IPT 2017 Sales Tax Symposium
San Antonio, Texas
September 17-20

Louisiana Law Changes
2017
Presenters

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Agenda/Learning Objectives

- **Louisiana’s Revenue Environment**
  - After the session, you will understand the dire revenue situation in which Louisiana once again finds itself

- **Changes from 2016**
  - The session will refresh your understanding of changes made in 2016
Agenda/Learning Objectives

- Law Changes in 2017
  - After the session, you will understand what the legislature did in the 2017 session

- Recent Cases in Louisiana
  - After the session, you will have an understanding of recent and important cases dealing with sales tax and procedure

- What Do We Expect Next?
Louisiana’s Budget Crisis

- The “Fiscal Cliff”: 
Louisiana’s Budget Crisis

- Current Year Budget Deficit - fiscal year 2017-2018:
  - $440 million deficit (per Governor)
  - $200 million surplus (per House leadership)

- The “Fiscal Cliff”:
  - $1.7 billion in revenues will roll off in 2018 (per Governor)
    - Clean penny sales tax (1%) rolls off
    - Sunset dates
      - Temporary sales and use tax exclusion/exemption suspensions/repeals
      - Corporate income and franchise tax exemption “haircuts”
  - $700-800 in revenues roll-off (per House leadership)
Tax Changes in 2016 First Special Legislative Session
"Scrubbing"/"Cleaning" of Existing Pennies

- **HB 61 (ACT 25) (Rep. Morris)**
- Temporarily removes applicability of certain exemptions and exclusions to portions of the existing 4% state sales and use tax
- Effective April 1, 2016
HB 61 “Cleaned Pennies”

- "Cleans" several exemptions and exclusions from existing 4% states sales tax imposed by:
  - 47:302 (2%)
  - 47:321 (1%)
  - 47:331 (1%)
HB 61 “Cleaned Pennies”

- Provides “exclusive lists” of applicable exemptions and exclusions:
  - 47:302 (32 specific exemptions)
  - 47:321 (31 specific exemptions)
  - 47:331 (32 specific exemptions)
- Only specifically enumerated exemptions will be operative for that portion of the state sales tax for definite periods of time.
To determine what is exempt/excluded, and to what extent, requires:

- Review provisions of HB 61 applicable to each taxing statute (§ 302, § 321, and § 331) to determine effective dates.
- Identify exclusive list of exemptions/exclusions for each taxing statute (§ 302, § 321, and § 331) and related tax percentage (2%, 1%, and 1%)
- Pay attention to exceptions and outliers.
HB 61 “Cleaned Pennies”

- Currently Fully Exempt/Excluded Items Not on the "Exclusive Lists":
  - 4/1/16 – 7/1/16 ➔ Taxable at 4% (includes 302, 321, and 331)
  - 7/2/16 – 7/1/18 ➔ Taxable at 2% (321 and 331 fall off)
  - 7/2/18 – Future ➔ Exempt/excluded to extent today (302 falls off)
HB 61 “Cleaned Pennies”

- MM&E:
  - 4/1/2016 – 6/30/16 → Taxable at 1% (taxable under 321, excluded under 302 and 331)
  - 7/1/2016 – 6/30/18 → Taxable at 1% (321 still applies, excluded under 302, 331 falls off)
  - 7/1/2018 – Future → exempt to the extent today (321 falls off)
HB 61 “Cleaned Pennies”

● Business Utilities
  - 4/1/2016 – 6/30/16 → Taxable at 4% (includes 302, 321, and 331)
  - 7/1/2016 – 6/30/18 → Taxable at 3% (321 falls off)
  - 7/1/2018 – 3/31/19 → Taxable at 1% (302 falls off)
  - 4/1/19 – Future → exempt to the extent today
“Clean Penny”

- Imposes an additional “one cent” (1%) state sales and use tax
- Effective April 1, 2016
- Creates new statue 47:321.1
- Provides an exclusive list of 65 applicable exemptions and exclusions
  - Only specifically enumerated exemptions will be operative for that portion of the state sales tax for definite periods of time.
HB 62 “Clean Penny”

