

Lagniappe

A Publication for
**LOUISIANA
CERTIFIED
PUBLIC
ACCOUNTANTS**

January/February 2006

Volume 31, Number 7



THE SOCIETY OF LOUISIANA CERTIFIED PUBLIC ACCOUNTANTS

2400 Veterans Memorial Blvd.
Suite 500
Xerox Centre
Kenner, LA 70062-4739

(504) 464-1040
1-800-288-5272

FAX: (504) 469-7930

<http://www.lcpa.org>

President

Phil T. Graham, CPA

Executive Director

Grady R. Hazel, CPA

(504) 904-1123

Publisher

Alex L. Suffrin, CPA, CAE

(504) 904-1126

Editor

Ann G. Lupu

(504) 904-1125

Graphic Design

Fred R. Carter

(504) 904-1128

Advertising Inquiries

Ann Lupu

(504) 904-1125

Lagniappe is published nine times a year and is the official publication of the Society of Louisiana CPAs, a nonprofit professional association serving the interests of over 6,600 members and the public. Opinions expressed do not necessarily reflect those of the Society.

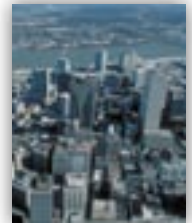
Pursuant to IRS Circular 230 and IRS regulations we inform you that any federal tax advice contained in this publication is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties imposed under the Internal Revenue Code.

COVER STORY

The Louisiana Headquarters and Growth Act, an Open Invitation to Business: Locate Here

Page 4

The Louisiana Headquarters and Growth Act (LHGA) was enacted to spur economic development and industrial growth in Louisiana by forging a more ideal business climate. This in-depth article discusses the changes made to the Louisiana corporation income and franchise tax statutes by the LHGA. Learn why the LHGA not only encourages companies to expand or relocate in Louisiana, but how it operates as a post-hurricane incentive for current Louisiana-based businesses to retain their headquarters in the state.



FEATURES

State Tax Report	Page 8
Federal Tax Report	Page 10
Local Tax Report	Page 12
Summary of KETRA, GO Zone, and Other Pending Federal & State Disaster Relief Provisions	Page 14
Business Interruption Claims	Page 19
Louisiana ReveNews	Page 20
A Message from the IRS Stakeholder Liaison Division	Page 21
KETRA's Impact on the Work Opportunity Tax Credit	Page 23
CPAs – Important Allies in Donor Education and Louisiana's Recovery	Page 25

DEPARTMENTS

Highlights	Page 3
GMV – Get More Value from Your Membership – Free Phone Service Audit	Page 26
2006 Social Security Changes At-a-Glance	Page 26
Society CPE	Page 27
Classifieds	Page 28

Advertisers Index

AIM Technologies, *Inside Front Cover*; Brooke Companies, *Page 2*; LUBA Workers' Comp, *Page 2*; Title Exchange Company, *Page 20*; Gilsbar, Inc., *Page 22*; Roux Business Systems, *Page 22*; Title Exchange, *Page 20*; Willeford Law Firm, *Page 27*; Crais Management Group, LLC, *Page 27*; Stonehenge Capital Company, LLC, *Inside Back Cover*; Coe & Company, *Back Cover*

Coming in the March Issue

- The Benefits of Cost Segregation
- Louisiana Labor Report
- Marketing New Services During Tax Season



Want to Come Home?
Many opportunities await those who
want to return to the city they love:


Accountants
Financial Analysts
CPAs
Accounting Managers
AR & AP Managers

504-834-9772

To see a list of current openings go to
brookecompanies.com

BROOKE
super human resources
recovery

LUBA Workers' Comp is committed to our founding values: the return of unused premiums to policyholders and personal, hometown service. That's how we became Louisiana's second largest writer of workers' comp coverage while maintaining our A- Excellent rating for financial strength from A.M. Best, the world's foremost insurance-rating agency.

LUBA 
Workers' Comp
Genuine Dependability™

Call 1-888-884-LUBA for a free premium analysis and an agent near you, or visit www.chooseluba.com

HIGHLIGHTS

Legislators Income Tax Guide Updated

The Society recently published its *2005-2006 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 question-and-answer format to address the most frequently raised questions. The Guide is available on the LCPA's website, <http://www.lcpa.org/200506IncomeTaxGuide.pdf>.

IRS Clarifies Schedule D Instructions

After comments from the AICPA about the burden imposed on tax practitioners, the IRS has released a statement clarifying the Form 1040, Schedule D instructions involving capital gains transaction reporting. The instructions literally state that tax practitioners must enter the specifics of each capital gain or loss transaction on a separate line of the form.

However, based on the clarification posted to the IRS's website, tax practitioners should be aware that "...taxpayers may continue to use a substitute statement to provide all of the same information and in a similar format to lines 1 and 8 of Schedules D and D-1. They are not required to use the official version of Schedules D and D-1 to provide the details on each transaction... [T]he details of each transaction still must be provided with the tax return and not just upon request."

The 2005 Instructions for Schedule D (Form 1040) is now available at <http://www.irs.gov/instructions/i1040sd/index.html>.

LCPA Members Share Concerns Over Hurricane Tax Issues with IRS

The LCPA recently hosted a Commissioner's Forum for all practitioner groups in Louisiana and Mississippi to discuss tax issues related to the 2005 hurricane disasters. The forum featured Kevin Brown, Commissioner of the IRS Small Business/Self Employed Operating Unit, and several of his team members, including Beth Tucker, Director of Communications, Liaisons, and Disclosures, and Brady Bennett, SB/SE Director of Collection.

A major issue discussed was the Section 165(i), which gives taxpayers until April 15, 2006 to elect whether or not to claim a casualty loss on the taxpayer's 2004 return. The LCPA expressed the need for additional time to obtain appraisals and make this determination.

Some other topics covered include:

- The definition of "destroyed" for purposes of the Section 121 exclusion.
- Applicability of Code Section 121 vs. Code Section 1033.
- Appraisal matters. Wade Ragas, Ph.D., a real estate expert, provided an extensive report, *The Analysis of Damages and Cost to Report Greater New Orleans Area*.
- FEMA payments. Beth Tucker indicated that the IRS would develop a fact sheet to outline the nature of all payments.
- Lost records.
- Penalty waivers.
- NOL carrybacks.
- Bonus depreciation.

As a result of the numerous questions

raised during the Commissioner's Forum, subsequent conference calls and meetings are being held. The LCPA will disseminate information via e-mail and the LCPA website as soon as definitive answers and guidance are provided.

Disaster Recovery Seminars Held in Lake Charles and Lafayette

The LCPA and Hibernia National Bank wrapped up their series of Small Business Disaster Recovery Community seminars with programs in Lake Charles and Lafayette. The *Taking the Next Steps* program was designed to assist hurricane victims in their relief and recovery efforts. Representatives of the Internal Revenue Service, Louisiana Department of Revenue, and Louisiana Department of Labor also participated in both events.

The LCPA and Hibernia presented a total of eight seminars. The programs were well attended by CPAs and small business owners from Houma, Metairie, Mandeville, Baton Rouge, Lake Charles, and Lafayette. The program is an extension of the Society's Financial Literacy effort.



LCPA Board Member Mollie Broussard presents to Lake Charles area CPAs and small business owners.



Promote Your Practice with Tax Season Brochure, Speech & PowerPoint

The Tax Saving Tips for 2005 brochure, speech and PowerPoint presentation address specific tax law changes and important provisions to help clients minimize their taxes. These materials can help you establish a reputation in your community as a valuable source of information. You also may attract new clients as well as secure your position as a credible professional.

The brochure is available in black and white, two-color and four-color, as well as in both high and low resolutions. Space is provided on the back panel to imprint your firm name, logo and contact information. The 15-25 minute speech can be used with the PowerPoint and is designed to provide you with a general framework for giving a speech.

Visit the Members section of LCPA.org to access these 2005 Tax Season Resources.

THE LOUISIANA HEADQUARTERS AND GROWTH ACT

An Open Invitation to Business: Locate Here!

By Robert S. Angelico, JD, CPA and Brianne M. Star, JD

Introduction

The Louisiana Headquarters and Growth Act¹ (the “LHGA” or the “Act”) was enacted in July of 2005 in an effort to spur economic development and industrial growth in Louisiana by forging a more ideal business climate. The Act reduces the overall tax liability of Louisiana-based companies by amending the Louisiana corporation income and franchise tax statutes to provide the companies with favorable tax consequences that previously only followed out-of-state businesses having minimal nexus to Louisiana. Not only does the LHGA encourage companies to expand or relocate in Louisiana, but it equally, and perhaps more importantly, operates as a post-hurricane incentive for current Louisiana-based businesses to retain their headquarters in the state.

Prior to the LHGA, Louisiana businesses were heavily taxed on their non-business income.² In addition, when compared to out-of-state companies that merely sold their products in Louisiana, Louisiana-based manufacturers and merchandisers were penalized for maintaining property and payroll in the state. Effective January 1, 2006, the LHGA rectifies these discrepancies by exempting non-business interest, dividends, and to some extent, capital gains from the Louisiana corporation income tax and by altering the Louisiana corporation income and franchise tax apportionment formulas to favor capital intensive, heavy labor businesses based in Louisiana that make significant sales outside the state.

This article discusses the changes made to the Louisiana corporation income and

franchise tax statutes by the LHGA. Part I discusses the favorable treatment provided interest, dividends, and capital gains under the Louisiana corporation income tax. In Part II, changes in the calculation of the Louisiana corporation and franchise tax apportionment percents are discussed, particularly as they relate to in-state manufacturers and merchandisers.

Not only does the LHGA encourage companies to expand or relocate in Louisiana, but it equally, and perhaps more importantly, operates as a post-hurricane incentive for current Louisiana-based businesses to retain their headquarters in the state.

Part I. Non-Business Income: Interest, Dividends, and Certain Capital Gains

Prior to the LHGA, for purposes of the Louisiana corporation income tax, interest and dividends received by a Louisiana entity were classified as allocable income and most often sourced to and taxed by the business’s commercial domicile state – Louisiana.³ Capital gains from the sales of property not made in the regular course of business were also classified as allocable income and generally sourced either to the

business’s commercial domicile or to the state in which the property sold was either used or located.⁴ For many businesses headquartered in Louisiana, particularly manufacturers with considerable property in the state, these rules meant that such capital gains were fully taxed by Louisiana.⁵ The LHGA changes these tax consequences by exempting interest and dividends from taxation and by providing for the apportionment of capital gains.

In order to appreciate the changes made by the LHGA, it is necessary to understand the framework in which the Louisiana corporation income tax system operates. For those unaccustomed to the Louisiana corporation income tax, a brief summary follows.

A. The Louisiana Corporation Income Tax

The Louisiana corporation income tax is imposed on the Louisiana taxable income of corporations and other entities taxed as corporations for federal income tax purposes. Determination of the amount subject to tax by Louisiana begins with the taxpayer’s federal gross income to which modifications are made. The result is the taxpayer’s net income, the items of which are then segregated into two categories: “allocable income” and “apportionable income.” Allocable income includes only those items statutorily classified as such. Once classified, such items are then allocated, or sourced, either within or without Louisiana. All income that is not classified as allocable income is apportionable income. Net apportionable income is apportioned within and without Louisiana using either the Louisiana

apportionment percent established for the particular business or by using the separate method of accounting. If a taxpayer uses the apportionment percent, the percent is based on an average of ratios comparing the taxpayer's gross receipts, property, and wages paid, within and without the state; however, these "factors" vary depending on the specific type of business involved. Once net income has been classified and sourced, taxpayers determine the amount of net income attributed to and taxable by Louisiana by using the following three-step process: (1) subtract from total net income allocable net income from all sources, (2) apply an apportionment percent or the separate accounting principles to the remainder, and (3) add back Louisiana-sourced allocable income. Once Louisiana net income is determined, the taxpayer subtracts the deductions for net operating losses and federal income taxes, as permitted under Louisiana law. The result is Louisiana taxable income on which the Louisiana corporation income tax is imposed.

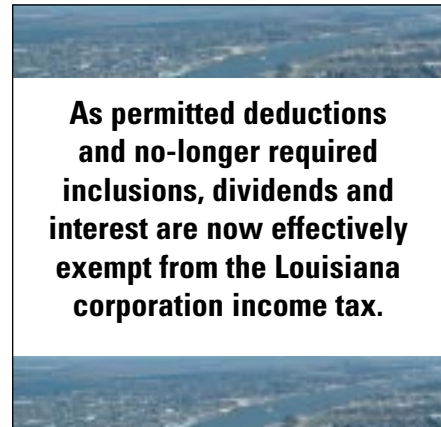
If the taxpayer does business only within Louisiana, allocation and apportionment are irrelevant as all of the taxpayer's income is subject to tax by the state. However, taxpayers that do business within and without Louisiana must use these categories to determine the amount attributed to and taxable by Louisiana. Important to note is that while items of allocable income are separately analyzed to determine their source and taxed in their entirety if sourced to Louisiana, apportionable income, which may be considered as having several different sources, is generally attributed to Louisiana based on factors demonstrating a nexus with the state and taxed only to the extent of the determined nexus.

B. Dividends and Interest

Prior to the LHGA, dividends and interest received by a Louisiana-based taxpayer were categorized as allocable income and were subject to tax by the state. Now, not only are dividends and interest no longer classified as allocable income, but taxpayers may deduct these items from federal gross income for the purpose of determining their total net income.⁶ In addition, the requirement that certain tax-exempt interest and dividends be added back to federal gross income was

repealed.⁷ As permitted deductions and no-longer required inclusions, dividends and interest are now effectively exempt from the Louisiana corporation income tax.

Although the exemptions promise to reduce the income taxes for some, for others, the interest exemption may result in an actual increase in overall tax liability. This is because interest expenses are only



deductible against Louisiana allocable income if attributable to taxable interest income.⁸ With the exemption of interest income from the Louisiana corporation income tax, related interest expenses will be disallowed, consequently preventing their use against other items of Louisiana allocable income and creating the potential for greater tax liability with respect to taxpayers with significant interest expenses.

For this reason, the LHGA permits certain taxpayers to elect to be taxed on interest income, but only in limited circumstances.⁹ The election is available only to corporations that receive interest from a subsidiary, in which the corporation owns 50 percent or more of the voting stock.¹⁰ As a result of the election, interest will be classified as allocable income and sourced to the state in which the securities or credits producing the income have their business situs, or if no business situs exists, to the commercial domicile of the taxpayer.¹¹ If there is a business situs and that situs is in Louisiana, the interest income is allocated to the state or states in which the real and tangible personal property of the controlled corporation is located, the location of which is determined by comparing the value of such property located in Louisiana to the total value

of the property within and without the state.¹² To the extent the interest is taxable Louisiana allocable income, the taxpayer will be entitled to a deduction for its interest expense allocated to Louisiana.¹³

C. Capital Gains

For purposes of the Louisiana corporation income tax, allocable income included profits or losses from the sale or exchange of property if the sale or exchange was not made in the regular course of business.¹⁴ Whether the capital gain was attributed, or sourced, to Louisiana depended on the nature of the property sold. If the property consisted of incorporeal property or rights, as a practical rule, the gain was sourced to the location of the taxpayer's commercial domicile, which for Louisiana-based businesses was typically Louisiana.¹⁵ Capital gain from the sale of other property was attributed to Louisiana if the property sold was used or located in the state, which was often the case for businesses headquartered in Louisiana.¹⁶

LHGA retracted the provisions classifying capital gains not made in the regular course of business as allocable income.¹⁷ As they are no longer allocable, by default, these items are now classified as apportionable income.¹⁸ Consequently, all profits and losses resulting from the sale or exchange of property, whether or not made in the regular course of business and regardless of the character of the property sold, are classified as "apportionable income" and attributed to Louisiana using the appropriate apportionment percent.

