cholesterol-free egg substitute (1/4 cup)

risk factors in coronary heart disease. This can occur when too much LDL, or bad cholesterol, builds up on the inner walls of your arteries forming plaque. This plaque will then clog your arteries, making it more difficult for your heart to pump blood efficiently to all areas of your body. This condition, known as atherosclerosis, increases your risk of heart attacks.

You get cholesterol both from your own body and from the food you eat. Your liver and cells make up 75 percent of the cholesterol in your body and 25 percent comes from your diet. Cholesterol,

contrary to many beliefs, is one of the naturally-produced substances in your body that keeps you healthy. But like all things, too much can harm you. Some people inherit genes from family members that will cause them to overproduce LDL. Additionally, some people develop their overabundance of LDL with too much saturated fat, trans fat, and dietary cholesterol in their diets. ❖

Editor's Note: Information was provided by Gilsbar, Inc., exclusive administrator of the LCPA Members Insurance Program.

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Promoting CPAs as the Premier Provider of Tax Services Is the Focus of a Multiyear Campaign by the AICPA

Tax law changes are reason enough to seek out qualified tax guidance before filing one's tax returns. But to whom should consumers turn? The variety of tax preparation service options available makes it challenging for CPAs to remain top-of-mind for Americans during tax season. Add to that the IRS's recent implementation of a tax preparer registration program and there is a real possibility of consumer confusion about who is most qualified to provide tax advice. So the American Institute of CPAs (AICPA) is responding with a multi-year campaign focusing on CPAs as the premier providers of tax services.

New Website Creates Year-Round Tax-Planning Presence

A cornerstone of the AICPA tax campaign is the new 360 Degrees of Taxes website, 360Taxes.org. With its Dec. 15 launch, this comprehensive tax website puts CPA knowledge and information directly at consumers' fingertips. It contains interactive functionality featuring tax articles, calculators, FAQs, resources for choosing a CPA and CPA-written tax blogs. In addition, consumers can ask CPA members vital, tax-related questions through Ask A CPA, and their answers will be posted on the site.

As a year-round destination site for all things tax, 360Taxes.org highlights the importance of building a relationship with a CPA throughout the year, not just as tax day rolls around.

Marketing Toolkit Updates Materials to Better Meet Members' Needs

In addition to the annual tax materials usually offered, the AICPA has prepared numerous new resources designed to help its members distinguish themselves from competitors within their local mar-

kets – tools to market CPA services, educate clients and prospects, and position CPAs as the premier providers of tax and financial planning services year-round.

The CPA Marketing Toolkit is updated regularly and offered free online to AICPA members. It includes print ads; tweets for posting as part of a social media campaign; a media advisory template; the *Tax Season Strategies for the 2011 Filing Season* brochures, Microsoft PowerPoint presentations and speeches for individuals and small businesses; and a downloadable and printable booklet entitled *Trusted Financial and Tax Planning from Your Local CPA*. The booklet provides details about the services that CPAs provide and helps guide consumers toward CPAs as the go-to tax and financial planning experts. In addition, AICPA members can find a video featuring AICPA President and CEO, Barry C. Melancon, CPA, to help them address this important distinction with clients and potential clients.

New Advertisements Help CPAs Promote Their Services

This year, the AICPA has developed new consumer print advertisements that reinforce the message that CPAs are the

most qualified tax experts. The new ads feature images of CPAs alongside other highly-skilled professionals such as an astronaut with the headline: "Your CPA. Few prepare as rigorously." AICPA members can download these free advertisements, which provide an area for firm name and contact information, from the CPA Marketing Toolkit.

By mobilizing this comprehensive multi-year campaign, the AICPA is offering everything its members need to distinguish themselves from competitors within their local markets and establish themselves as the premier providers of tax services.

LCPA Tax Season Campaign

As part of LCPA's annual tax season campaign, the Society will place ads in several major outlets across the state. The "Your CPA" ads will promote the CPA Locator Service and a link to LCPA's website and Facebook page. Watch for them in the coming months. ❖

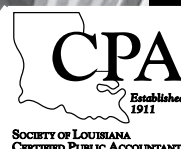


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State Board Disciplinary Actions

Respondent

Anthony Tulli
Certificate No. 17941
Firm Permit No. 1709
Mandeville, Louisiana

Board Findings and Actions

Administrative Hearing held January 26, 2010 – Board Decision rendered May 12, 2010.

The Board found that Anthony Tulli violated the following provisions of the Louisiana Accountancy Act and Board Rules of Professional Conduct: Dishonesty, fraud, gross negligence; performance of fraudulent act; conduct reflecting adversely on licensee; efforts to deceive or defraud the public; fiscal dishonesty; failure to file a report required by law; false communication to Board; failure to respond to Board communications; failure to cooperate with Board investigation; representation as a CPA without holding a current CPA Certificate / License; practicing as CPA without holding a current CPA Firm Permit; conduct that brings dishonor to the profession; placing one's own interest ahead of client's interests; rendering false reports; preparation of false financial statement.

The Board ordered the following actions: CPA Certificate and CPA Firm Permit REVOKED; Pay Fine of \$593,500; Pay all Board costs of proceedings; Publication of Board action in Society of Louisiana CPAs' newsletter *Lagniappe*; Publication of Board action in area newspapers; Restitution to a client.

Society Action

Anthony Tulli's membership in LCPA was terminated.