- Currently Fully Exempt/Excluded Items Not on the "Exclusive List":
  - 4/1/16 – 6/30/18 → New 1% tax applies (from 321.1)
  - 7/1/18 – Future → “Clean penny” tax goes away
HB 62 “Clean Penny”

- **MM&E:**
  - 4/1/2016 – 6/30/16 → New 1% tax applies (from 321.1)
  - 7/1/2016 – 6/30/18 → Not taxable – 0% (excluded under 321.1)
  - 7/1/2018 – Future → “Clean penny” tax goes away
HB 62 “Clean Penny”

- Business Utilities
  - 4/1/2016 – 6/30/18 → New 1% tax applies (from 321.1)
  - 7/1/2018 – Future → “Clean penny” tax goes away
HB 61 and HB 62 Combined

- Currently Fully Exempt/Excluded Items Not on Any of the "Exclusive Lists":
  - 4/1/2016 – 6/30/16 → Taxable at 5% (includes 302, 321, 321.1 and 331)
  - 7/1/2016 – 6/30/18 → Taxable at 3% (321 and 331 fall off)
  - 7/1/2018 – Future → exempt to the extent today
HB 61 and HB 62 Combined

- MM&E:
  - 4/1/2016 – 6/30/16 → Taxable at 2% (excluded under 302 and 331)
  - 7/1/2016 – 6/30/18 → Taxable at 1% (321.1 falls off, excluded under 302 and 331)
  - 7/1/2018 – Future → exempt to the extent today
HB 61 and HB 62 Combined

- **Business Utilities**
  - 4/1/2016 – 6/30/16 → Taxable at 5% (taxable under 302, 321, 321.1 and 331)
  - 7/1/2016 – 6/30/18 → Taxable at 4% (321 falls off)
  - 7/1/2018 – 3/31/19 → Taxable at 1% (302 and 321.1 fall off)
  - 4/1/2019 – Future → exempt to the extent today
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Art VII Sec 27 of LA Constitution</td>
<td>Gasoline, diesel fuel or special fuels subject to excise tax</td>
<td>Act 25 0% Act 26 0% Total Tax Rate 0%</td>
<td>Act 25 0% Act 26 0% Total Tax Rate 0%</td>
<td>Act 25 0% Act 26 0% Total Tax Rate 0%</td>
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<tr>
<td>4:168</td>
<td>Parimutuel race tracks</td>
<td>4% 1% 5%</td>
<td>2% 1% 3%</td>
<td>0% 0% 0%</td>
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<tr>
<td>4:227</td>
<td>Off-track betting facilities</td>
<td>4% 1% 5%</td>
<td>2% 1% 3%</td>
<td>0% 0% 0%</td>
</tr>
<tr>
<td>12:245</td>
<td>Nonprofit electrical cooperatives</td>
<td>0% 1% 1%</td>
<td>1% 1% 2%</td>
<td>1% 0% 1%</td>
</tr>
<tr>
<td>22:2005</td>
<td>Purchases and rentals of tangible personal property and services by UGA (la. Insurance Guaranty Assoc.)</td>
<td>4% 1% 5%</td>
<td>3% 1% 4%</td>
<td>1% 0% 1%</td>
</tr>
<tr>
<td>33:4109(D)</td>
<td>Construction and operation of sewerage or wastewater treatment facilities by private companies for municipal corporation, parish, or sewerage or water districts</td>
<td>4% 1% 5%</td>
<td>2% 1% 3%</td>
<td>0% 0% 0%</td>
</tr>
<tr>
<td>38:2212.4</td>
<td>Bulk purchases of materials, supplies, vehicles, and equipment by a public trust that is turned to give public entities cost effective buying power.</td>
<td>4% 1% 5%</td>
<td>2% 1% 3%</td>
<td>0% 0% 0%</td>
</tr>
<tr>
<td>39:457</td>
<td>Sales in and admissions to the Louisiana Superdome, New Orleans Arena, Zephyr Field (effective 8/1/2005) and Cajundome (effective 7/1/2009). Does not include sales of tangible personal property at trade shows or similar events.</td>
<td>4% 1% 5%</td>
<td>2% 1% 3%</td>
<td>0% 0% 0%</td>
</tr>
<tr>
<td>39:468</td>
<td>Sales in and admissions to Rapides Parish Coliseum, Sugar Arena, and Lamar-Dixon Center (effective 9/2010). Parish tax authorities must exempt event also. Does not include sales of tangible personal property at trade shows or similar events.</td>
<td>4% 1% 5%</td>
<td>2% 1% 3%</td>
<td>0% 0% 0%</td>
</tr>
<tr>
<td>47:301(3)(a)</td>
<td>Separately stated installation charges. Also see R.S. 47:301(13)(a). NONTAXABLE SERVICE</td>
<td>0% 0% 0%</td>
<td>0% 0% 0%</td>
<td>0% 0% 0%</td>
</tr>
<tr>
<td>47:301(3)(b)</td>
<td>Separately stated labor charges on property repaired out-of-state.</td>
<td>4% 1% 5%</td>
<td>2% 1% 3%</td>
<td>0% 0% 0%</td>
</tr>
</tbody>
</table>
Impact to Industry/Aftermath