An exception to the use of the apportionment percent exists, however, if the Louisiana apportionment percent is zero, or if net apportionable income is computed using the separate accounting method.¹⁹ In those circumstances, capital gains not made in the regular course of business are apportioned to Louisiana using a ratio of gross income from Louisiana sources (other than such profits and losses) to all the taxpayer's gross income (other than such profits and losses).²⁰ If all of the taxpayer's gross income is from such capital gains, then the capital gains are attributed to Louisiana according to the character of the item sold or exchanged: (i) if tangible property located in Louisiana, capital gains

(Continued on page 6)

(Growth Act continued from page 5)

are Louisiana gains; (ii) if an ownership interest in a business organization which owned assets located in Louisiana, capital gains are Louisiana gains to the extent the assets were located in Louisiana; (iii) if an intangible right used in Louisiana, capital gains are Louisiana gains to the extent used in Louisiana, and (iv) if other intangible property, capital gains are sourced to the state in which the assets have a business situs, or if no business situs exists, to the commercial domicile of the taxpayer.²¹

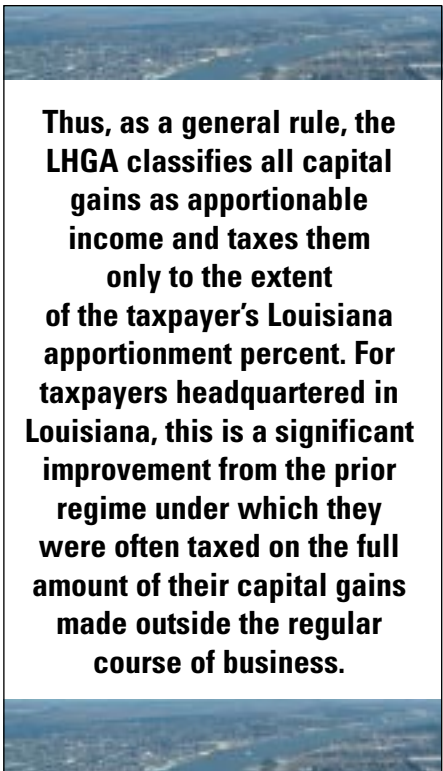
Thus, as a general rule, the LHGA classifies all capital gains as apportionable income and taxes them only to the extent of the taxpayer's Louisiana apportionment percent. For taxpayers headquartered in Louisiana, this is a significant improvement from the prior regime under which they were often taxed on the full amount of their capital gains made outside the regular course of business. Only if the taxpayer's Louisiana apportionment percent is zero, or if the taxpayer uses the separate accounting method, will an extraordinary capital gain be taxed according to a gross income factor, and only if all of the taxpayer's gross income constitutes such capital gain will the location or use of the property or the commercial domicile of the taxpayer determine the appropriate source of the gain.

Part II. Louisiana Corporation Income and Franchise Tax Apportionment Percents

For purposes of the Louisiana corporation income tax, the amount of apportionable income that is taxable by Louisiana is generally calculated by multiplying apportionable income by an apportionment percent.²² The apportionment percent is statutorily determined according to the type of business conducted by the taxpayer.²³ For purposes of the Louisiana franchise tax, an apportionment percent is similarly applied to a corporation's franchise tax base to determine the corporation's Louisiana franchise tax liability.²⁴ For certain taxpayers, the LHGA changes the method in which the apportionment percent is calculated.

A. Manufacturers and Merchandisers

Prior to January 1, 2006, in calculating its Louisiana corporation income tax, a taxpayer whose net apportionable income was derived primarily from "the business of manufacturing or merchandising"



Thus, as a general rule, the LHGA classifies all capital gains as apportionable income and taxes them only to the extent of the taxpayer's Louisiana apportionment percent. For taxpayers headquartered in Louisiana, this is a significant improvement from the prior regime under which they were often taxed on the full amount of their capital gains made outside the regular course of business.

computed its apportionment percent by averaging the following ratios: (i) a property factor, i.e., the ratio of certain property owned by the taxpayer and located in Louisiana to the value of all such property owned by the taxpayer and used in the production of net apportionable income, (ii) a wage factor, i.e., the ratio of the amount paid by the taxpayer for compensation for personal services rendered in Louisiana to the total amount paid by the taxpayer in the production of net apportionable income, and (iii) a sales factor, i.e., the ratio of net business sales and other apportionable income attributable to Louisiana to the total net business sales and other gross apportionable income of the taxpayer.²⁵ Except for certain businesses, in averaging these ratios, the sales factor counted twice, or was double-weighted, such that a total of four ratios were averaged.²⁶ Similarly, in calculating its Louisiana franchise tax, a corporation engaged in the "business of manufacturing" was required to average (i) a property factor and (ii) a sales factor,

which was also provided double-weight.²⁷

Taxpayers considered as being in the "business of manufacturing or merchandising" under the corporation income tax included, and still include, taxpayers whose net apportionable income was derived primarily from the manufacture, production, or sale of tangible personal property.²⁸ Although the franchise tax refers only to those in the "business of manufacturing," it encompasses the same general categories of taxpayers described as manufacturers and merchandisers under the corporation income tax.²⁹ Even so, each definition excludes different categories of taxpayers, though both exclude those whose income is primarily from the production or sale of unrefined oil and gas.³⁰

With the enactment of the LHGA, the apportionment percents of manufacturers and merchandisers, under both the Louisiana corporation income and franchise taxes, are now computed using a single sales factor.³¹ As it applies to Louisiana-headquartered manufacturers and merchandisers engaged in cross-border transactions, use of a single sales factor both removes the disadvantage placed upon such entities as a result of the double-weighted sales ratio and also eliminates the penalty imposed upon such taxpayers as a result of their possessing property and employing individuals in the state. When the single-sales factor apportionment percent is combined with the exemption of interest and dividends and the classification of all capital gains as apportionable income, such Louisiana-based manufacturers and merchandisers will be subject to tax only to the extent their products are sold in the state.

In providing the benefit of the single sales factor, the LHGA also limited its scope. In addition to the existing exclusions for producers and retailers of unrefined oil and gas, the LHGA provided an additional exclusion for "integrated oil companies" under the corporation income tax and expanded the existing exclusion under the franchise tax.³² For purposes of both taxes, "integrated oil companies" are either (i) taxpayers defined as "integrated oil companies" in Internal Revenue Code ("Code") §291(b)(4), which encompasses crude oil producers who are independent producers or royalty owners who are "retailers" of oil or natural gas or of any

derivative product, as “retailer” is defined in Code §613A(d)(2) or (2) refiners of crude oil as defined in Code §613A(d)(4), or (ii) integrated oil companies that refine, produce, and have marketing operations, whose income in Louisiana is principally derived from the production and sale of unrefined oil and gas, and who engage in significant marketing of refined petroleum products in Louisiana.³³ However, even if a taxpayer is associated with an “integrated oil company” as a “related party” or “member of the federal consolidated group,” as those terms are defined under the Code, if the taxpayer’s activities do not include any “gross receipts from retail sales of oil and/or natural gas,” or any “refinery activities of oil and/or natural gas,” the taxpayer will not be considered an integrated oil company.

B. Loan Businesses

Prior to enactment of the LHGA, in calculating its Louisiana corporation income tax liability, a taxpayer whose net apportionable income was derived primarily from the business of making loans computed its apportionment percent by averaging two ratios: (i) a wage factor, and (ii) a loan factor, i.e., the ratio of the amount of loans made by the taxpayer in Louisiana to the total amount of loans made by the taxpayer.³⁴ The LHGA repealed this specific apportionment percent for loan businesses.³⁵ In the absence of a specific provision, a loan business will now determine its apportionment percent as do all businesses for which no specific provision exists – by averaging a property factor, a wage factor, and a sales factor.³⁶

It is not clear why the Louisiana Legislature repealed this provision. Perhaps with the deductibility of interest income and the significant reduction in gross income for loan businesses that will necessarily result, the legislature believed the provision to be superfluous. On the other hand, the legislature may have intended to encourage such businesses to provide loans to individuals and companies in Louisiana by eliminating the increase in tax that was the outcome of their doing so. Whatever the reason, because interest income is deductible and because loan businesses engage in few, if any, sales, loan businesses will have very little gross income and will likely be taxed

only to the extent they paid wages to Louisiana employees and own immovable and corporeal movable property in Louisiana.

Conclusion

The LHGA has made great inroads in Louisiana’s goal to attract new business, as well as to create, retain, and expand existing Louisiana businesses. Although targeted to capital and labor intensive companies, the exemptions of interest, dividends, and to some extent capital gains, place Louisiana in a position to be much more competitive in attracting all industries and promises to improve the long-term business of the state.



Editor’s Note: Robert S. Angelico is an attorney and shareholder with the New Orleans law firm Liskow & Lewis, APLC. He currently serves as a board member at-large for the Society of Louisiana CPAs. He is past president of the association’s New Orleans chapter.



Brianne M. Star is an associate in the New Orleans office of Liskow & Lewis, APLC. She received an LL.M. in taxation from New York University and her J.D. from Louisiana State University. Ms. Star’s practice emphasizes federal, state, and local tax planning and tax dispute resolution.

Notes

- 1 2005 La. Acts 401.
- 2 The term “non-business” income, as used in this context, refers to interest, capital gains, and dividends earned from both passive investment, as well as that paid by subsidiaries from profits generated in the subsidiary’s ordinary course of business. This characterization differs from the dichotomy of “non-business income” provided in many other states, in which income paid by subsidiaries is treated as taxable business income, while purely passive income is treated as non-taxable non-business income.
- 3 See La. R.S. 47:287.92 (2005), La. R.S. 47:287.93 (2005).
- 4 Id.
- 5 Id.
- 6 See 2005 La. Acts 401, §1; La. R.S. 47:287.738(F).
- 7 2005 La. Acts 401, §2; see La. R.S. 47:287.71(A)(1) & (2) (2005).
- 8 See La. R.S. 47:287.81.
- 9 2005 La. Acts 401, §1;

- La. R.S. 47:287.738(F)(2);
- La. R.S. 47:287.93(A)(2).
- 10 See 2005 La. Acts 401, §1; La. R.S. 47:287.738(F)(2).
- 11 La. R.S. 47:287.93(A)(2).
- 12 Id.
- 13 See La. R.S. 47:287.81.
- 14 La. R.S. 47:287.92(B)(2) (2005).
- 15 See La. R.S. 47:287.93(A)(4) (2005).
- 16 See La. R.S. 47:287.93(A)(3) (2005).
- 17 2005 La. Acts 401, §1.
- 18 See La. R.S. 47:287.92(C).
- 19 2005 La. Acts 401, §1; La. R.S. 47:287.94(H).
- 20 Id.
- 21 Id.
- 22 See La. R.S. 47:287.95.
- 23 Id.
- 24 See La. R.S. 47:606.
- 25 La. R.S. 47:287.95(F)(2) (2005); La. R.S. 47:287.95(F)(2)(a).
- 26 La. R.S. 606(A)(3) (2005).
- 27 La. R.S. 47:606(A)(3) (2005); La. R.S. 47:606(A)(3)(a).
- 28 La. R.S. 47:287.95(F)(2) (2005); La. R.S. 47:287.95(F)(2)(c).
- 29 Those in the business of manufacturing include taxpayers whose net sales were derived primarily from the manufacture, production, and sale of tangible personal property. La. R.S. 47:606(A)(3) (2005); La. R.S. 47:606(A)(3)(c).
- 30 La. R.S. 47:287.95(F)(2)(a), (b) (2005); La. R.S. 47:287.95(F)(2)(c)(i), (ii); La. R.S. 47:606(A)(3)(a) (2005); La. R.S. 47:606(A)(3)(c)(i).
- 31 2005 La. Acts 401, §1; La. R.S. 47:287.95(F)(2)(b); La. R.S. 47:606(A)(3)(b).
- 32 2005 La. Acts 401, §1; La. R.S. 47:287.95(F)(2)(c)(iii); La. R.S. 47:606(A)(3)(c)(iii).
- 33 Id.
- 34 La. R.S. 47:287.95(E) (2005).
- 35 2005 La. Acts 401, §2.
- 36 La. R.S. 47:287.95(F)(1).

STATE TAX REPORT

Summary of Liaison Meeting with the Louisiana Department of Revenue

By Susan G. Breaux, CPA

The annual Liaison Meeting between the Louisiana Department of Revenue ("LDR") and the LCPA's State and Local Taxation ("SALT") Committee was held at the LCPA offices in Kenner, Louisiana on January 12, 2006. The LDR was well represented with attendees from the Baton Rouge Headquarters office and the New Orleans, Baton Rouge and Thibodaux Field Offices. The Secretary of the Department of Revenue, Ms. Cynthia Bridges, opened with a thank you to the LCPA for participation in the Southern Association of Tax Administrators ("SEATA") conference which was held in Louisiana in the Summer of 2005. Arthur Parham, Chairman of the LCPA SALT Committee, thanked everyone for their time and attendance and said that both tax practitioners and taxing authorities will have a challenging filing season in 2006 due to the events of 2005, including new tax legislation as well as Hurricanes Katrina and Rita.

Highlights of Legislative Changes

Members of the Policy Division of the LDR provided summaries of legislative tax law changes which are available at <http://www.rev.state.la.us/sections/lawspolicies/lis.asp>.

Highlights for income/franchise taxes include:

From the 2005 Regular Legislative Session:

- Act 268 – pass-through of credits for S Corporations and partnerships
- Act 351 – requiring partners to elect out of Subchapter K for state purposes if they elect out for federal purposes, addressing the *Unocal* case
- Act 355 – specifying that a portion of related party debt may be treated as equity not subject to phase-out for corporate franchise tax purposes
- Act 396 – disallowing a dividends paid deduction for closely held REITs, addressing the *AutoZone* case
- Act 401 – changing various provisions for allocation and apportionment for corporations with most changes effective for income years beginning after 12-31-2005
- HCR 134 and SCR 62 – directing the LDR to accept amended tax returns for

2002 to 2004 allowing married couples aged 65 or older to deduct \$12,000 in retirement income regardless of which spouse received it

From the 2005 First Extraordinary Legislative Session:

- Act 23 – Federal income tax deduction is not to be reduced by the amount of any Federal income disaster tax credits or Federal income taxes due as a result of claiming casualty losses as a result of Hurricanes Katrina & Rita
- Act 27 – Corporations with over 50 percent of assets in or revenue from the FEMA individual assistance areas of Hurricanes Katrina or Rita may use pre-hurricane levels of borrowed capital to compute their franchise tax base

Highlights for sales/use taxes include:

From the 2005 Regular Legislative Session:

- Act 126 – for purposes of calculating sales tax on interstate and foreign transportation dealers, Louisiana mileage shall not include miles that are part of a stream of movement between a point in this state and a point offshore beyond state waters in response to *Mallard Bay* case
- Act 301 – returned the "societal expectations" analysis to the determination of what property is part of an immovable in response to the *Willis-Knighton* case
- Act 471 – amends definition of "manufacturer" to include those companies that are not required to register with the Department of Labor that would qualify under the appropriate NAICS codes, such as farmers

From the 2005 First Extraordinary Legislative Session:

- Act 9 – provided for the 2005 Sales Tax Holiday
- Act 47 – allows a state tax exemption for manufacturers who replace equipment in hurricane damaged areas
- Act 48 – reduced the state sales tax rate to 3.3 percent for natural gas used for energy, electric power, steam and water for nonresidential purposes

Highlights for excise taxes and administrative matters include:

From the 2005 Regular Legislative Session:

- Act 295 – innocent spouse relief may be

applied to other taxes as well as to income taxes),

- Act 454 – changes interest calculation methodology to provide for interest on statements of accounts to be calculated to the 15th day after the notice and this amount apply for 30 days from the date of notice to reduce the issuance of small bills and refunds
- Act 252 – puts Louisiana's excise tax methodology in line with most other states by changing the point of collection for motor fuels tax to the terminal rack, effective July 1, 2006

From the 2005 First Extraordinary Legislative Session:

- Act 6 – suspended some general legal deadlines that affected the date successions have to be opened in order to avoid an inheritance tax liability
- Act 29 – allows the LDR to release information to taxpayers regarding tax amounts reported by third parties including withholding reported by employers

Retirement Income Exclusion

Information regarding procedures for amending returns for the annual retirement income exclusion is outlined in LA Revenue Information Bulletin 05-015, available at <http://www.rev.state.la.us/forms/lawspolicies/RIB05015.pdf>. The amendment periods were staggered to reduce the fiscal impact. Beginning in the 2005 tax year, only the spouse that earned the retirement income can exclude it.

