New LA Tax Laws Require Quick Decisions (Before July 1) to Preserve Favorable Tax Treatment

June 15, 2015

The Louisiana Legislature has completed its work and critical decisions must be made between now and the effective date of most of the bills: **July 1, 2015.** The tax legislation that passed, if not vetoed, will address the state's budget issues by dipping into the pockets of business, certain industries and S corporation shareholders, and even individuals, but there are time-limited opportunities to avoid some of the impact of the new legislation by acting quickly. That is, for some taxpayers, there is a brief window of opportunity to save taxes by filing 2014 income/franchise tax returns, S corporation shareholder returns and individual income tax returns before the effective date. Other significant legislation that passed includes a bill specifically expanding Louisiana's ability to require remote vendors to collect Louisiana use taxes and legislation severely curtailing solar tax credits and making significant changes to Louisiana's film tax credit program. Please note that no bill is final until the Governor signs it (with the exception of HCR8), however, the governor promised the legislature not to veto its tax increases if the legislature passed the "SAVE" Act, which it did. The following is a summary of some of the tax bills that passed:

Across-the-Board Reduction in Tax Benefits

HB 624 contains several different measures intended to increase revenue that all operate in the same manner. Specifically, this bill, as engrossed, reduces the complete exclusion from certain taxes for credit unions, mutual savings banks, and electric cooperatives to a 72% exclusion. In addition, this bill reduces the complete exclusion from gross income for both interest received from Louisiana obligations and funds accrued by a corporation operating a public transportation system to a 72% exclusion. HB 624 also reduces a number of deductions from a complete deduction to a 72% deduction, including refunds of Louisiana corporate income tax receiving during the year, funds received by a corporation engaged in operating a public transportation system, interest on Louisiana obligations and securities, deductions related to certain casualty losses, certain dividends, and certain benefits provided for hurricane recovery. In addition to these deductions, this bill also proposes to reduce the net operating loss available for use in a given year to 72% of the Louisiana loss incurred in the preceding year. This bill also reduces the allowances and deductions related to depletion for oil and gas wells. Some of these measures are applicable to returns that are filed after July 1, 2015, even if filed pursuant to timely extension, though the disallowed benefit may be carried forward to tax years 2017, 2018, and 2019. Alternatively, filing prior to July 1, 2015 may preserve the greater tax benefits available under prior law. Some taxpayers may want to file before July 1 and amend later. While these revenue increasing measures may seem extreme, they are set to expire as of June 30, 2018.

Reduction/Delay of Refundability of Inventory Tax Credit

HB 805 changes the tax credit structure for ad valorem taxes paid on certain inventory held by manufacturers, distributors, and retailers and on natural gas held or consumed in providing natural gas storage services or operating natural gas storage facilities. Whereas taxpayers are currently entitled to a 100% credit of the taxes paid with a complete refund for any allowable credit which exceeds their aggregate tax liability, HB 805 proposes to alter the tax credit from a refundable credit to one in which only 75% of the excess credit is refundable and the remaining 25% is carried forward and may be applied against subsequent income tax liability for up to five years. In addition, HB 805 modifies the research and development credit and the Small Business Innovation Research Grant Credit, making them nonrefundable, but able to be carried forward for a period not exceeding 5 years. Importantly, the bill provides that these provisions will not apply to any returns filed before July 1, 2015 where the credits at issue are claimed, even if those returns are subsequently amended on or after July 1, 2015. HB 805 was forwarded to the Governor on June 12.

Reduction of Certain Tax Credits

HB 629 provides for a reduction of certain tax credits including the corporation tax credit, the neighborhood assistance tax credit, the tax credit for contributions to educational institutions, credits arising from refunds by utilities, certain job credits, the credit for employee or dependent health insurance coverage, the rehabilitation tax credit, and the Louisiana Basic Skills Training tax credit, along with other miscellaneous credits. These reductions in tax credit will be effective from July 1, 2015 until June 30, 2018. Importantly, these reductions will not apply to tax returns claiming a credit filed before July 1, 2015 regardless of the taxable year to which the return applies, even if such return is subsequently amended. If, however, the tax return is filed after July 1, 2015 pursuant to an extension executed before July 1, 2015, then the excess disallowed credit can be carried forward equally to tax years 2017, 2018, and 2019. This bill was sent to the Governor on June 15.