- Inconsistent Dates
- Clear Guidance from LA DOR
- Amend Tax Accrual Logic/Time to Implement
- Invoice Dates
- Customer Bills
- Regulators
- Budgets
Louisiana Sales Tax Legislation

- Task Forces
Task Forces

- Committees, Committees, Committees!
  - HCR 11 Task Force on Structural Budget and Tax Reform
    - To study tax system and make recommendations for long-term tax/fiscal reform
  - SCR 6 Task Force
    - To study state’s current method of providing tax credit for ad valorem tax paid by taxpayers
  - Sales Tax Streamlining and Modernization Commission
    - To study state and local sales tax systems and recommend revision of practices
  - Governor’s Task Force on Transportation Infrastructure Investment
    - To identify methods of current and recurring funding to address state’s transportation backlog and future infrastructure needs
    - Looking at gasoline tax as possible “vehicle” for funding
  - Louisiana Tax Institute
    - To serve as continuous official advisory tax law revision and reform agency of the state, and promote clarification and simplification of tax laws
News Item: The Louisiana Task Force on Structural Changes in Budget and Tax Policy finally released its report.

AND NO ONE SEEMS TO BE PAYING MUCH ATTENTION TO IT.
Governor's Pre-Session Plan

- **Sales Tax Proposals**
  - Let “temporary” 1% state sales tax rate sunset as planned on 7/1/18
  - Permanently repeal numerous exclusions and exemptions otherwise applicable to the historical 4% state sales tax rate
  - Expand sales tax to certain services effective 10/1/17

- **Tax Expenditures**
  - Make permanent the 28% reductions to income/franchise tax credits, exemptions, rebates and deductions
  - Sunset or eliminate certain other credits and incentives

- **Individual Income Tax**
  - Eliminate FIT deduction
  - Lower rates to 1%, 3% and 5%
Louisiana Sales Tax Legislation

- 2017 Regular Session
2017 Regular Session

- Tax bills a plenty!

- 2017 Regular Session is a “fiscal session”
  - Tax/revenue bills are allowed

- Focus was on long-term tax reform
  - … at least initially.
Task Force Bills
Act 25 / Act 26 Extension Bills

- H.B. 609 – Makes limitations to Section 302 permanent
Sales/Use Tax Bills That Passed

- H.B. 264 (ACT 209) - Specifies the types of construction contracts eligible for exclusion in Sec. 47:305.11 construction contract “grandfathering” protection statute
  - Adds fixed rate and guaranteed maximum price construction contracts
- S.B. 180 (ACT 426) – Restores exemption for “medical devices” (Morrell)
The Future?