Collection Issues

Joy Shrum discussed the reduction in the interest rate on unpaid taxes outlined in LA Revenue Information Bulletin 06-001, available at <http://www.rev.state.la.us/forms/lawspolicies/RIB06001.pdf>. Also, requests for innocent spouse relief must be filed within two years from the date on which LDR collection actions begin, and the spouse requesting relief must demonstrate either a lack of knowledge or coercion.

Tax Form Changes

David Black addressed changes in tax forms for the 2005 tax year forms. The

LDR has made changes in response to requests for improved “readability” as well as incorporating the various tax law changes. The LDR has requested that taxpayers and practitioners delay filing of personal income tax returns until after February 1, 2005, and that electronic filing be used whenever possible.

Changes highlighted include the following:

Personal income tax forms (available at <http://www.rev.state.la.us/sections/taxforms/default.asp?Year=2005&fCatInd=PSN%3BPersonal+Income+Tax&fCatBus=&setYr=1&setCat=1>)

- Decedent check box for joint returns
- Changes in federal income tax deduction calculations due to disaster relief provisions and credits including a new Schedule H
- Changes in the underpayment penalty form R-210R related to calculations for farmers. Note also that the LDR will post payments made by February 28, 2006 made by taxpayers in the hurricane areas back to their original due dates such as September 15, 2005
- Removal of line for military pay exclusion that was not renewed
- Changes due to the START savings program
- Changes to the credit form which include code numbers for various credits (Barbara Roe of Post-Processing suggested that taxpayers and practitioners should ensure accuracy of credit code numbers.)
- On the substitute form used for data scanning purposes, the LDR added some informational boxes based on the LCPA's request
- Extension forms may be filed online at <https://webtax.rev.state.la.us/Scripts/WebEncore.dll>

Corporate income-franchise tax forms (available at <http://www.rev.state.la.us/sections/taxforms/default.asp?Year=2005&fCatInd=&fCatBus=CIF%3BCorporate+Income+and+Franchise+Taxes&setYr=1&setCat=1>)

- Form has been expanded in number of pages to improve readability
- Schedule A has undergone significant changes related to the franchise tax phase-out on debt (with a reminder that deferred income taxes are not considered debt and for phase-out purposes)

Delivery and Processing Issues

Due to the displacement of many Louisiana residents, the LDR suggested using Form 6505 to notify the Department of address changes. Although the LDR receives information on permanent address changes from the US Postal Service, temporary forwarding orders are not included.

The LDR suggested that taxpayers in areas where mail is not being delivered who may be owed a refund request direct deposit using Form R-6002 (available at [http://www.rev.state.la.us/forms/taxforms/6002\(10_05\)F.pdf](http://www.rev.state.la.us/forms/taxforms/6002(10_05)F.pdf)).

Electronic filing was aggressively suggested as the preferred method to file returns for the 2005 tax year in that e-filing is generally more accurate and saves the state money through reduced processing costs. Due to budget constraints experienced subsequent to the hurricanes, the Department is unable to bring in the approximately 160 seasonal employees who generally begin work in January to assist with the spring tax season. This year, there will be approximately 90 employees processing all tax returns compared with 250 last year. Due to the delays that will result, the Department suggests that 2006 is a great year to start using electronic filing. Additionally, electronic payments may be made for many types of taxes using electronic funds transfers or credit cards. Refunds claimed on paper returns may create processing delays of up to 18 weeks.

The LDR recognizes that some taxpayers may have inadequate records in accumulating the appropriate documentation to attach for ad valorem credits; LDR suggested that taxpayers provide whatever information they can along with an explanation regarding their situations.

LA-Taxpayer Access Point (LaTAP)

Since summer of 2005, the LDR has provided businesses with the ability to view account activity online. Kent LaPlace and Dawn Bankston reviewed the advantages of using the LaTAP system as providing the ability to:

- File amended sales/use tax returns online as well as ability to verify the last version of the return that the LDR has on file
- Change address or DBA name
- Make electronic payments
- File several returns electronically,

including withholding, sales-use tax and excise tax

- Access account (taxpayers and CPAs)
- Easily register– e-mail address is needed.

Judicial Decisions

Alva Smith reviewed various relevant court cases and noted the following results:

- Taxpayers may not file class action suits for sales and use tax refunds.
- *Galen Medical* regarding franchise tax obligations of corporate members of LLCs was a victory for the LDR at the District Court level, but with no published decision and no appeal by the taxpayer.
- Statute waivers must now be signed by an officer of a corporation or a member of the Board of Directors.

Audit Issues

Deborah Underwood indicated that few new issues arose as a result of audits. The LDR has reviewed collections by convenience stores on food due to changes from the Stelly Plan legislation. Additionally, efforts are being undertaken to review the following:

- Internet tobacco sales
- Classification of moveable vs immoveable oilfield items
- Oilfield catering services
- Individual domicile

The Department will continue to exercise the Secretary's authority under La. R.S. 47:287.480 when income is not clearly stated.

Other Items Addressed

The Discovery Unit headed by Virginia Burton is collecting information from the IRS in order to track when federal audits result in increased Louisiana income. The state may obtain information from SEATA, U.S. Customs and/or the IRS.

Collection efforts will continue for consumer use and excise taxes on internet and catalog purchases when vendors do not charge sales tax. This use tax may be reported on LA form 540, the Louisiana individual income tax return.

The LDR is preparing certain industry-specific tax information publications. Use of Louisiana account numbers rather than federal EINs has increased from 50 to 75 percent. The LDR still plans to assess penalties if the LA number is not used.

(Continued on page 24)

The annual National CPA/IRS Tax Issues Meeting was held on November 2, 2005 in Washington DC following the AICPA Fall Tax Division Meeting. The meeting was attended by representatives of the various State CPA Societies around the country and representatives from the National Office of the Internal Revenue Service.

Jim Brennen, who currently chairs the AICPA's IRS Practice & Procedure Committee, acted as moderator for this year's annual CPA/IRS Tax Issues Meeting. Benson Goldstein, AICPA Technical Manager, was also in attendance along with representatives of the various state CPA Societies. The Internal Revenue Service (IRS) was represented by Andrew E. Blanche Jr., Director, Appeals Field Operations East; Bruce Unger, Deputy Commissioner, LMSB Division; Richard Morgante, Commissioner W&I Division; Kevin Brown, Commissioner, SB/SE Division; Bert DuMars, Director, Office of Electronic Tax Administration; Steven T. Miller, Commissioner, Tax Exempt & Government Entities Division; Laurie Tuzynski, SB/SE; Paul Cordova, LMSB; and Nina Olsen, National Taxpayer Advocate.

Overall IRS Initiatives

The common focus of virtually all of the IRS representatives continues to be on enforcement. The IRS is interested in putting a stop to tax shelters and prosecuting those engaged in selling aggressive tax planning techniques. At the same time, a secondary focus is on trying to make dealing with the IRS easier for taxpayers.

Division Specific Initiatives

Some of the plans and initiatives of specific IRS Divisions for the coming government fiscal year are described below:

Appeals Division

Andrew "Earl" Blanche Jr. represented the Appeals Division. Their case load last year consisted primarily of collection due process, examination issues, offers in compromise, and penalty appeals. Their major emphasis for the last several years has been on shortening the time it takes to process a case through the Appeals Division. Blanche said the goal for OIC cases is four

months, and for all other cases six months. Examination cases are still expected to still take a year or more. He acknowledged they are not there yet.

In order to achieve these goals, Appeals is trying to settle more cases without the necessity of a face-to-face conference. Appeals Officers are based at all six "campuses" (formerly referred to as Service Centers) and can settle cases based on telephone conferences or correspondence. The taxpayer will always have the right to a face-to-face conference if he wants one, however it will not be necessary in many cases. Getting more cases into the "Fast-Track" process will also help expedite the timing.

In response to a question from the audience, Blanche rejected the contention that there has been an increase in denial of penalty abatement. However Field Agents are supposed to develop penalties just like they would develop a tax issue. Appeals will no longer trade penalties for settlement of an issue.

Blanche also noted under Delegation Order 4-25 and Rev. Proc. 99-28, IRS Compliance can use Appeals' settlement authority for subsequent years on identical issues.

Large and Mid-Sized Business Division

The LMSB Division is the IRS's large case group. Deputy Commissioner Bruce Unger noted some of the current enforcement initiatives, including the "Son of Boss settlement," the KPMG settlement, and the recent initiative (Announcement 2005-80) to settle 21 specific transaction issues (including 16 Listed Transactions). There are more examinations of tax shelter promoters scheduled for 2006. Areas targeted for improvement include the time to complete audits and to settle cases and the agreed/unagreed rate.

Tools that the LMSB Division hopes to use to achieve their goals are:

- a) the Compliance Assurance Process (CAP audits) whereby issues are audited and resolved before the taxpayer files his return
- b) Schedule M-3, although this is still too new to have much developed in the way of trends or patterns of taxpayer usage
- c) Issue Management System (IMS) is a

tracking & standardization system for all significant audit workpapers. It is intended to be fully implemented in 2006. The IRS hopes this will help predict emerging issues. d) Electronic filing of 1120s is now mandatory for taxpayers with \$50 million in assets. Thresholds will be lowered over the next few years.

No mention was made of last year's hot topic: Limited Issue Focus Exams (LIFE)

Wage & Investment Division

The W&I Division handles and processes tax returns that have only wages and investment income. Taxpayers classified as being subject to W&I jurisdiction are evenly split between those who prepare their own returns and those who use a practitioner. Richard Morgante proclaimed that last year's compliance season was one of the smoothest, with no major glitches. The W&I Division handled more returns, including more e-filings; answered more calls promptly; and provided more accurate answers (89 percent accurate vs. last year's 73 percent) to taxpayers' questions.

The W&I Division provided 4,500 employees to assist in taking FEMA calls following hurricanes Katrina & Rita.

Morgante noted the hurricane-related law changes for casualty losses and the corresponding changes to Form 4684 (eliminated the 10 percent limitation and \$100 floor). He also noted the February 28, 2006 extended due date for returns and tax payments.

Last year the W&I Division had announced 68 walk-in centers would be closed. None of these closures have taken place yet. Congressional intent was that these sites not be closed without a study of the impact, so nothing has been done at this point. There are only 8 tax return processing centers in the country now, so the lock-box addresses (for tax returns with tax due) for many taxpayers will be changing for 2005 returns due in 2006.

For 2006, a new Form 4868 will allow an automatic six month extension of time to file an individual income tax return, and may be filed electronically.

The IRS's "questionable W-4 program" (which puts the burden of screening Form W-4s on the employer) has proved

to be ineffective, and will be scrapped. The IRS has determined that they already have sufficient information from W-2 information to screen for under-withholding.

Mid-year 2006, the IRS intends to issue 3 contracts to private debt collection agencies, turning over \$11 to 12 billion of delinquent taxes for collection. The program will be expanded in 2007 and 2008, adding another 8 to 10 private collection agencies.

Small Business/Self Employed Division

The SB/SE Division encompasses approximately 33 percent of all taxpayers, a significant number of which use a tax practitioner for tax assistance. This is the IRS Division that most CPAs will interact with.

Commissioner Kevin Brown estimated the “tax gap” (the difference between taxes owed and taxes paid) at approximately \$300 billion, attributable to underreporting, underpayment, or failure to file. Not surprisingly the taxpayers which should be targeted to reduce the “tax gap” include those with abusive tax avoidance transactions, those with a lot of flow-through entities (high income/high risk taxpayers usually have investments in around 15 flow-through entities), high income non-filers, and those with unreported income (major non-compliance area for Schedule C filers).

Brown stated his principal goal as reducing the “no-change” rate on audits. The IRS is developing new selection criteria to ensure they are examining the right taxpayer. A legitimate “no change” audit suggests that the IRS audited the wrong taxpayer.

Back-to-back penalties for failure to electronically deposit funds can usually be waived, Brown said in response to a question from the floor, if the taxpayer’s representative is diligent and keeps calling.

Office of Electronic Tax Administration

Director Bert DuMars noted two significant milestones. Last year was the first time more individual returns were filed electronically than on paper; and 2006 will mark the 20 year anniversary of e-filing. Interestingly enough, the largest and fastest growing segment of e-filers is taxpayers who owe money.

The IRS website is being redesigned, and should be available by the end of November. It will feature revised navigation tools, new search tools, a new page for tax professionals, and a “new look and feel.” The next step will be to improve the content, to do a better job directing users to what they need.

Panel on Flow-Through Entities

Laurie Tuzynski (SB/SE), Paul Cordova (LMSB), and Danny Snow (Thompson, Dunavant PLC, Memphis TN) conducted a panel discussion on partnerships, LLCs and other flow-through entities. They all commented on the increasing number of 1120S and 1065 returns being filed, while the number of 1120s filed is flat or declining.

They highlighted tax avoidance issues available (legal or otherwise) through the use of flow-throughs (basis shift, deferral or avoidance of income, off-balance sheet financing, S corporations used to avoid self-employment tax, partnerships with large capital accounts simply stop filing). The IRS is working on K-1 based tools that can determine the controlling entity (*i.e.* who is really getting the tax benefits) in a complicated structured transaction.

In the IRS’s view, the use of flow-through entities, whether by an individual taxpayer, a corporation, or other taxpayer, creates an enterprise (multi-entity) risk that an examining agent might overlook if he is only scoring individual entities rather than the entire group.

An additional 46,000 audits are being planned targeting individual taxpayers whose returns include K-1s from partnerships, S corporations, trusts, etc.

Tax Exempt & Government Entities

Steven Miller, Commissioner of TE/GE has responsibility for charitable entities, state & local governments, tribal governments, and all retirement plans. The Division staff is divided between registration of tax exempt entities and enforcement. TE/GE had a 9 percent budget increase last year all of which went into enforcement.

Areas of focus include Indian casinos, large state and federal government units (more than \$40million in payroll), underfunding of employee plans, and criminal activity. The Financial Investigations Unit investigates money laundering, terrorist funding, and fraud.

TE/GE has also created a compliance unit to review more tax returns, and contact more taxpayers than has been done in previous years. They will be conducting “compliance audits” which are not really an audit, but will require a response from taxpayers and will require taxpayers to submit additional data. These compliance audits will increase by 50 percent this year and an additional 20 percent after that.