Respondent

Name withheld pursuant to provisions of consent order.
Houma, Louisiana
File No. 2010-27

Information

This matter was pending before the State Board of Certified Public Accountants of Louisiana ("Board") for administrative adjudication of alleged violations of the Louisiana Accountancy Act, La. Rev. Stat. §37:71 et seq., and Board Rules of Professional Conduct, by the Respondent, relative to the Respondent holding out as a CPA and engaging in practice as a CPA during the period of January 1, 2009 to June 16, 2010 without possessing a valid active CPA Firm Permit, performing attest services without holding a CPA Firm Permit and engaging in efforts to deceive or defraud the public.

Alleged Violations

La. Rev. Stat. §37:83(D): No firm shall provide attest services or assume or use the title "certified public accountants" or abbreviation "CPAs" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a CPA firm unless the firm holds a valid permit issued.

La. Rev. Stat. §37:79.A(11): Engaging in efforts to deceive or defraud the public.

La. Rev. Stat. §37:79.A(5): Violation of Rules of Professional Conduct promulgated by the Board.

Action

The Respondent in lieu of formal administrative proceedings, acknowledged, accepted and consented to entry of the following Order. Accordingly, pursuant to the authority vested in the Board by La. Rev. Stat. §37:71 et seq., the following actions were ordered by Consent Order:

Formal administrative proceedings were dismissed against the Respondent.

The Respondent is hereby officially reprimanded by the Board for violation of the aforementioned statutes and rules promulgated by the Board.

Respondent shall satisfy and pay, or cause to be satisfied and paid, a fine in the amount of one thousand five hundred dollars (\$1500.00), due and payable to the Board within fifteen (15) days of the Respondent's notification from the Board's office that this Consent Order was signed by the Secretary of the Board.

A summary of the alleged violations and the Board's action in this matter, without the Respondent's name included, will be forwarded to the Society of Louisiana CPAs for publication in the newsletter *Lagniappe*, and to other Boards of accountancy, appropriate agencies and organizations.

Any violation of the terms of this Consent Order by the Respondent including failure by the Respondent to timely satisfy or fulfill the obligations imposed hereby, shall provide legal cause for the Board to invoke further disciplinary action as the Board may deem appropriate, as if such violation were enumerated among the causes provided by La. Rev. Stat. §37:79, but without the necessity of administrative adjudication or formal administrative proceedings.

This Consent Order shall be, and shall be deemed to be, a public record.

Date

Consent Order effective November 12, 2010.

Respondent

Name withheld pursuant to provisions of consent order.
Covington, Louisiana
File No. 2010-24

Respondent

This matter was pending before the State Board of Certified Public Accountants of Louisiana ("Board") for administrative adjudication of alleged violations of the Louisiana Accountancy Act, La. Rev. Stat. §37:71 et seq., and Board Rules of Professional Conduct, by the Respondent, relative to the Respondent's failure to have a Peer Review once every three years as required.

Alleged Violations

La. Rev. Stat. §1503.A(1): Failure to complete a Peer Review at least once each three years.

La. Rev. Stat. §37:79.A(5): Violation of Rules of Professional Conduct promulgated by the Board.

Action

The Respondent in lieu of formal administrative proceedings, acknowledged, accepted and consented to entry of the following Order. Accordingly, pursuant to the authority vested in the Board by La. Rev. Stat. §37:71 et seq., the following actions were ordered by Consent Order:

Formal administrative proceedings were dismissed against the Respondent.

The Respondent is hereby officially reprimanded by the Board for violation of the aforementioned statutes and rules promulgated by the Board.

The Respondent shall satisfy and pay, or cause to be satisfied and paid, a fine in the amount of one thousand five hundred dollars (\$1500.00), due and payable to the Board within fifteen (15) days of the Respondent's notification from the Board's office that this Consent Order was signed by the Secretary of the Board.

The Respondent shall in the future timely complete all peer reviews, and shall fully and timely comply with all requirements of the Peer Review Program.

The Respondent shall, within thirty (30) days of the date this Consent Order was signed by the Secretary of the Board, provide acceptable confirmation from the Society of Louisiana CPAs to the Board's office that he is a participant in the Peer Review Program and that he is timely scheduled for a Peer Review.

A summary of the alleged violations and the Board's action in this matter, without the Respondent's name included, will be forwarded to the Society of Louisiana CPAs for publication in the newsletter *Lagniappe*, and to other Boards of accountancy, appropriate agencies and organizations.

Any violation of the terms of this Consent Order by the Respondent including failure by the Respondent to timely satisfy or fulfill the obligations imposed hereby, shall provide legal cause for the Board to invoke further disciplinary action as the Board may deem appropriate, as if such violation were enumerated among the causes provided by La. Rev. Stat. §37:79, but without the necessity of administrative adjudication or formal administrative proceedings.

This Consent Order shall be, and shall be deemed to be, a public record.

Date

Consent Order effective November 12, 2010. ❖

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June 16-19 • Hotel Monteleone
New Orleans

Business & Industry Conference
August 18-19 • Ritz Carlton New Orleans

Louisiana Accounting & Auditing Conference • August 25-26
Hilton Riverside, New Orleans

Financial Institutions Conference
September 21 • Hilton Capitol Center
Baton Rouge

Estate & Financial Planning Conference • November 4
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Governmental Accounting & Auditing Conference • November 17-18
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Miscellaneous

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Advertise in both *Lagniappe* and online for only \$1.20 per word (\$25 minimum). Classified ads may still be placed separately in *Lagniappe* for 80¢ per word (\$12 minimum). The following are considered words and are charged as such: "a" • "and" • "the" • "&" and phone numbers, including area code. Print and online advertisers may request a "blind box" number for an additional fee of \$10.00 per file.

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