- H.B. 673 (DNP) – Affects certain exclusions and exemptions (Stokes)
Louisiana Sales Tax Litigation
Recent Sales Tax Litigation

  - Local use tax assessed on company’s importation and lease of 9 cranes in Ascension Parish.
  - Turner asserted:
    - 5 cranes were transferred in isolated or occasional sale.
      - Thus, excluded from sales tax on transfer and use tax on subsequent importation and use.
    - Prior sales/use settlement with Parish included 5 of the cranes.
      - Double taxation would result.
    - Credit owed for local sales/use tax paid to other jurisdictions.
      - Turner not required to request refunds from other jurisdictions under La. R.S. 47:337.86.
Recent Sales Tax Litigation

- **Turner Bros. Crane and Rigging, LLC v. Ascension Parish Sales and Use Tax Auth., 2016-0673 (La. App. 1 Cir. 7/5/17); __ So. 3d __, 2017 WL 2875914.**
  - Court of Appeal held:
    - Evidence did not establish that 5 cranes were transferred in “isolated or occasional” sale.
      - Testimony at trial was insufficient – Court of Appeal wanted testimony of actual signatory or employee of company at time of transfer.
    - Prior sales/use settlement with Parish was silent as to which cranes were involve in settlement.
      - Thus, Court found district court did not err in factual finding.
    - Credit was owed for local sales/use tax paid to other jurisdictions.
      - Turner not required to request refunds from other jurisdictions under La. R.S. 47:337.86.
        - Separate transactions at issue (sale/use and subsequent use) – sales/use tax not “erroneously” paid elsewhere.
    - Case remanded to district court to determine proper credit amount.
Louisiana Chemical Association v. State of Louisiana, et al., 2016-0501 (La. App. 1 Cir. 4/7/17), ___ So. 3d ___.
- In 2015, Louisiana legislature passed House Concurrent Resolution No. 8 (HCR 8).
  - Suspended 1 cent of business utilities sales tax exemption.
- Louisiana Chemical Association (LCA) filed declaratory judgment action seeking to have HCR 8 declared unconstitutional:
  - Not passed with 2/3 vote of legislature.
- 19th JDC judge ruled in favor of LDR.
- Judge held:
  - HCR 8 did not require a 2/3 vote for passage; HCR 8 was not a tax repeal; HCR 8 was not a tax increase; HCR 8 was not void for vagueness; and HCR 8 did not violate due process.
- LCA appealed.
Recent Sales Tax Litigation

- **Louisiana Chemical Association v. State of Louisiana, et al., 2016-0501 (La. App. 1 Cir. 4/7/17), ___ So. 3d ___.**
  - Court of Appeal affirmed, and ruled:
    - HCR 8 was constitutional.
    - As a resolution to suspend an exemption, HCR 8 did not require a 2/3 vote, but rather a simple majority vote.
    - Constitutional requirement for 2/3 vote of legislature only required to levy a tax or repeal of a tax exemption.
    - Suspension of exemption in HCR 8 was not tantamount to repeal of a tax exemption.
    - “A suspension (which is time-limited) of an exemption is not the same thing as a permanent repeal.”
  - See LDR Statement of Acquiescence No. 15-001.
Recent Sales Tax Litigation

- Red River Parish Tax Agency, et al. v. SWEPI, LP, 61-51244 (La. App. 2 Cir. 4/5/17), ___ So. 3d ___.
  - Local-level sale/use tax refund claim appeal procedure issue.
Red River Parish Tax Agency, et al. v. SWEPI, LP, 61-51244 (La. App. 2 Cir. 4/5/17), ___ So. 3d ___.

- Court of Appeal held local tax collector was precluded from filing suit for declaratory judgment at trial court seeking judgment by the court on a local sales tax refund claim appeal matter already pending at BTA.
- Following Act 640 of the 2014 Regular Session, Louisiana Legislature has now granted exclusive original subject matter jurisdiction to Board to hear appeals of local sales/use tax refund claim denials.
- Tax collector cannot seek to circumvent this exclusive jurisdiction by filing declaratory judgment action in district court.
- Court affirmed the trial court’s granting of the taxpayer’s exceptions of lack of subject matter jurisdiction, no right of action, and no cause of action.
- Court affirmed dismissal of collector’s declaratory judgment action at the trial court.
Recent Sales Tax Litigation