National projects include scrutiny of compensation areas: high salaries and high loans to officers and directors; closer examination of credit counseling organizations, considering the new Bankruptcy Act requirements; and reportable/listed transactions using tax exempt entities, especially employee plans.

Mandatory e-filing for the Form 990 series is required for year 2005 returns for tax exempt organizations with more than \$100 million in assets. The threshold drops to \$10 million in assets for year 2007. A waiver can be requested if the electronic filing requirement imposes a hardship.

Form 5500 will also be required to be e-filed starting in 2007. The Form 5500 is processed by the Department of Labor, and there is no waiver available. Paper returns will not be accepted. If a taxpayer or practitioner cannot prepare and file electronically he will be required to engage a service provider to assist.

National Taxpayer Advocate Service

Nina Olsen is in charge of the Taxpayer Advocate Service (TAS). The TAS is designed to assist all types of taxpayers with cases that have gone through established channels without resolution, cases involving a significant hardship resulting from an action by the IRS, and other taxpayer problems in dealing with the IRS.

Olsen noted that her staff is starting to see a higher case load, which she attributes to the increased enforcement efforts by the rest of the IRS. She also made a point that OIC cases are being accepted more frequently.

She expressed concern about the IRS’s continued emphasis on electronic filings, and electronic media (*e.g.* the IRS website) with regard to America’s underprivileged. She stated “electronic applications are no substitute for taxpayers who are functionally illiterate.” The reliance on electronic means of dealing with taxpayers will leave behind

(Continued on page 24)

LOCAL TAX REPORT

Summary of Liaison Meeting with the Louisiana Association of Tax Administrators

By Stuart L. Reeks, CPA

The sixth annual liaison meeting of the Louisiana Association of Tax Administrators (LATA) and the LCPA's State and Local Taxation Committee (LCPA) was held on December 7, 2005 at Cypress Bend Resort on Toledo Bend in Sabine Parish.

About LATA

LATA was formed in the mid 1960s with a membership consisting solely of sales tax administrators. Later the membership was opened to other taxing authorities such as ad valorem and occupational tax administrators, as well as members of private industry and other tax professionals such as attorneys and accountants. However, "voting membership" is limited to one representative from each tax collection agency.

LATA was established to assist state and local tax administrators in the exchange of information and encourage uniformity in laws, regulations, and administration among the different jurisdictions. It is also used as a vehicle to encourage cooperation and the reciprocal exchange of information between the different taxing authorities in order to increase efficiency for all the member jurisdictions.

LATA is governed by a board of directors consisting of eight directors and three officers, elected annually from the general membership, along with the past presidents, also known as Trustees. LATA also has administrative officers who are elected by the general membership at the annual meeting and serve a term of twelve months. The membership has an annual conference usually held in early December.

There are several committees within the LATA that meet quarterly. A new committee, the Uniform Return and Remittance Committee, was established to address the challenges faced by members in adopting the electronic filing of returns. Donna Andries, CPA of Rapides Parish stated that the LATA has also developed a task force called Vision 20/20 to look at the entire structure of the LATA to analyze what direction the LATA needs to take for the future. Another new task force was developed in the wake of the hurricanes to determine what LATA can do assist those jurisdictions who have been adversely

affected by an emergency situation.

Uniform Sales Tax Code

Roger Bergeron, with West Baton Rouge Parish, began discussing the current status of the Louisiana Local Uniform Sales Tax Code (UTC). The Legislation required the local jurisdictions to make recommendations to the Louisiana Department of Revenue concerning existing regulations in which the law was similar between the local jurisdictions and the State. These recommendations dealt primarily with housekeeping issues such as the terminology used in the regulations.

The Legislature also charged the LATA with developing procedures to be followed when implementing "local only" regulations or rules for inclusion in the Uniform Sales Tax Code. These procedures have been adopted by the Legislature and are now known as the "Uniform Local Sales Tax Administrative Procedure Act." Bergeron stated that the procedures can be found at LA RS 47:337.94. Prior to the adoption, amendment, or repeal of any local regulation or rule, those procedures must be followed. The procedures state that a "Notice of Intent" (NOI) must be published not less than 90 days before such action. The procedures also afford at least 30 days, from date of publication of the NOI, to receive responses from interested persons. They also require hearings to take place not less than 35 days, nor more than 45 days, from the publication of the NOI in the Louisiana Register. At the time of publication the procedures require that the LATA Board provide copies to all interested persons and they must file their response to comments for/against adoption and provide copies of such responses to the Legislative Oversight Committees. Only the LATA Board may initiate an adoption, amendment, or repeal a regulation or rule, however, others may petition the Board for action and the Board must respond to these petitions within 120 days.

Bergeron went on to say that no rule will be considered effective if not made in compliance with the established procedures. Certified copies of the rule must be filed with the Office of the State Registrar prior to adoption and

copies must also be provided to the Legislative Oversight Committees. The rule becomes effective upon publication in the Louisiana Register. Any legal challenges on procedural grounds must be commenced within two years of effective date. The Statute provides for judicial review under three scenarios including the constitutionality of the rule, procedural grounds or whether or not the Legislature overstepped its authority. It is important to note that the Legislature can have the final say on rule or regulation by vetoing, amending, or suspending an adopted rule by concurrent resolution.

The Office of the State Register must compile and index all of the rules and regulations and provide them to the LATA Board for their review. They must be reviewed every two years. According to Roger Bergeron, no actions have been taken to date by the LATA Board to adopt any "local only" rules or regulations.

In conjunction with the UTC the Legislature mandated the development of a uniform electronic filing and remittance system for local taxes. A five member advisory committee was appointed by the governor to advise the Department of Revenue in developing the system. Mark West, with Ascension Parish and who chairs the advisory committee, indicated there were four duties with which the committee was charged. The first was to develop an electronic filing system so any taxpayer could file their sales tax returns at no charge to the taxpayer. Secondly, they needed to create a website where taxpayers could access the sales tax, interest and penalty rates along with any exemptions that a local jurisdiction may have. The third duty was to create a uniform paper return and the fourth was to develop procedures for collection disputes. The LATA formed its committee to provide input to the advisory committee on these issues. The advisory committee has had several meetings. It has developed a survey to send to the local jurisdictions to gather information on rates, penalties, etc. A banking sub-committee was formed to address banking issues. The banking sub-committee will address how

to get payments from multiple taxpayers to multiple local jurisdictions with the required documentation. The sub-committee is wants to encompass both ACH Debit and ACH Credit programs in the system. ACH Debit allows the local tax agency to initiate the transaction and draw from a taxpayer's account, while ACH Credit allows the taxpayer to initiate the transaction and "push" the funds to the taxing authority.

West added that the goal is to make the electronic filing and remittance program as user friendly as possible so that it will be utilized by mom and pop businesses as well as large corporations.

Hurricane Katrina/Rita

Donna Andries, CPA, current president of LATA, stated that the LATA assisted many of the member jurisdictions in adopting extension provisions in the wake of Hurricanes Katrina and Rita. She indicated that the Uniform Tax Code limits what a jurisdiction can do in granting extensions. She believes it allows for a maximum thirty day extension. The LATA posted the extensions granted by the jurisdictions on their website at www.laota.com. Roy Austin with the LCPA committee said he appreciated the way in which the LATA acted quickly after the hurricanes in working with the jurisdictions to provide filing extensions as it would have been impossible for many taxpayers to meet the September 20 deadline. Andries added that she feels there may be a need to amend the Uniform Tax Code to provide for extensions in these types of emergency situations.

The LATA also set up a Hurricane Katrina/Rita disaster relief fund and has approximately \$5,000 in the fund. The LATA Board plans to contribute an additional \$5,000 to the fund. There are currently three applicants requesting assistance.

Alternative Dispute Resolution

Roger Bergeron discussed the status of the LATA Alternative Dispute Resolution process which was outlined in detail at the 2004 liaison meeting. According to Bergeron no one has taken advantage of this program since its inception in December of 2004. Basically, the Alternative Dispute Resolution consists of

two possible approaches. One is binding arbitration and the other is mediation. The details of this process are posted on the LATA's website.

Litigation

Raymond Tangney, with the Louisiana Department of Revenue, began the subject of litigation with an update on the *Mallard Bay Drilling, Inc. vs. Kennedy* case. This case involves a refund claim by Mallard Bay Drilling for sales taxes paid previously on diesel fuel and supplies used on drilling barges. The Company argued that the barges were vessels used in interstate commerce and, therefore, the fuel was exempt from sales tax. The Department position was that they were not entitled to the exemption because they were operating in Louisiana waters. The Supreme Court sided with the Department on this issue and some other issues as well. One being the Court decided the term "vessels" used in interstate commerce does not include barges. The Court also took issue with the retroactive provisions in Acts 40 and 41 which were passed by the state legislature in response to the Archer Daniels Midland case. Acts 40 and 41 provided that vessels involved in interstate commerce do not actually have to leave the State to be considered involved in interstate commerce.

Tim Cefalu with Caddo Parish brought the group up to date on the *Willis-Knighton Medical Center vs. Caddo-Shreveport Sales and Use Tax Commission* case. The Louisiana Supreme Court ruled on the issue of whether or not such items as nuclear cameras were considered movable or immovable property. This distinction is important in determining the taxability of repairs to such property. In the summer of 2005 the Supreme Court ruled that the nuclear cameras were movable property. The test they used to determine this was whether or not the cameras could be removed without damaging the building or the item. In its decision the Court threw out the "societal expectation" test which caused some concern within some industries. This led the Legislature to amend Article 466 of the Civil Code during the 2005 regular session to use the societal expectation test in determining whether property is movable or immovable.

Cefalu also stated that the Supreme

Court affirmed a lower court ruling that the State medical devices exemption does not apply to local sales taxes.

Streamlined Sales Tax Project

Jerry McWherter of the Natchitoches Tax Commission reported on the current status of the Streamlined Sales Tax Project (SST). The SST was started about four years ago with the goal of having sales tax collected through a nationwide program. Currently nineteen states, which consist of twenty-nine percent of the United States population, have signed on to the SST agreement to create a uniform tax code. Federal guidelines required ten states with over twenty percent of the United States population for the SST to proceed. The SST is now seeking federal legislation to encourage the remaining states to get on board and conform their state laws to be in compliance with the Agreement.

McWherter went on to report that the SST has developed a governing board which is currently in the process of writing bylaws that will lay out the requirements for membership in the SST. There is a checklist of approximately 400 items a state must comply with before it will be granted membership. Some of the issues which create uniformity problems deal with rates, exemptions, and whether the state has a destination or origin based sales tax system. Louisiana is a "participating" state but has not signed on to the agreement to be a member state. There is much work to be done to get Louisiana's laws in compliance before the State can sign on to the SST agreement.

2005 Legislation

LATA member George Marretta indicated there were not many local tax issues addressed in the 2005 special session except for a resolution encouraging the local jurisdictions to adopt a sales tax holiday. Upon discussion by the various sales tax administrators, the consensus was they cannot legally grant a sales tax holiday and it would take a law, not just a resolution, to allow the local jurisdictions to have the holiday.

Marretta informed the group of another issue from the 2005 special session which dealt with the local hotel occupancy tax. House Bill 115, which has been sent to the Governor for signature, removes the occupancy tax exemption for hotel stays in

(Continued on page 24)

SUMMARY OF KETRA, GO ZONE, AND OTHER PENDING FEDERAL & STATE DISASTER RELIEF PROVISIONS

Prepared by Charles C. Theriot, CPA

I. KETRA – KATRINA EMERGENCY TAX RELIEF ACT OF 2005 H.R. 3768/Public Law 109-73

Enactment Date: September 23, 2005
Overall Tax Savings: \$6.1 billion

Hurricane Katrina Disaster Area (Definition)

- An area with respect to which a major disaster has been declared by the President before September 14, 2005
- Automatic Relief in 31 Louisiana Parishes designated for “individual assistance,” including Terrebonne, Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafourche, Lafayette, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Martin, St. Mary, St. Tammany, Tangipahoa, Vermillion, Washington, West Baton Rouge and West Feliciana
- Automatic Relief in 47 Mississippi Counties designated for “individual assistance,” including Adams, Amite, Attala, Claiborne, Choctaw, Clarke, Copiah, Covington, Franklin, Forrest, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston and Yazoo
- Automatic Relief in 10 Alabama Counties designated for “individual assistance”, including Baldwin, Choctaw, Clarke, Greene, Hale, Mobile, Pickens, Sumter, Tuscaloosa and Washington
- Relief if identified as impacted by Hurricane Katrina in remaining 33 Louisiana Parishes, 35 Mississippi Counties, 12 Alabama Counties, and 11 Florida Counties designated for “public assistance”

Hurricane Katrina Core Disaster Area (Definition)

That portion of the Hurricane Katrina Disaster Area determined by the President to warrant individual or individual and public assistance from the

Federal Government, i.e., the 31 Louisiana Parishes, 47 Mississippi Counties, and 10 Alabama Counties

A. Special Rules for Use of Retirement Funds for Relief Relating to Hurricane Katrina

1. Tax-Favored Withdrawals from Retirement Plans for Relief Relating to Hurricane Katrina / Qualified Hurricane Katrina Distribution (Definition)

Distribution from eligible retirement plan on or after August 25, 2005 and before January 1, 2007 to individual whose principal residence on August 28, 2005 is in Hurricane Katrina Disaster Area and who has sustained an economic loss resulting from Hurricane Katrina

Eligible Retirement Plan (Definition)

- IRA, Individual Retirement Annuity, Section 401(a) qualified trust, Section 403(a) qualified annuity plan, Section 457(b) eligible deferred compensation plan of governmental employer, and Section 403(A) annuity
- 10 percent Premature Withdrawal Penalty for distributions pre-591/2 will not apply
 - Aggregate distributions up to \$100,000
 - Distribution will not endanger plan qualification
 - Distribution may be repaid to plan or to IRA within 3 years of date of distribution
 - Repayment to non-IRA plans will be treated as a direct trustee to trustee transfer
 - Repayments to IRAs will be treated in a similar manner
 - Income Inclusion spread equally over 3 years beginning with year of distribution

2. Recontribution of Withdrawals for Home Purchases Cancelled Due to Hurricane Katrina

3. Loans from Qualified Plans for Relief Relating to Hurricane Katrina

- After Enactment Date (September 23, 2005) and before January 1, 2007
- Up to the lesser of \$100,000 or 100% of the nonforfeitable accrued benefit (Not less than \$10,000)

- Loan repayment deferred for up to one year on existing loans (and new loans?)
- Loan repaid over five years not including one year deferral

4. Provisions Relating to Plan Amendments

- Plan Amendments made before December 31, 2007 treated as retroactive
- Plan must be administered as if the plan amendment in effect (*Note:* The IRS has issued detail guidance on the KETRA retirement distribution rules in Notice 2005-92, 2005-51 IRB; IR 2005-137.)