Changes to Credit for Taxes Paid to Other States

HB 402 modifies the requirements that must be met in order for an individual taxpayer (including S corporation shareholders) to claim a credit against Louisiana income/franchise tax for taxes paid to another state. Specifically, this bill states that the credit will only be allowed if the other state allows a similar credit for Louisiana taxes paid and only to the extent of the amount of Louisiana tax that would have been due had the income been earned in Louisiana. Finally, the credit will not be allowed with respect to states that give a nonresident a credit against income taxes for the nonresident state for taxes payable to other states. Texas does not currently offer such a credit against Louisiana income taxes for its margin tax. As with respect to HB 629, this modification will not apply to tax returns claiming the credit filed before July 1, 2015 regardless of the taxable year to which the return applies, even if such return is subsequently amended. If, however, the tax return is filed after July 1, 2015 pursuant to an extension executed before July 1, 2015, then the excess disallowed credit can be carried forward equally to tax years 2017, 2018, and 2019. On June 12, this bill was sent to the Governor for approval.

Increase in Tax on Business Utilities

HCR 8 temporarily suspends the 0.97% tax exemption for all business utilities on the state sale and use tax levied on the sales of steam, water, electric power or energy, and natural gas. HCR 8 is drafted to be operative for only the period from July 1, 2015 to 60 days after final adjournment of the Louisiana Legislature’s 2016 Regular

Session. This resolution was enrolled and signed by the Speaker of the House on June 12 and subsequently sent to the Secretary of State.

Reduction of Certain Business Tax Incentives

HB 635 provides for the reduction and modification of certain business tax incentives. Specifically, the bill requires that certain businesses who enter into contracts after July 1, 2015 that would entitle them to Enterprise Zone credits are ineligible for the credits unless an advance notification form was filed before July 1, 2015. In addition, the bill modifies the Louisiana Mega-Project Energy Assistance rebate to 80% of severance taxes imposed on natural gas used, directly or indirectly, in the project. With respect to the Louisiana Quality Jobs Program Act, incentive rebate is reduced to the statutory benefit rate multiplied by 80% of the eligible gross payroll for those whose advance notification was filed on or after July 1, 2015. HB 635 also reduces the amount of the contract administration rebate by 5% related to projects for which the Secretary invites application on or after July 1, 2015. Similarly, this bill reduces the amount of new payroll eligible for the Competitive Projects Payroll Incentive Program and the percentage of the project facility expense rebate for projects that the Secretary invites application on or after July 1, 2015. These reductions will be effective from July 1, 2015 until June 30, 2018.

Remote Vendor Nexus Bills

HB 555, which provides for the collection of sales and use taxes by remote dealers, has been passed and sent to the Governor for executive approval. This bill expands the definition of "dealer" for sales and use tax purposes and requires remote dealers to collect and remit sales and use tax and to electronically file Louisiana sales and use tax returns. The definition of "dealer" will also include manufacturers of tangible personal property; those who solicit business by compensating Louisiana-based referral sources (with a rebuttable presumption of dealer status if the person derives over $50,000 in cumulative gross receipts during the preceding 12 months from sales of tangible person property to customers in Louisiana as a result of such referrals); those who sell the same or substantially the same line of products as a Louisiana retailer; those who solicit business and develop a market in Louisiana through the use and compensation of a Louisiana-based affiliated agent; persons holding a substantial ownership interest, directly or through a subsidiary, in a retailer maintaining sales locations in Louisiana; and persons who are owned in whole or substantial part by a retailer maintaining sales locations in Louisiana. Taxpayers from whom dealers collect this tax may obtain a refund if the taxpayer either shows that the appropriate use tax return has been filed, along with proof of payment, or provides an affidavit affirming that the delivery and use of the property will be in a parish with no use tax imposed. These provisions would apply to tax periods beginning on and after July 1, 2015.