- **Cajun Indus., LLC and Cajun Constr., Inc. v. Sec’y Dep’t of Revenue, State of Louisiana, LLC., BTA Docket No. 9898D, (La. Bd. Tax App. 4/12/17).**
  - State-level refund claim matter.
  - Refund claim not timely filed within prescriptive period.
  - Issue: Was prescription otherwise interrupted or suspended?
    - Similar, separate claim for same tax period had been timely filed by taxpayer, but involved distinct transactions.
  - BTA ruled:
    - “Refund claims are not made for time periods but for transactions that make up the claim.”
    - Second claim must stand on its own.
    - No statutory basis for argument that prescription was suspended or interrupted.
Recent Sales Tax Litigation

- **Barfield v. Diamond Construction, No. 51,291 (La. App. 2 Cir. 4/5/17), ___ So. 3d ___.**
  - Louisiana Court of Appeal held that LDR could estimate amount of sales taxes owed by construction company.
    - Company failed to provide sufficient records.
  - Taxpayer was not registered with LDR for sales tax purposes.
  - In collection suit, on summary judgment, trial court held LDR’s allegations were *prima facie* true.
    - Taxpayer failed to meet its burden of disproving the allegations.
  - Second Circuit found no genuine issues of material fact remained and taxpayer failed to produce evidence to rebut LDR’s *prima facie* case.
    - Unable to do so due to poor recordkeeping.
Recent Sales Tax Litigation

- **Arrow Aviation Company, LLC v. St. Martin Parish School Board Sales Tax Dept., 2016-1132 (La. 12/6/16), ___ So. 3d ___, 2016 WL 7118912.**
  - Louisiana Supreme Court held that statutory exclusion for repairs to TPP delivered to customers out of state was unconstitutional as applied for audit periods during which exclusion was mandatory for tax authorities in one parish (East Feliciana Parish), but optional for tax authorities in all other parishes.
  - Taxpayer was assessed local sales tax in St. Martin Parish.
  - Applicable exclusion was optional for St. Martin Parish.
    - St. Martin Parish had not chosen to enact the exclusion.
  - Taxpayer argued that constitution’s tax uniformity clause required exclusion to be mandatorily applied to all parishes throughout the state.
Recent Sales Tax Litigation

- **Arrow Aviation Company, LLC v. St. Martin Parish School Board Sales Tax Dept., 2016-1132 (La. 12/6/16), ___ So. 3d ___, 2016 WL 7118912.**
  - Court explained:
    - Constitution’s uniformity clause requires a legislative tax exclusion **treat** “all local governmental subdivisions, school boards, and other political subdivisions” the same (by making the exclusion optional for all parishes).
    - It does **not** mean that all these local tax authorities must uniformly **act** the same by applying a legislative tax exclusion.
    - Optional exclusions are acceptable as long as they are **optional** for all parishes.
Recent Sales Tax Litigation

- **Arrow Aviation Company, LLC v. St. Martin Parish School Board Sales Tax Dept., 2016-1132 (La. 12/6/16), ___ So. 3d ___, 2016 WL 7118912.**
  - Court ruled against taxpayer’s request to force exclusion to be mandatory for all parishes.
  - Court also held that portion of exclusion that was mandatory for East Feliciana Parish was unconstitutional and should be stricken, thereby making the exclusion optional for all parishes, including East Feliciana Parish.
  - Ruling not only resulted in unfavorable outcome for taxpayer, but also may adversely impact many other taxpayers statewide.
  - Appears to call into question constitutionality of any other pointed, single-parish exemption in sales tax code (or any exemption that applies to anything other than all parishes).
Recent Sales Tax Litigation