B. Employment Relief (\$131 million)

1. Work Opportunity Tax Credit (WOTC) for Hurricane Katrina Employees / Hurricane Katrina Employee (Definition)

Any individual whose principal place of abode on August 28, 2005 is in the “Core Disaster Area” and who is hired within two years for a position the principal place of employment of which is located in the “Core Disaster Area” and

Any individual whose principal place of abode on August 28, 2005 is in the “Core Disaster Area” who is displaced by Hurricane Katrina from his abode, and who is hired during the period from August 8, 2005 through December 31, 2005

- Hurricane Katrina employee treated as member of targeted group
- Reasonable identification acceptable in lieu of certification
- Income tax credit allowed for taxable year equal to 40 percent of qualified wages
- Maximum qualified wages for credit not to exceed \$6,000 (maximum credit \$2,400 per employee)
- Special Rules apply for determining credit for post-2005 wages and rehires

2. Employee Retention Credit for Employers Affected by Hurricane Katrina Eligible Employer (Definition)

Any employer which conducted an active trade or business on August 28, 2005 in a “Core Disaster Area” and the trade or business is inoperable on any day after

August 28, 2005 and before January 1, 2006 as a result of damage sustained by reason of Hurricane Katrina

Eligible Employee (Definition)

An employee of an Eligible Employer whose principal place of employment was in a "Core Disaster Area"

Qualified Wages (Definition)

Wages paid or incurred by an Eligible Employer to an Eligible Employee after August 28, 2005 and before January 1, 2006 during a period beginning on the day the business became inoperable and ending on the date the business resumed significant operations at the principal place of employment

- a) Income tax credit allowed for taxable year equal to 40% of qualified wages
- b) Maximum qualified wages for credit not to exceed \$6,000 (maximum credit \$2,400 per employee)
- c) Employers with an average of more than 200 employees do not qualify (*Deleted by the Gulf Opportunity Zone Act of 2005.*)
- d) Credit allowed is added to current year business credit

C. Charitable Giving Incentives (\$1 billion)

1. Temporary Suspension of Limitations on Charitable Contributions

Qualified Contributions (Definition)

- Any cash charitable contribution as defined in section 170(c) paid in cash during the period beginning on August 28, 2005, and ending on December 31, 2005 to a charitable organization
- Corporate contributions must be for relief efforts related to Hurricane Katrina and be substantiated
 - a) Percentage limitations not applicable to qualified charitable contributions for individuals and corporations and not subject to phase-out of itemized deductions for individuals
 - b) Charitable Contribution Deduction for individuals limited to adjusted gross income without NOL
 - c) Charitable Contribution Deduction for corporations limited to taxable income in excess of other charitable contributions
 - d) Excess charitable contributions allowed as carryover for individuals and corporations
 - e) Non-cash contributions are not qualified contributions

2. Additional Exemption for Housing Hurricane Katrina Displaced Individuals (Definition)

Any natural person if such person's principal place of abode on August 28, 2005 was in the Hurricane Katrina Disaster Area, the person is displaced from such abode, and it was either damaged or the person was evacuated, or if the abode was located in the "Core Disaster Area," such person is displaced from such abode, and person is provided free housing in the taxpayer's principal residence for 60 consecutive days ending in the taxable year – not taxpayer's spouse or dependent

- a) For 2005 and 2006 taxable income reduced \$500 for each Hurricane Katrina displaced individual
- b) Maximum exemption for two years combined limited to \$2,000 (only one exemption per HKDI)
- c) No deduction is allowed if taxpayer receives rent or other amount from any source

3. Increase in Standard Mileage Rate for Charitable Use of Vehicles

- a) Increased to 70 percent of standard mileage rate if related to Hurricane Katrina relief (\$.34/mile effective September 1, 2005 / \$.31/mile effective January 1, 2006) – otherwise, \$.14/mile
- b) IRS previously increased standard mileage rate to \$.485/mile for September 1 through December 31, 2005 (\$.445 for period beginning January 1, 2006)

4. Mileage Reimbursements to Charitable Volunteers Excluded from Gross Income

- a) Use of passenger vehicle for benefit of charitable organization related to providing relief relating to Hurricane Katrina from August 25 to December 31, 2006
- b) Limited to standard business mileage rate or reimbursable employee business expenses
- c) Applicable to volunteer services only

5. Charitable Deduction for Contribution of Food Inventory

- a) Section amended to add special rule for contributions of food inventory effective August 28, 2005 and ending December 31, 2005
 - (1) Contribution of "apparently wholesome food" from any trade or business of taxpayer (incl. C Corp)
 - (2) For non-C Corporation taxpayers,

deduction is limited to 10% of taxpayer's aggregate net income from all trades or businesses from which such contributions were made

- b) Deduction equal to lesser of twice cost basis or cost basis plus one-half appreciation

6. Charitable Deduction for Contributions of Book Inventories to Public Schools

- a) Section amended to add special rule for contributions of book inventory to public schools effective August 28, 2005 and ending December 31, 2005
 - (1) Limitations based on type of donor and donee's use removed
 - (2) Contributions of books to public school which is an educational organization (K-12)
 - (3) Certification by donee that books are "suitable" and will be used in educational programs
- b) Deduction equal to lesser of twice cost basis or cost basis plus one-half appreciation

D. Additional Tax Relief Provisions

1. Exclusion of Certain Cancellations of Indebtedness by Reason of Hurricane Katrina

- a) Gross income of a natural person will not include certain cancellation of indebtedness on or after August 25, 2005 and before January 1, 2007
- b) Natural person must have principal place of abode on August 25, 2005 in the "Core Disaster Area" or in the Hurricane Katrina Disaster Area and have suffered economic loss resulting from Hurricane Katrina
- c) Cancellation of indebtedness income will be recognized if indebtedness incurred in connection with a trade or business or to the extent real property collateral is located outside the Hurricane Katrina Disaster Area
- d) Taxpayer's tax attributes must be reduced by income not recognized

2. Suspension of Certain Limitations on Personal Casualty Losses (\$2.4 billion)

- a) \$100 per casualty deductible will not apply to losses arising in the Hurricane Katrina Disaster Area on or after August 25, 2005, and which are attributable to Hurricane Katrina
- b) 10 percent of AGI deductible will not apply to losses arising in the Hurricane

(Continued on page 16)

(KETRA continued from page 15)

Katrina Disaster Area on or after August 25, 2005, and which are attributable to Hurricane Katrina (Note: Code Section 165(i) allows individual to claim casualty loss on either 2005 return or on amended 2004 return.)

3. Required Exercise of Authority Under Section 7508A for Hurricane Katrina Tax Relief

- a) Taxpayers determined to be affected by the Presidentially declared disaster relating to Hurricane Katrina
- b) Relief provided at least until February 28, 2006 (Note: Same for Hurricanes Rita and Wilma victims)
- c) Shall apply to filing of returns relating to, and the payment of, employment and excise taxes
- d) Also applies to income, gift, and estate taxes
(Note: The IRS has issued detail guidance on the KETRA deferred filing and payment relief in Notice 2005-73, 2005-42 IRB; IR 2005-109; IR 2005-112.)

4. Special Rules for Mortgage Revenue Bonds – First-time home buyer requirement waived and up to \$150,000 of loan proceeds may be used to repair damaged homes

5. Extension of Replacement Period for Nonrecognition of Gain for Property Located in Hurricane Katrina Disaster Area (\$1.8 billion)

- a) Damaged/Lost Property must have been located in Hurricane Katrina Disaster Area
- b) Replacement period for compulsory or involuntarily converted property in the Hurricane Katrina Disaster Area increased to 5 years from 2 years
- c) Substantially all of the use of the replacement property must be in the Hurricane Katrina Disaster Area

6. Special Look-back Rule for Determining Earned Income for Child Tax Credit and Earned Income Credit

7. Secretarial Authority to Make Adjustments Regarding Taxpayer and Dependency Status

II. GO Zone – Gulf Opportunity Zone Act of 2005 (H.R. 4440)

Enactment Date: December 21, 2005
(Includes provisions of Tax Revision Act of 2005 (H.R. 4388) and substantive and clerical technical corrections related to the Energy Policy Act of 2005, the American Jobs Creation Act of 2004, and the Jobs and Growth Tax Relief Reconciliation Act of 2003.)

Gulf Opportunity Zone (Definition)

- Hurricane Katrina Core Disaster Areas of Louisiana, Mississippi, and Alabama
- Hurricane Rita and Hurricane Wilma Disaster Areas are not included in GO Zone but have their own individual GO Zones (*i.e.*, the Rita GO Zone and the Wilma GO Zone which are the “core disaster areas”)

Hurricane Rita Disaster Area (Definition)

- All counties and parishes in Texas and Louisiana have been designated as eligible for individual assistance and/or public assistance
- Automatic Relief in 21 Louisiana Parishes designated for “individual assistance,” including Acadia, Allen, Ascension, Beauregard, Calcasieu, Cameron, Evangeline, Iberia, Jefferson, Jefferson Davis, Lafayette, Lafourche, Plaquemines, Sabine, St. Landry, St. Martin, St. Mary, Terrebonne, Vermillion, Vernon, and West Baton Rouge (Note: Allen, Beauregard, Evangeline, Sabine, St. Landry, and Vernon are the only Louisiana Parishes not already included in Hurricane Katrina “individual assistance” area)
- Automatic Relief in 9 Texas Counties designated for “individual assistance,” including Chambers, Galveston, Hardin, Jasper, Jefferson, Liberty, Newton, Orange and Tyler (Note: There are 13 Texas Counties designated for “individual assistance” that do not qualify for automatic relief.)
- Relief if identified as impacted by Hurricane Rita in remaining Louisiana Parishes and Texas Counties

Hurricane Wilma Disaster Area (Definition)

- Relief if identified as impacted by Hurricane Wilma in 20 Florida Counties, including Brevard, Broward, Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Martin, Miami-Dade, Monroe, Okeechobee, Osceola, Palm Beach, Polk, St. Lucie and

Sarasota.

- Administrative Relief Provided to Hurricane Rita Victims on Same Basis as Hurricane Katrina Victims - Hurricane Wilma relief does not include deferral of payment of employment and excise taxes

A. 50% bonus depreciation provided for all businesses in GO Zone

- Most new property investments made in the GO Zone, including machinery and equipment, purchased computer software, leasehold improvements
- New property acquired after August 27, 2005 and before January 1, 2008 (before January 1, 2009 for real property)
- Property not eligible – any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, any store the principal business of which is the sale of alcoholic beverages for consumption off the premises, any property used directly in connection with gambling, animal racing, or the on-site viewing of such racing, and buildings or portions thereof dedicated to these activities of not less than 100 square feet

B. Business expensing deduction increased from \$108,000 to \$208,000 in 2006 (to \$205,000 in 2005)

- Expensing Allowance Increased by the lesser of (1) \$100,000, or (2) the cost of qualified GO Zone property placed in service during the tax year (Note: Expensing Allowance for 2005 is \$105,000, otherwise.)
- New property acquired after August 27, 2005 and before January 1, 2007
- Property not eligible – any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, any store the principal business of which is the sale of alcoholic beverages for consumption off the premises, any property used directly in connection with gambling, animal racing, or the on-site viewing of such racing, and buildings or portions thereof dedicated to these activities of not less than 100 square feet
- Maximum purchases before phase-out in 2006 begins at \$1.03 million rather than \$430,000
- Phase-out of Expensing Allowance Increased by the lesser of (1) \$600,000, or (2) the cost of qualified GO Zone property placed in service during the tax year

C. Partial Expensing for Demolition and Clean-Up Costs

- Current Law – No deduction allowed

to owner or lessor of building for loss on building demolition or any of demolition expenses. Costs must be capitalized and added to land basis.

- Site Clean-up and demolition costs incurred after August 27, 2005 and before January 1, 2007
- Expenses related to property located in the GO Zone held by the taxpayer for use in a traded or business or for the production of income, or inventory held for resale to customers in ordinary course of business
- 50 percent of costs related to site clean-up and demolition are deductible

D. Expensing Election for Environmental Remediation Costs Extended Through 2007

Qualified Remediation Expense (Definition)

Expense paid or incurred after August 27, 2005 in connection with the abatement or control of hazardous substances at a Qualified Contaminated Site located in the GO Zone

- Clean-up of petroleum products in GO Zone treated as Qualified Remediation Expense

E. Expensing of Reforestation Expenses by Timber Growers

- Reforestation expenses incurred after August 27, 2005 and before January 1, 2008
- Expensing of Reforestation Costs increased to the lesser of (1) \$10,000 (\$5,000 if married filing separately), or (2) reforestation expenses paid or incurred by taxpayer regarding qualified timber property during the specified portion of the tax year
- Qualified Timber Property located in the GO Zone, the Rita Zone or the Wilma Zone
- Not Eligible for the Expensing Election - publicly traded corporations, real estate investment trusts, taxpayers holding more than 500 acres of qualified timber property at any time during the tax year

F. NOL Carryback Allowed for 5 years rather than 3 for Hurricane relief related losses

- NOL eligible for 5-year carryback
- Qualified GO Zone casualty losses
 - Certain moving expenses
 - Certain temporary housing expenses
 - Depreciation Deductions for qualified GO Zone property for year placed in service
 - Deductions for certain repair expenses resulting from Hurricane Katrina
 - Losses paid or incurred after August 27,

2005 and before January 1, 2008

- Irrevocable election may be made to forego NOL carryback
- 5-Year Carryback of NOL also available for small timber growers (less than 500 acres in the Katrina, Rita, or Wilma Zones)
- 10-Year Carryback of NOL available to Public Utilities for casualty losses caused by Hurricane Katrina
- Property not eligible - any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, any store the principal business of which is the sale of alcoholic beverages for consumption off the premises, any property used directly in connection with gambling, animal racing, or the on-site viewing of such racing, and buildings or portions thereof dedicated to these activities of not less than 100 square feet

G. Provides Same Relief to Hurricane Rita and Wilma Victims as in KETRA

- Employee Retention Credit
- Early Withdrawals from Qualified Retirement Plans and IRAs
- Loans from Qualified Retirement Plans
- Individual Charitable Giving Limitations Relaxed
- Corporate Charitable Giving for Hurricane Relief
- Individual Casualty Loss Rules Relaxed

H. Provides Some Additional Relief regarding Hurricane Katrina

- Employer Credit for Housing Hurricane Katrina Employees / Income Exclusion for Employees
- Hope and Lifetime Learning Credits are Doubled and Base Expanded for GO Zone Schools

III. Other Existing Applicable Disaster Relief Provisions

A. Carryback Election for Casualty Losses in Presidentially-Declared Disaster Area

(Note: Code Section 165(i) allows individual to claim casualty loss on either 2005 return or on amended 2004 return.)