Film Tax Credit Changes

The Louisiana Legislature has enacted significant changes to the state's film investor tax credit program by implementing several new restrictions on program eligibility and the amount of credits available to investors per fiscal year, as well as other areas. Chief among these changes is the program-wide cap on investor tax credits proposed under HB 829, which the Senate has currently placed at $30 million per production and $180 million per year on a first come, first served basis, with redeemed credits from previously withheld productions counting towards the yearly cap. In addition to a credit cap, other measures modify and/or restrict qualifying expenditures, such as SB 100, which limits production expenditures on related party transactions; SB 102, which limits tax credits if expenditures for "Above-the-Line" exceed 40% of total production expenditures; and SB 103, which excludes finance fees, insurance fees, and travel fees as eligible expenditures. Further, some of the proposed legislation seeks to identify and remove eligibility for "bad actors" (not a pun) while protecting those who purchase credits, even from bad actors, in good faith (SB 98 imposes a background check for certain participants, and SB 106 and HB 748 disallow credits for those who applied for or received credits through fraud or misrepresentation, while simultaneously protecting the authorized transfer of credits of third-parties without knowledge of such fraud or misrepresentation). Still other changes stem from a tightened credit verification process aimed at securing certification from the Louisiana Workforce Commission or disinterested, third-party CPAs or tax attorneys (SB 101 and HB 604, respectively), a requirement that actor salaries be withheld as individual income tax (HB 735), or that a production simply use Louisiana promotional graphics in their marketing (HB 678).

Solar Tax Credit Changes

HB 779 makes drastic changes to the state's solar energy systems tax credit, including a repeal of the credit for solar thermal systems, and a phase-out of the credit itself. At a minimum, the revised law reduces the solar tax credit available for purchased systems, modifies when the tax credit may be claimed, and reduces the maximum amount of the credit allowed when such systems are installed during portions of the new effective period. Similar treatment is also given to leased systems. The new law also adds an annual cap for both purchased and leased systems in the amount of $10 million, $10 million, and $5 million, which cap is effective in calendar years fiscal years starting in 2015, 2016, and 2017, respectively. The statute distinguishes between leased and purchased systems however as it relates to 2014 installations which won't be claimed on returns until 2015. The cap for leased systems installed in the 2014–2015 fiscal year but with respect to which credits were not granted prior to June 1, 2015, is $19 million. There is no similar provision for purchased systems. Credits are granted on a first come, first served basis until the annual cap is reached so it is important to file sooner rather than later. HB 779 also requires the submission of certain information when claiming a solar tax credit, regardless whether the system was purchased or leased, such as proof of installation, information on the solar panels, the terms of any financing for the system, and forms for the sworn statements to be issued by the dealer and installer regarding the system's size.

Other less time-sensitive legislation that passed includes:

Unclaimed Property Law Tweaks

This bill (HB 692) proposes changes relating to the unclaimed property law impacting banks and financial institutions. Specifically, this bill expands the ways in which an owner can show "interest" in his property thereby interrupting the abandonment period. Under this bill, an indication of an owner's interest in the property would be shown by a one-time or recurring electronic transaction authorized by the owner as well as accessing a deposit account through the website of the financial organization. This bill was sent to the Governor for approval on June 9.

BTA Clean Up Bill

HB 338, which introduces a number of procedural provisions, primarily with respect to the Board of Tax Appeals ("BTA"), has been passed and sent to the Governor for approval. As explained in our prior coverage, key provisions of this bill include establishing the Local Tax Division of the BTA as an independent agency within the BTA and tweaking the local tax judge position; adding remedies for the collection of taxes by collectors, such as reconventional demand and third-party demand, in any court or before the BTA; providing additional circumstances in which prescription of both assessment and refunds may be suspended; establishing an Escrow Account for the BTA; and increasing notice requirements and allowing taxpayers to rely on the date of a notice of disallowance of a refund claim in determining timeliness of an appeal to the BTA.

Sales and Use Tax Modernization Study Commission Authorized

Members of the Louisiana legislature have realized that the current state and local sales tax system in Louisiana is rapidly becoming dated with the introduction of new types of business and sales platforms. HB 471 seeks to help Louisiana modernize its state and local sales tax statutes through creation of the Sales Tax Streamlining and Modernization Commission. This Commission will be compromised of 19 members consisting of a variety of individuals and stakeholders including members of the legislature, the Department of Revenue, and local taxing interests. The thrust of the Commission's duty will be to conduct studies relating to how current Louisiana state and local sales tax policy affects the economy of the state in comparison to areas with similar demographics and economies. Specifically, the Commission will be tasked with studying how the introduction of a broad-based tax on services might impact revenue, the efficiency of Louisiana's sales tax collection and audit procedures, and a comprehensive study of special tax treatment, including credits, deductions, exclusions, exemptions, and rebates. During its time in the Senate, the Senate amended the bill to require that the Louisiana Legislative Auditor be included in the Commission. The House of Representatives concurred in this amendment, and, after the bill was signed by the Speaker of the House and the President of the Senate, it was forwarded to the Governor on June 11.

More information will be forthcoming as we continue to review the new legislation.