- *Dept. of Revenue, State of Louisiana v. Jazz Casino Co., LLC., 2016-0180, (La. 2/7/17), ___ So.3d __, 2017 WL 496266.*
  - Jazz Casino operates a land-based casino in New Orleans, Louisiana.
    - In connection with its operations, Jazz Casino rented rooms.
  - LDR collected hotel occupancy taxes on behalf of State and also Louisiana Tourism Promotion District (“LTPD”), the Louisiana Stadium & Exposition District (“LSED”), and the New Orleans Exhibition Hall Authority (“NOEHA”).
  - Jazz Casino sought refund of hotel occupancy taxes, requesting refund of state, LTPD, LSED, and NOEHA hotel occupancy taxes.
    - The Department denied refund claims, and Jazz Casino appealed to BTA.
  - Parties ultimately stipulated that Jazz Casino had overpaid $1,983,315.27, exclusive of interest, in hotel occupancy taxes.
    - 2% attributable to state general sales taxes.
    - 98% percent attributable to LTPD, LSED, and NOEHA taxes.
  - Based on stipulations of parties, BTA rendered judgment ordering LDR to refund entire $1,983,315.27 to Jazz Casino, with applicable statutory interest.
    - Judgment was not appealed and became final.
  - Department filed with BTA a motion to annul BTA’s judgment.
    - Claim: BTA did not have subject matter jurisdiction to order refund of taxes LDR had collected and remitted to LTPD, LSED, and NOEHA.
  - BTA denied motion to annul.
Recent Sales Tax Litigation

- **Dep’t. of Revenue, State of Louisiana v. Jazz Casino Co., LLC., 2016-0180, (La. 2/7/17), __ So.3d __, 2017 WL 496266.**
- On appeal, the Department contended that the BTA lacked subject matter jurisdiction.
  - LDR’s Argument:
    - BTA’s jurisdiction set forth in La. R.S. 47:1401 and 1407 did not extend to NOEHA and LSED taxes.
    - La. R.S. 47:1401 extended the BTA’s jurisdiction only to taxes “administered” by LDR.
    - La. R.S. 47:1502 limited the taxes administered and collected by LDR to those set forth in the provisions of Subtitle II of Title 47, La. R.S. 47.21-47:1690.
    - Neither NOEHA nor LSED taxes are found in Title 47.
    - Because LDR does not “administer” the NOEHA or LSED taxes, but rather “collected” those taxes as an agent of those political bodies, with no authority to issue refunds, BTA did not have subject matter jurisdiction to order it to issue a refund of such taxes.
- La. Supreme Court disagreed.
Recent Sales Tax Litigation

- **Dep’t. of Revenue, State of Louisiana v. Jazz Casino Co., LLC., 2016-0180, (La. 2/7/17), __ So.3d __, 2017 WL 496266.**
- Issue was whether the LDR “administers” the NOEHA and LSED hotel occupancy taxes.
  - Court found there was nothing in the language of La. R.S. 47:1502 that limited the LDR’s authority to administer only the taxes referred to therein.
  - Looking to the ordinances and provisions of the NOEHA and LSED, the Court found the LDR was authorized to collect such taxes on behalf of the respective entities.
  - Court held that while the word “administer” is not defined in La. R.S. 47:1401, it was clear through various legislative provisions, ordinances and resolutions, the LDR was authorized to and had been “administering” the NOEHA and LSED taxes.
  - Court held the BTA had subject matter jurisdiction to hear and decide dispute between Jazz Casino and the LDR as to LDR’s denial of Jazz Casino’s request for a refund of these taxes.
- Court upheld denial of LDR’s motion to annul judgment.
Recent Sales Tax Litigation

- **New Odebrecht Cases, and Their Progeny ...**
  - Cases concern applicability of sales/use tax exclusion in La. R.S. 47:301(10)(g) for sales of TPP “intended for future sale to the United States government or its agencies prior to the incorporation of that property into a final product.”
  - Elements:
    - Transfer of title or possession of TPP;
    - For consideration;
    - Subsequent transfer of title or possession of TPP to US government or its agencies;
    - Before TPP is incorporated into a final product.
  - Cases tend to hinge on:
    - Presence and applicability of relevant *Federal Acquisition Regulation (FAR)* provisions included in contract documents or incorporated by reference.
      - Title passage clauses.
    - Specific facts in each case and applicability to specific title transfer provisions in FAR in relevant contract document and at issue in the case.
  - Sec. 301(10)(g) is an exclusion from tax
    - Must be interpreted in favor of taxpayer
Recent Sales Tax Litigation

- New *Odebrecht* cases, and their progeny ...
  - Specific recent cases from BTA:
Questions & Contact Information

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