B. Gross Income Exclusion for Qualified Disaster Relief Payment Amount Received by an Individual

Qualified Disaster Relief Payment (Definition)

- Any amount (to the extent not compensated by insurance or otherwise) paid to or for the benefit of an individual:

- to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster;
- to reimburse or pay reasonable and necessary expense incurred to repair or rehabilitate a personal residence (including a rented residence) or repair or replace its contents to the extent caused by a qualified disaster;
- by a person who provides or sells transportation as a common carrier because of the death or or personal physical injuries arising from a qualified disaster;
- if the amount is paid by a federal, state, or local government, or an agency or instrumentality of those governments, in connection with a qualified disaster in order to promote the general welfare

C. Grant Payments Made under FEMA's Flood Mitigation Assistance Program Used to Elevate Personal and Business Structures Located in Flood Prone Areas Are Includible in

IV. Louisiana Department of Revenue (LDR)

Gross Income

A. Legislative Relief

1. 2005 Sales Tax Holiday – December 16 through 18, 2005

- a) Exemption from state sales tax for first \$2,500 of sales or cost price of eligible consumer or business purchases
- b) Otherwise taxable tangible personal property
- c) Excluded from exemption are vehicles subject to license and title requirements and meals provided for consumption on the premises where purchased or "to go"
- d) For business to qualify for exemption
 - (1) Buy tangible personal property to replace property damaged, destroyed, or lost as a result of Hurricanes Katrina or Rita in "core disaster area"
 - (2) Apply for and receive a Sales Tax Holiday Exemption Certificate from LDR

2. State Sales Tax Rate on Electricity and Natural Gas Bought by Businesses is reduced to 3.3 percent from 3.8 percent for January 1, 2006 through June 30, 2009

(Continued on page 18)

3. Total Exemption from State Sales Tax from Effective Date through June 30, 2007, for purchase, lease, or rental of manufacturing machinery, equipment, parts, or services to repair, service or replace manufacturing machinery or equipment damaged or destroyed by Hurricanes Katrina or Rita

4. For 2005 and Later Tax Years, Federal Income Tax Deduction Allowed to Louisiana State Income Taxpayers will not be reduced by Federal Disaster Relief Credits and Disaster-Related Casualty Loss Deductions Resulting from Hurricanes Katrina and Rita

5. Corporations with either 50 percent of property located in or 50 percent or more of their revenues from the "core disaster area" are eligible to compute borrowed capital portion of franchise tax base as "extraordinary debt" at pre-disaster levels

B. Currently Extended Deadlines to file and pay certain taxes to February 28, 2006 (same as IRS)

Individual and Corporate Estimates Withholding
Partnership and Individual Income Corporate Income and Franchise Tax

30-day Extension for Sales Tax Returns and Payments due September 20, 2005

60-day Extension for taxes otherwise due August 30 thru September 30

Emergency Rule Providing Hurricane Katrina Victims Relief from State Sales Taxes on Lodging Charges (Ended Effective November 1, 2005)

LDR will grant "similar disaster related federal tax relief for which there is no specific Louisiana modification"

Refunds for State Sales Taxes paid on "uninsured personally owned movable property destroyed by Hurricane Katrina" (Note: Refund is of taxes paid on destroyed property, not replacement.)

Exempt From State Sales Tax
Purchases with Red Cross or FEMA vouchers or debit cards – Yes
Purchases with Red Cross or FEMA checks or funds deposited – No
Purchases by nonprofit agencies for hurricane victims – No

V. Tax Relief Offered by Other States

A. Alabama

- 1. Will Follow Federal Extension Date for Hurricanes Katrina and Rita
a) Individual Income Tax
b) Corporate Income Tax
c) Income Tax Withholding
d) Business Privilege Tax
e) No Provision in State Law for Waiver of Interest
f) Relief Measures for other Taxes Administered by ADOR on case-by-case basis
2. Follows Federal Treatment of Leave-Donation Programs

B. Florida

- 1. Deadline for filing intangibles tax return extended to January 18, 2006
2. Follows special tax relief granted by IRS with extension for corporations to March 15, 2006

C. Mississippi

- 1. Exclusions from Gross Income - Qualified Disaster Relief Payments and "Qualified Hurricane Katrina Distribution"
2. Withholding Tax Returns and Payments due for August and September 2005 due by October 25, 2005 and Timely Thereafter
3. Adopts federal provisions for casualty loss calculations for Hurricane Katrina
4. Property Tax Assessment Relief Provided for Individuals and Businesses Damaged by Hurricane Katrina
5. New Tax Credits and Exemptions for Businesses Enacted
6. 30 Day Extension for certain sales and use tax returns
7. Interest and Late Filing or payment penalties will be abated

D. Texas

- 1. Extensions of Filing and Payment granted, if necessary, up to 90 days, on a case-by-case basis
2. State Hotel/Motel Tax Waived for Displaced Persons

E. Other States and Municipalities Offering Relief

- AK Adopts Penalty and Interest Relief Provisions of IRS for Hurricanes Katrina and Rita
AZ Filing and Payment Extensions and Penalty Relief for Hurricane Katrina
AR Filing and Payment Extensions and Penalty Relief for Hurricane Katrina
CA Extended Filing and Payment Due Dates and Penalty Relief for Hurricanes Katrina and Rita
CO Adopts Penalty and Interest Relief Provisions of IRS
CT Filing and Payment Extensions to February 28, 2006 for Hurricanes Katrina and Rita

- DE Limited Filing Payment Extensions
GA Filing and Payment Extensions to February 28, 2006 – Follow Federal Guidelines on Leave-Based Donation Programs
ID Limited Filing and Payment Extensions
IL Filing Extension to February 28, 2006
IN Relief for use of dyed diesel fuel for highway use
IO Extended Filing and Payment Due Dates and Penalty Relief for Hurricanes Katrina and Rita
KY Filing and Payment Extensions Limited
ME Provides Guidance on Leave-Based Donation Programs and Adopts Penalty and Interest Relief
MD Filing and Payment Extensions to February 28, 2006 for Hurricanes Katrina and Rita
MA Adopts Penalty and Interest Relief Provisions of IRS
MI Filing and Payment Extensions granted on case-by-case basis
MN Adopts Penalty and Interest Relief Provisions of IRS
MO Initially granted 60-day filing extension
NE Adopts federal relief rules for Hurricanes Katrina and Rita
NJ Filing and Payment Extensions to February 28, 2006
NM Filing and Payment Extensions
NY Waiver of Penalties for Late Filing and Late Payment
NC Adopts Penalty and Interest Relief Provisions of IRS for Hurricanes Katrina, Ophelia and Rita
ND Filing and Payment Extensions to February 28, 2006 for Hurricanes Katrina and Rita
OH 45-day Extension to File and Pay Ohio Taxes
OR Adopts Penalty and Interest Relief Provisions of IRS
PA Adopts Penalty and Interest Relief Provisions of IRS
SC Filing and Payment Extensions to February 28, 2006 for Hurricanes Katrina and Rita
VA Filing and Payment Extensions to February 28, 2006 for Hurricanes Katrina and Rita
WA Extensions Granted by Calling Department of Revenue
WI Adopts Federal Filing and Payment Extensions
VT Adopts Federal Filing and Payment Extensions
NY City Filing and Estimated Tax Extensions to City February 28, 2006



Editor's Note: Charles C. Theriot, CPA operates his own accounting firm in Houma. With over thirty years of experience in public accounting, he specializes in all aspects of federal and state tax planning and reporting, assisting individuals in buying, selling and financing business transactions, and assisting parties and their legal counsel in litigation related matters. Charles is a past LCPA President and recipient of the Society's Special Recognition Award.



BUSINESS INTERRUPTION LOSS CALCULATIONS

By Holly Sharp, CPA, CFP, CFE

Coverage for business interruption losses and related extra expenses are often included in property and casualty insurance policies. The insurance policy defines the terms of coverage.

Overview of Coverage Provisions

Insurance coverage for loss of business income and extra expenses is typically provided when the loss is due to suspension of operations and direct physical loss of property, unless excluded. Exclusions typically include “water” with elaboration that this means “flood, surface water, tides, tidal waves, overflow of any body of water, all whether driven by wind or not.” Other exclusions include earth movement, nuclear hazards, war and military actions, and power failure. A civil authority provision included in policies provides for payment of loss of business income and extra expenses caused by action of civil authority that prohibits access to premises due to direct physical loss to property, other than at the described premises. The “period of restoration” is the time period for loss measurement and the “water” exclusion has limited many hurricane claims to the civil authority provision. Policyholders with flood damage and no civil authority that prohibited access to premises may have no coverage for loss of business income and extra expenses. The “period of restoration” may also be referred to as the loss period.

Some policies include time limits to the period of restoration; the civil authority provision may be limited to a specified number of weeks and loss of business income may be limited to a specified number of months. Policies may also include time limits for coverage of certain expenses, such as ordinary payroll during suspension of business operations. Many policies limit coverage for ordinary payroll during suspension of business operations to a specified time period such as 60 days. The period of restoration when there is direct physical loss to property generally begins immediately after the time of direct physical property loss and ends on the earlier of the date when the property should be repaired or restored or the date when business is resumed at

a new permanent location. The period of restoration is extended in some policies until “normal” business operations are resumed.

Calculation of Loss of Business Income

Loss of business income coverage replaces the net profit that would have been earned if no physical loss occurred. Revenues are projected over the period of restoration and are reduced by revenues actually earned during the period of restoration. An insured has the obligation to “mitigate” or minimize losses and an additional reduction may be applied if revenues could have been earned during the period of restoration, but the insured did not adequately do so. The difference between projected revenues and actual revenues (or revenues that should have been earned with proper mitigation) equals lost revenues. Lost revenues are reduced by expenses that would have been incurred to produce lost revenues to arrive at net lost business income. These expenses are referred to as “non-continuing expenses” or “saved expenses.”

Example: Joan’s Clothing sustained damage to its building when a tree crashed through the roof. Joan’s Clothing was closed from August 29 through October 31 for necessary repairs. Projected lost revenues total \$15,000 per month. Cost of goods sold represents a non-continuing or saved expense and this amount is projected to total 55 percent of lost revenues. Analysis of historical business financial data reflects the following additional non-continuing or saved expenses: credit card fees, payroll, utilities, and rent.

Loss of business income coverage may also include continuing normal operating expenses incurred, including ordinary payroll.

Example: Joan’s Clothing continues to pay its employees during the period of restoration and has coverage for ordinary payroll up to 60 days. The amount paid to employees for 60 days will be added to net lost business income.

Extra Expenses

Coverage is generally also provided for

extra expenses the business incurs due to the loss and for temporary operations. These amounts should be separated from loss of business income and non-continuing expenses.

Example: Joan’s Clothing rents a temporary facility for one month beginning October 1 to mitigate its losses. Clothing is shipped overnight, resulting in higher shipping costs than usual. Employees are paid overtime for working nights and weekends to re-open the business. Furniture and fixtures are rented for one month. The temporary rent, additional shipping, employee overtime and furniture rental are all examples of extra expenses incurred by the business to minimize lost business income and may be reimbursed by insurance.

Analysis of Historical Operations and Industry Data

Extra expenses are based upon the amount actually paid or incurred and the insurance company generally requests the invoice, proof of payment and brief explanation why the extra expense was incurred. Projection of lost net business income should be based upon the best information available. Review of historical operations and interviews with the insured may be sufficient, but new businesses or businesses without detailed records may require analysis of industry data or information from other sources to determine projected revenues and non-continuing expenses. The coverage is designed to put the insured in the position they would have been in had the loss event not occurred and is not intended to be a windfall to the insured.



Editor’s Note: Holly Sharp, CPA, CFP, CFE is the Director of the Financial Consulting Department for Laporte Sebtr Romig Hand.

Her experience includes extensive consulting work in the areas of taxation for individuals, corporations and other entities, as well as financial planning, estate planning, and business succession planning. She can be reached at hsharp@laporte.com.



LOUISIANA REVENUE NEWS

In the coming months you will see an increase in both print and television media coverage associated with the LDR campaign to encourage tax preparers to file income tax returns electronically rather than manually. For instance, one of our Public Service Announcements developed to encourage awareness of the electronic filing process features Louisiana native Mr. Terry Bradshaw speaking on behalf of the Louisiana Department of Revenue. I am very grateful for Terry's participation in our promotion. His charismatic personality has introduced electronic filing to Louisiana preparers and taxpayers that were previously unaware of its benefits.

Following the special and extra-special U.S. Congressional and Louisiana State Legislative sessions that were called late last year, it became obvious that there would be a delay in printing and distribution of the 2005 Louisiana State Income Tax forms. As a result we have been encouraging tax preparers to plan on filing electronically no earlier than February 1st and to continually check the LDR website www.revenue.louisiana.gov for up-to-date details relating to personal circumstances or business needs.

In the wake of these difficult economic challenges, our agency has lost staff members. Many of these talented individuals were involved in processing paper returns. As a result the time involved in receiving returns processed manually will average six to eight weeks, in contrast to those taxpayers that file

electronically, who will receive refunds within seven to ten days.

The 2005 hurricane season has caused near immeasurable devastation in the disruption of lives, professions and the general quality of life within the effected regions of Louisiana. As the recovery continues and taxpayers begin making plans for the future, I hope it is of some comfort to know that the Louisiana Department of Revenue is actively enhancing several customer service features to make the task of filing 2005 income returns easier for everyone.

LDR promptly addressed many taxpayer issues associated with Hurricanes Katrina and Rita. Initially, we extended filing deadlines associated with monthly business and individual returns for August 2005, followed by an additional 30-day extension to taxpayers with files due on September 20, 2005. Within this same spirit of rebuilding, LDR is available via online and through telephone customer services support lines to assist Louisiana tax preparers in completing their client's income tax returns as efficiently and painlessly as possible.

Electronic filing is the newest and most effective process for managing your revenue responsibilities. There's no longer a need for the drudgery that has been associated with income tax filing in past years. I appreciate your continued support in introducing this technology to our taxpayers.

By LDR Secretary Cynthia Bridges



“ . . . we have been encouraging tax preparers to plan on filing electronically no earlier than February 1st and to continually check the LDR website www.revenue.louisiana.gov for up-to-date details relating to personal circumstances or business needs.”

Secretary Cynthia Bridges
Louisiana Department of Revenue

Attention CPAs!

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”.

Now, your client can sell his real estate, deposit the proceeds with a “qualified intermediary” and have 45 days to “shop” for a replacement property.

Featuring: • Reverse Exchanges • Construction Exchanges • Consultants
For more information visit our Web site at www.TitleExchange.com

TITLE EXCHANGE COMPANY
IRC 1031 “QUALIFIED INTERMEDIARY”

13862 Perkins Road • Baton Rouge, LA 70810 • (225) 752-1031 • FAX (225) 752-3737 • Toll Free 1-866-762-1031

CPA The CPA. Never Underestimate The Value.



Bill Hyde
Attorney At Law

A MESSAGE FROM THE IRS STAKEHOLDER LIAISON DIVISION

We know you are busy all year round but especially so during filing season. The last thing you need is wasted time looking for the right IRS contact. IRS Stakeholder Liaison may be able to help. While our role is not to answer technical tax law questions, we will do our best to refer you to the right place. We have provided a list of frequently used IRS phone numbers below. Most of your questions can be answered by utilizing these contacts. If you are unsuccessful in navigating our system and still need assistance, your local Stakeholder Liaison staff can point you in the right direction.

Local Contacts

If you need assistance in Louisiana contact one of the Stakeholder Liaison employees below.

Sharon Evans, Senior Stakeholder Liaison
 Phone: (504) 558-3371
 Fax: (504) 558-3296
 E-mail: Sharon.M.Evans@irs.gov

Aaron Steele, Senior Stakeholder Liaison
 Phone: (504) 558-3069
 Fax: (504) 558-3296
 E-mail: Aaron.steel@irs.gov

Dee Harris, Stakeholder Liaison
 Phone: (504) 558-3081
 Fax: (504) 558-3296
 E-mail: Deirdre.Y.Harris@irs.gov

You may also contact the Mid-South Area Manager for Stakeholder Liaison, Craig Crews at (615) 250-5791 or Craig.Crews@irs.gov.

Provide Feedback to the IRS

We value your opinions and ideas on how to improve the service we provide to you and your clients. Tax practitioners are uniquely aware of what is not working and what can be improved. We are actively seeking feedback from tax practitioners to make the tax system better. Stakeholder Liaison has established a formal process called the Issue Management Resolution System, or IMRS, to accomplish this. We have already resolved a number of system-wide problems through this process. An example of this is the standardized fax sheet now used throughout the IRS. This

change was a result of feedback from practitioners.

We think the Issue Management Resolution System will serve as an early warning system for you and your clients as well as provide you concrete evidence that the Service is working with you to improve the administration of the tax system. Please encourage members of your organization to use this channel of communication. They can call us at (504) 558-3371 or send an e-mail with a description of the issue to SBSE.SL.GulfStates@irs.gov.

Electronic Services

The IRS offers a wide range of electronic services to assist you in your tax practice. In addition to e-file for Tax Professionals, we also offer e-Services, a web-based system that allows you to interact with the IRS electronically. Through e-Services you are able submit powers-of-attorney online, resolve

client issues electronically, and instantly receive client transcripts and wage and information returns on your computer. You will save time and money using e-Services. There are also many Electronic Payment Options available to you and your client. The IRS has also recently added a new logo on the IRS.gov homepage. The Electronic IRS is a gateway to the many IRS electronic options available to taxpayers and tax professionals.

Upcoming Practitioner Events

We are also your first point of contact for information on IRS sponsored seminars, phone forums, symposiums and other practitioner events in your area. Go to Tax Pro Events on our website to find a listing of events in your area. Signing up for e-News for Tax Professionals is the best way to get the latest news from IRS. Each edition will have a link to practitioner related events in your state.

PRACTITIONER CONTACTS

Title	Telephone Number	Hours of Operation (CT)
Practitioner Priority Service	(866) 860-4259	M-F, 8:00 am - 8:00 pm
IRS Tax Help Line for Individuals	(800) 829-1040	M-F, 8:00 am - 8:00 pm
Disaster Assistance Hotline	(866) 562-5227	M-F, 7:00 am - 10:00 pm
Business & Specialty Tax Line	(800) 829-4933	M-F, 8:00 am - 8:00 pm
e-Help Desk (Practitioners Only)	(866) 255-0654	6:30 am - 5:00 pm
Refund Hotline	(800) 829-1954	M-F, 8:00 am - 8:00 pm Automated Service available after hours.
Forms and Publications	(800) 829-3676	M-F, 8:00 am - 8:00 pm
National Taxpayer Advocate's Help Line	(877) 777-4778	M-F, 8:00 am - 8:00 pm
Centralized Lien Payoff	(800) 913-6050	M-F, 7:00 am - 10:00 pm
Centralized Bankruptcy	(800) 913-6050	M-F 6:00 am - 9:00 pm
Telephone Device for the Deaf (TDD)	(800) 829-4059	M-F, 8:00 am - 8:00 pm
Electronic Federal Tax Payment System	(800) 555-4477	24 hour operation; POC is available M-F 8:00 am - 4:30 pm
Government Entities (TEGE) Help Line	(877) 829-5500	M-F 7:30 am - 3:30 pm
Extension to File	(800) 829-4477	N/A
Form 706 and 709 Help Line	(866) 699-4083	M-F, 7:00 am - 7:00 pm
Automated Collection System (Business)	(800) 829-3903	M-F, 8:00 am - 8:00 pm
Automated Collection System (Individual)	(800) 829-7650	M-F, 8:00 am - 8:00 pm
Criminal Investigation Informant Hotline	(800) 829-0433	M-F, 8:00 am - 8:00 pm
Employer Identification Number (EIN)	(800) 829-4933	M-F, 8:00 am - 8:00 pm
Excise Tax and Form 2290 Help Line	(866) 699-4096	M-F, 7:00 am - 5:00 pm
Information Return Reporting	(866) 455-7438	M-F, 7:30 am - 3:30 pm
Terrorist Act or Combat Zone Special Hotline	(866) 562-5227	M-F, 8:00 am - 8:00 pm

Does Your Insurance Hit the Spot?

If not, Gilsbar can help. Go online to **request a quote** or call us today to set up a meeting with one of our insurance specialists.

www.gilsbar.com/lcpa

Gilsbar

Dalmation

Gilsbar is the right spot for LCPA members to find insurance coverage.

Our insurance specialists can design an insurance strategy for you and your family. Let us help maximize your coverage and minimize your costs.

1-800-445-7227 ext. 672

 GILSBAR

Gilsbar, Inc. • P.O. Box 998 • Covington, LA 70434 • www.gilsbar.com

This ad is for informational purposes only and is not a contract. Contact your Gilsbar representative for complete terms, conditions, definitions, exclusions, limitations and renewability. Disability, Life and Medical Insurance are underwritten by New York Life Insurance Co., 51 Madison Avenue, New York, NY 10010. Policy Form GMR. MK-05-2133

Get the information you need, when you need it.



- Fully Integrated Accounting, Distribution, CRM, Sales Force Automation, Web Store
- Real-Time Dashboards
- Fully Hosted and Web Based Solution
- Low Cost of Ownership
- Great for businesses on a budget who want a complete solution



- Fully Integrated Accounting, Project Management, Distribution, Field Service
- Web Based Dashboards and Business Portals
- Highly Customizable
- Seamless Integration with other Business Applications
- Built upon Microsoft Visual Basic .NET, SQL Server 2005, Sharepoint

Microsoft Dynamics SL 2005 Excellence in Customer Service Award Winner



www.rouxbiz.com

Baton Rouge (225) 293-6202 New Orleans (504) 394-7654



KETRA'S IMPACT ON THE WORK OPPORTUNITY TAX CREDIT —

By Jeff Newcorn

KETRA (Katrina Emergency Tax Relief Act) was signed into law by the President on September 23, 2005. The Joint Committee on Taxation estimates the tax breaks to be valued at over \$6 billion.

One key aspect of KETRA was the creation of a new "target group" for the Work Opportunity Tax Credit (WOTC) referred to as Hurricane Katrina Employees. The target group can be separated into two distinct groups, depending on whether the worksite is inside or outside the core disaster area (as defined by FEMA).

If the business is inside the core disaster area, Hurricane Katrina Employees are defined as individuals who on August 28th, 2005 had a principal place of abode in the core disaster area, and who are hired during the 2-year period, which began on August 28, 2005.

If the business is outside the core disaster area, Hurricane Katrina Employees are individuals who on August 28, 2005 had a principal place of abode in the core disaster area, and who were displaced from their abode and hired during the period, which began on August 28, 2005 and ended on December 31, 2005.

What causes this limited change to the law to be so unique is that it makes a traditionally underused program (especially for small businesses) very attractive. Why? Because the sometimes arduous process of WOTC certification is waived for Hurricane Katrina Employees. Also, the percentage of employees that were 'certified' and thus usable in the WOTC calculation under the traditional WOTC program ranges from 5 to 15 percent, depending on the industry. This law change makes virtually 100 percent of hires inside the core disaster area available to use in the calculation of the WOTC credit. It also produces a unique window of tax credit opportunity for those communities near the core disaster area.

The traditional WOTC limit of \$2,400 maximum credit still applies. This credit can also have an unexpected benefit even to those businesses with a tax loss in 2005 since a business can carry unused credits back one year and forward for 20 years.

Let's summarize what that means:

- The usual lag time for WOTC Certification (anywhere from one to twelve months) has now vanished. A business that hired Hurricane Katrina Employees in 2005 is now in a position to claim the full amount of their WOTC credit earned for all hires and to do so now, when they need it most. No more need for waiting months for the certifications to be issued. The only variable now is dependent on how long it takes to crunch the numbers.
- The ability to obtain the sometimes-arduous documentation requirements necessary for traditional WOTC has been waived. All that is needed to be obtained by the employer is reasonable evidence that the hire is indeed a Hurricane Katrina Employee and a self-attestation is sufficient for this purpose.

One can only imagine how many thousands of businesses are in or near the core disaster area.

The core disaster area represents the southeastern third of Louisiana (31 parishes), over half of the state of Mississippi (47 counties), and the southwest part of Alabama (10 counties).

What used to be a modestly used credit will now place a demand on the accounting firms in Louisiana, Texas, Mississippi and Alabama. Most accounting firms do not have a WOTC processing practice in-house due to the on-again, off-again nature of WOTC. Every year or two the legislation supporting the

credit expires, while anxious WOTC firms, along with several of the Fortune 500 push for its renewal. WOTC did expire on December 31, 2005 and as of January 24, 2006, WOTC still is in hiatus mode (even though WOTC for hiring Hurricane Katrina Employees inside the core disaster area is not subject to the WOTC expiration on December 31, 2005). Given its tenuous nature and the special processing needed to handle the administrative, and computational requirements, many Louisiana accounting firms may be caught flat-footed from this well-intended, yet unexpected impact of KETRA.

Editor's Note: Jeff Newcorn is the founder and president of R. Jeffrey & Associates, Inc. His firm specializes in the processing of the Work Opportunity Tax Credit and the Federal Renewal Community and Empowerment Zone Tax Credits. He can be reached at jeff@rjeffrey.com or (866) 753-3379.



ACCOUNT CHURNING	OPTIONS TRADING
DEFAMATION/U-5 ABUSES	SPECULATIVE TRADING
SECURITIES ARBITRATION	
EMBEZZLEMENT	STOCK MANIPULATION
RETIREMENT/IRA ACCOUNTS	UNREGISTERED SECURITIES
FORGERY	UNSUITABLE INVESTMENTS
INAPPROPRIATE DERIVATIVE TRADING	VARIABLE ANNUITIES
LIMITED PARTNERSHIP	WRONGFUL TERMINATION ACCOUNT
James F. Willeford	
<i>Willeford Law Firm</i>	
CHURNING	OPTIONS TRADING
DEFAMATION/U-5 ABUSES	SPECULATIVE TRADING
EMBEZZLEMENT	STOCK MANIPULATION
ERISA PENSION PLAN	UNAUTHORIZED TRADING
RETIREMENT/IRA ACCOUNTS	UNREGISTERED SECURITIES
FORGERY	UNSUITABLE INVESTMENTS
INAPPROPRIATE DERIVATIVE TRADING	VARIABLE ANNUITIES
LIMITED PARTNERSHIP	WRONGFUL TERMINATION ACCOUNT
REPRESENTING INVESTORS	
MARGIN TRADING	WRONGFUL TERMINATION ACCOUNT
IN DISPUTES WITH	
STOCKBROKERS, BROKERAGE HOUSES	
CHURNING	OPTIONS TRADING
DEFAMATION/U-5 ABUSES	SPECULATIVE TRADING
EMBEZZLEMENT	STOCK MANIPULATION
ERISA PENSION PLAN	UNAUTHORIZED TRADING
RETIREMENT/IRA ACCOUNTS	UNREGISTERED SECURITIES
FORGERY	UNSUITABLE INVESTMENTS
INAPPROPRIATE DERIVATIVE TRADING	VARIABLE ANNUITIES
LIMITED PARTNERSHIP	WRONGFUL TERMINATION ACCOUNT
AND INSURANCE COMPANIES	
MARGIN TRADING	WRONGFUL TERMINATION ACCOUNT
LOUISIANA • FLORIDA • TEXAS	
CHURNING	OPTIONS TRADING
DEFAMATION/U-5 ABUSES	SPECULATIVE TRADING
EMBEZZLEMENT	STOCK MANIPULATION
ERISA PENSION PLAN	UNAUTHORIZED TRADING
RETIREMENT/IRA ACCOUNTS	UNREGISTERED SECURITIES
FORGERY	UNSUITABLE INVESTMENTS
INAPPROPRIATE DERIVATIVE TRADING	VARIABLE ANNUITIES
LIMITED PARTNERSHIP	WRONGFUL TERMINATION ACCOUNT
Corporate Office	
201 St. Charles Avenue, Suite 3203	
New Orleans, LA	
Tel 800.706.5196	
Fax 313.692.5927	
jimwilleford@willefordlaw.com	
MARGIN TRADING	WRONGFUL TERMINATION ACCOUNT
CHURNING	OPTIONS TRADING
DEFAMATION/U-5 ABUSES	SPECULATIVE TRADING

(State Tax Report continued from page 9)

Hurricane Related Issues

The LDR noted that automatic extensions were given for taxpayers in affected areas, but that unlike the IRS which has requested that "Hurricane Katrina" or "Hurricane Rita" be written in red ink across the top of returns, the LDR requests that black ink be used. Penalties and interest will apply to any late payments from the due date until August 28, 2005.

The LDR addressed the potential complexities of determining residency status for hurricane evacuees, especially those who are undecided as to whether to return to Louisiana. Mike Pearson mentioned that a resident of Louisiana is one who is domiciled in-state, maintains a permanent place of abode in-state or spends in the aggregate more than 6 months of the taxable year in-state per R.S. 47:31(1) and 47:290B. Most evacuees will have spent more than 6 months in-state in 2005, thereby qualifying them as Louisiana residents. He suggested that taxpayers discuss specific issues with Taxpayer Services and mentioned Rev. Rul. 05-008 as guidance for part-year residents (available at <http://www.rev.state.la.us/forms/laws/policies/RR05008.pdf>).

State sales and use tax refunds are available for certain uninsured personal property damaged in the hurricanes. Information is available at <http://www.rev.state.la.us/sections/hottopics/ndrg.asp>. Items that are not eligible for sales tax refunds include titled assets (cars, boats, etc.) and recreational equipment for use away from home (such as Jet-skis). The

LDR has received approximately 2,000 claims. Typical errors have been claiming a refund on items that were not taxed when purchased (such as food or medicine) or claiming a refund on items on which sales/use tax had never been paid (such as goods purchased overseas and never reported on the personal use tax section of the individual return).

The LDR has been diligent in providing information to contractors who have entered Louisiana to do work in Louisiana by posting information on the LDR home page as well as random on-site visits for new contractors to verify that registration has occurred.

LCPA members asked about Louisiana treatment for casualty losses carried back to 2004, and the LDR pointed out that the special session legislation Act 23 (which does not require a reduction to the federal income tax deduction for casualty losses) only applies to 2005 returns. Therefore, anyone amending their federal 2004 return and carrying back a loss may actually owe additional 2004 Louisiana income tax due to the Stelly Plan provisions of disallowing itemized deductions. Additionally, the LDR suggested that 2005 returns with casualty losses include the address where the loss occurred because the filing address may be outside of hurricane affected areas.

Editor's Note: Susan G. Breaux, CPA is Executive Director in the Sales and Local Taxes area with the national CPA firm of Ernst & Young in New Orleans. She is a member of the Society's State and Local Taxation Committee.



(Local Tax Report continued from page 13)

excess of thirty consecutive days.

Ad valorem tax issues were also addressed during the 2005 special session. Marretta indicated that a bill was passed that provided for the continuation of the homestead exemption for five years if the property was damaged due to a gubernatorially declared disaster. For the exemption to continue, the taxpayer must sign an affidavit that they will be returning.

House Bill 148, which has recently been signed by the Governor, will give local jurisdictions that contained property devalued by the hurricanes, the option of pro rating the 2005 value of property for property tax assessment purposes. A parish must elect this option with the Louisiana Tax Commission within ten days of the date the Governor signed the bill into law.

2006 Legislative Wish List

Roy Austin with the LCPA Committee indicated he would like to see uniformity between the local jurisdictions with regard to the 20th of the month due date. He said he has seen different policies used when the 20th falls on a weekend or holiday. For example, some jurisdictions do not push the due date back to the next work day when the 20th falls on a weekend or holiday as does the state and most local jurisdictions. Also, he has dealt with taxing authorities who say the return must be received by the 20th as opposed to being postmarked by the 20th. The tax administrators agreed this is a problem and suggested a regulation is needed to address this issue.

Roger Bergeron stated he would like to see legislation to address the societal expectation test to determine whether or not property is immovable. He feels the societal expectation test is going to create a lot of controversy as the term is nebulous and has different meanings in different industries.

Editor's Note: Stuart L. Reeks, CPA is a Senior Tax Manager with the CPA firm Robertson, Bailes & McClelland, LLP in Shreveport. He is a member of the Society's State and Local Taxation Committee.



(Federal Tax Report continued from page 11)

many who cannot cope.

Olson also expressed concern about the use of private debt collectors, because the IRS will not be doing the training on taxpayer rights.

She commented on the tax gap, which Kevin Brown had mentioned earlier. According to Olson, the issue stems from situations where there is no withholding tax imposed at the source, in other words, from self-employed. She proposed a voluntary withholding program (the UK has a similar program in certain industries) with monthly scheduled EFTPS payments.

Editor's Note: John Bundscho, CPA is a former Chairman of the Federal Taxation Committee of the Society of Louisiana CPAs. He is a Senior Tax Advisor with Entergy Corporation, and is currently based in Entergy's Houston offices, following Hurricane Katrina.



CPAs – IMPORTANT ALLIES IN DONOR EDUCATION AND LOUISIANA’S RECOVERY

The role that CPAs and other financial advisors play in aiding the decision making processes of would be philanthropists is more relevant today than at any other point in past history. People of every age and socio-economic status stand poised and ready to do whatever they can to help. Today’s donors have seen and read a lot about the need to support reputable organizations placing an emphasis on accountability, but they need guidance in knowing where to direct their generosity.

In the aftermath of the storms that rocked the gulf coast last year, the willingness of Americans to reach out to those in need soared to heights never before seen in the history of the nation. As images of the sheer devastation suffered by the region and its inhabitants were beamed around the globe in the days and weeks following Hurricane Katrina and later Hurricane Rita, philanthropy took center stage as over \$2 billion was contributed to relief efforts in a matter of weeks.

Today as Louisiana navigates the long road to recovery, donors across the region find themselves struggling to make their way through a maze of charitable possibilities.

In the waning days of 2005, concerns about “donor fatigue” headlines touting mishandling of funds and sporadic outbreaks of fraudulent activity each threatened to stem the flow of compassion and donations that inundated charities across the state immediately following the hurricanes. Thankfully, donors nationwide continued to give in record numbers, spurred on in part by the Katrina Emergency Tax Relief Act. Of vital importance to the nonprofit sector is the ability of prospective donors to receive and appropriately apply knowledge regarding the many vehicles through which their contributions can positively impact communities.

Whether someone wants to give \$50.00 or \$50,000, every contribution matters. Consultations with CPAs and other professional financial services advisors can assure donors that their philanthropic dollars will be put to good use by

organizations that place a high premium on ethical management and transparent distribution of funds.

The CPA’s Role

We are in for a long, arduous journey as we work to rebuild what was lost and sustain what remains. As local and federally funded initiatives face tough questions and steep cuts to the bottom line, continued receipt of contributions from private citizens will play an important role in the region’s ability to recover. CPAs have a place at the forefront of the recovery process as they assist those with means, in decisions regarding tax-deductible contributions, wills, bequests and longevity planning to benefit communities devastated by the storms.

CPAs have a place at the forefront of the recovery process as they assist those with means, in decisions regarding tax-deductible contributions, wills, bequests and longevity planning to benefit communities devastated by the storms.

Before the winds calmed and the gravity of New Orleans area flooding and the impact of Rita on Southwest Louisiana was fully understood nonprofit organizations including faith-based groups, churches and foundations mapped out survival strategies for the sector. CPAs can assist clients in plotting long-term financial objectives in an effort to help sustain the communities they care for by:

- Becoming well-versed in the benchmarks of fundamentally sound/fiscally responsible organizations that can be trusted to use contributions wisely. Engaging clients in conversations about the causes and organizations they gravitate toward to help facilitate the decision making process with regard to charitable giving.
- Alerting clients to changes in tax laws

By Melissa Flourney, Ph.D.

and opportunities where contributions can be maximized through tax breaks and incentives.

- Communicating regularly regarding changes in clients circumstances (*i.e.*, marriage, divorce, aging parents, etc.) and how those changes could impact charitable giving concerns.
- Noting regional and national trends with regard to charitable giving and providing occasional updates as “hot-button” issues arise that may be of interest to clients.

LANO Resources

LANO offers a number of resources including joint data projects and publications produced with organizations such as the Johns Hopkins Center for Civil Society Studies and The Urban Institute that can be used to help substantiate the need for continued support of the nonprofit sector through charitable giving. LANO offers the Louisiana Standards for Excellence Program, a voluntary certification program for nonprofits. Based on fundamental values such as honesty, integrity, fairness, respect, trust, responsibility and accountability, the Louisiana Standards for Excellence Program provides nonprofits increased capacity to meet their missions while assuring the public that their operations have been carefully scrutinized and found to be ethical and accountable.

LANO considers LCPA to be an important ally in the recovery and rebuilding process as your members endeavor to educate clients for the good of their families and the state of Louisiana.

For more information on the Louisiana Association of Nonprofit Organizations and its role in recovery efforts, please visit www.lano.org.

Editor’s Note: Melissa S. Flourney, Ph.D. is the President and CEO of the Louisiana Association of Nonprofit Organizations. She can be reached at melissa@lano.org.



GMV – GET MORE VALUE FROM YOUR MEMBERSHIP

Save Money on Your of Telecommunications Services

In each issue of *Lagniappe* we'll feature one of your many member benefits and highlight the ways you can get more value from your membership investment. This issue's spotlight is on the value of:

Free Audits of Your Telecommunications Systems

Advanced Telephone Concepts (ATC) offers free audits of telecommunications services for LCPA members and their clients. ATC will review one complete month's billing for your existing basic service network, long distance, data

network and equipment, including cellular phones and beepers. The audit goal is to reduce the cost to the client, either by changing to a more cost effective service, reducing or eliminating abuse or fraud, or eliminating billing errors. Audits will be provided on site.

Recommendations for minor changes are provided to clients as "homework" that can be easily performed themselves. Recommendations for major changes may result in a change of carrier from CLEC (competitive local exchange carrier) or the current long distance company to BellSouth, only when it

benefits the customer.

To schedule an appointment, contact:
 Vivian Reilly
 Advanced Telephone Concepts, LLC
 858 S. Clearview Parkway, #338
 River Ridge, LA 70123
 Toll-free (877) 809-3137
 Phone (504) 309-4873



2006 SOCIAL SECURITY CHANGES AT-A-GLANCE

Cost-of-Living Adjustment (COLA)

Based on the increase in the Consumer Price Index (CPI-W) from the third quarter of 2004 through the third quarter of 2005, Social Security and Supplemental Security Income (SSI) beneficiaries will receive a 4.1 percent COLA for 2006. Other important 2006 Social Security information is as follows:

	2005	2006
Tax Rate		
Employee	7.65%	7.65%
Self-Employed	15.30%	15.30%

NOTE: The 7.65% tax rate is the combined rate for Social Security and Medicare. The Social Security portion (OASDI) is 6.20% on earnings up to the applicable taxable maximum amount (see below). The Medicare portion (HI) is 1.45% on all earnings.

Maximum Taxable Earnings

	2005	2006
Social Security (OASDI only)	\$90,000	\$94,200
Medicare (HI only)	No Limit	No Limit

Quarter of Coverage	2005	2006
	\$920	\$970

Retirement Earnings Test Exempt Amounts

Under full retirement age	2005	2006
	\$12,000/yr. (\$1000/mo.)	\$12,480/yr. (\$1,040/mo.)

NOTE: One dollar in benefits will be withheld for every \$2 in earnings above the limit.

The year an individual reaches full retirement age	2005	2006
	\$31,800/yr. (\$2,650/mo.)	\$33,240/yr. (\$2,770/mo.)

NOTE: Applies only to earnings for months prior to attaining full retirement age. One dollar in benefits will be withheld for every \$3 in earnings above the limit.

There is no limit on earnings beginning the month an individual attains full retirement age (65 and 6 months for retirees born in 1940; 65 and 8 months for those born in 1941).

Social Security Disability Thresholds

Substantial Gainful Activity (SGA)	2005	2006
Non-Blind	\$830/mo.	\$860/mo.
Blind	\$1,380/mo.	\$1,450/mo.
Trial Work Period (TWP)	\$ 590/mo.	\$620/mo.

Maximum Social Security Benefit: Worker Retiring at Full Retirement Age in 2005 and 2006

2005	2006
\$1,939/mo. (Age 65 and 6 months)	\$2,053/mo. (Age 65 and 8 months)

NOTE: For retirees born in 1940, full retirement age is 65 and 6 months; for those born in 1941, it is 65 and 8 months. Full retirement age will gradually increase to age 67 for those born in 1960 and later.

SSI Federal Payment Standard

	2005	2006
Individual	\$579/mo.	\$603/mo.
Couple	\$869/mo.	\$904/mo.

SSI Resources Limits

	2005	2006
Individual	\$2,000	\$2,000
Couple	\$3,000	\$3,000

SSI Student Exclusion

	2005	2006
Monthly limit	\$1,410	\$1,460
Annual limit	\$5,670	\$5,910

Estimated Average Monthly Social Security Benefits Payable in January 2006

	Before 4.1% COLA	After 4.1% COLA
All Retired Workers	\$963	\$1,002
Aged Couple, Both Receiving Benefits	\$1,583	\$1,648
Widowed Mother and Two Children	\$1,992	\$2,074
Aged Widow(er) Alone	\$929	\$967
Disabled Worker, Spouse and One or More Children	\$1,509	\$1,571
All Disabled Workers	\$ 902	\$939

Self-Study Ethics Course Offers a Convenient Option for Meeting State Board Requirements

Included in the CPE hours for this 2004-06 CPE reporting period is an Ethics requirement. Licensed CPAs, who completed the required Ethics course for the previous 2001-03 CPE cycle, are required to take the 2004-06, *Ethics in Today's Environment for Louisiana CPAs* (ETHSS06).

The LCPA offers the Ethics course in a convenient, self-study format. This online course provides you case studies drawn from "real-life" litigation and administrative proceedings involving CPAs in public practice and industry. It helps you take a proactive, risk-avoidance stance by pointing out common pitfalls and presenting alternative courses of action. Explore ethical issues in the context of actual proceedings that were resolved both in favor of and against accounting and auditing professionals. Gain insights from placing yourself in situations that require application

and understanding of relevant ethical considerations.

Course highlights include:

- Key issues in civil and regulatory actions
- Analysis of ethical requirements and considerations
- Fact patterns from actual proceedings
- Special ethical issues in select reporting and disclosure areas: off-balance sheet financing, related party transactions, revenue recognition, materiality, loan and lease loss reserves, restructuring charges and independence
- Effect of changes in disciplinary procedures and oversight
- SEC enforcement proceedings and their implications

The self-study course is composed of four modules. Tests are required at the end of each module. Each module must be taken and passed with a grade of at least 75% in order to ensure proper credit of 4 hours. You may retake a test as many times as needed within this year, in order to achieve a passing grade. A certificate of

completion will be shown onscreen upon successful completion. Print and keep the certificate of completion as assurance to the State Board.

Please verify that your computer meets the required system configurations. If it does not, you will need to download the free software plug-ins. You have one year from the date that you sign on, to complete the course. For CPE credit purposes, your certificate of completion must reflect a completion date no later than December 31, 2006.

The 2006 course fee is \$150 and qualifies for 4 hours of CPE credit. To place your order, contact a Member Services Representative or order online at www.lcpa.org.



Are your clients leaving cash on the table?



By utilizing the services of the leading Cost Segregation engineers in Louisiana your clients* can recapture tens, or perhaps hundreds of thousands of dollars this quarter.

* Referral fees paid.

Crais Management Group, LLC can assist your clients in recapturing capital or generating future tax savings for commercial property with a **cost basis of just \$300,000** or more. And we have the most competitive rates in the industry. Renovations, new build, or purchases, we can assist your clients at a time, post-Katrina and Rita, when cash really is king. We also work with GoZone, 1031 exchange, and TIC strategies.

Efficient service, prestigious client list, quick turnaround, audit support, and reasonable rates...a great partner for your firm.

Additional Lines:

- Digital Media and Film Tax Credits
- Medical Technology Commercialization
- Technology Transfer
- New Venture Capitalization

Contact David Crais Today
773.398.4143 • 504.813.6145

davidcrais@hotmail.com • dcrais@craigsgroup.com



CRAISMANAGEMENTGROUP, LLC[®]
New Orleans Chicago Los Angeles

www.craigsgroup.com

OFFICE RENTAL

OFFICE SUITE FOR LEASE

3850 North Causeway Blvd.
Suite 630 in Metairie
Interior and Window Offices Available
Includes receptionist services
Conference room, kitchen and
Covered parking
For more information call
836-5990

PROFESSIONAL SERVICES – OTHER

Peachtree & QuickBooks

- Software for New Users & Upgraders
- Industry-Specific Editions
- Payroll Tax Subscriptions
- Computer Checks, W-2 & 1099 Forms
- Assistance with Installation & Setup
- Remote Access Support via Internet
- Toll-Free Technical Support
- How-To Learning Guides
- QuickBooks Enterprise now has a
15-User Edition for Mid-Market Businesses

Discount Pricing for LCPA Members
Allday Consulting Group, LLC
1-800-259-4213
www.AlldayCPA.com

Section 125 Plan Administration

Professional administration for section 125 premium only and flexible spending plans. Turnkey payroll processing. Contact Employer's Administrative Corporation, 1409 Kirkman Street, Lake Charles, LA 70601. 1-800-256-7909.

TAX CONTROVERSIES

PAUL H. WALDMAN

Formerly Attorney for IRS
Board Certified Tax Attorney
AV rated
www.waldmanlaw.net
pw@waldmanlaw.net
504-834-7077

PROFESSIONAL SERVICES – PEER REVIEW

QUALITY REVIEWS AND CONSULTING REVIEWS PERFORMED FOR SOLE OWNERS AND LOCAL FIRMS. Contact Rowland Perry, 3007 Armand St., Monroe, LA 71201. Phone (318) 323-1411 for information and fee estimate.

ON-SITE AND OFF-SITE REVIEWS

Large local firm with wide range of experience will perform peer reviews for firms with 10 or less professionals. Contact Kenneth Pavy, John S. Dowling & Co., P. O. Box 433, Opelousas, LA 70571. Phone: (337) 948-4848.

Small firm with experience in several specialized industries will perform peer reviews for other small firms. Contact Neil Ferrari at 225-272-1177 or nfcpa@bellsouth.net.

PURCHASE • SALE • MERGER

ACCOUNTING PRACTICE SALES – WHERE PRACTICE SELLERS AND BUYERS MEET!!!

ACCOUNTING PRACTICES FOR SALE:

• 70 Minutes North of Shreveport - Gross
\$134,500

• Southern Louisiana - Gross \$868,000

Thinking of selling? We have qualified buyers waiting and an ever expanding database of qualified buyers and 100% cash out financing available to close the sale of your practice within 90 days. **TO LIST YOUR PRACTICE WITH US OR TO CHECK OUT OUR CURRENT LISTINGS** Call me, **JIM BURFORD, CPA TOLL FREE** (800) 340-7002 or visit our website at www.accountingpracticesales.com or e-mail me at jim@accountingpracticesales.com.

MISCELLANEOUS

ARMSTRONG'S SUPPLY CO., INC. Building a home? Renovating your existing home? For the best price and selection of light fixtures contact LCPA member Stephen Orkus at (504) 483-9216.

CLASSIFIED AD RATES

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). Classified advertisers are charged by the word. Each word costs 80¢. 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.

Additional Online Options:

Link to your e-mail and/or Web site \$5.00

List your heading in blue (default is black).... \$5.00

Include an animated "New" with the Ad..... \$5.00

Deadline for receipt of ad copy is the first working day of the month preceding the month of publication. Send ad copy to the Society, Attn: Christine Dempster, 2400 Veterans Blvd., Suite 500, Kenner, LA 70062 or fax your ad copy to (504) 469-7930.