

August 13, 2020

LISKOW & LEWIS

NEW ORLEANS | LAFAYETTE | HOUSTON | BATON ROUGE

Liskow.com

New Orleans CFMA Chapter Metairie, Louisiana Louisiana Sales & Use Tax Update

Robert S. Angelico

September 28, 2022

Income and Franchise Tax Legislation

Act 134, S.B. 159, 2021 Regular Session. Constitutional Amendment for Income Tax Reform. PASSED

- Constitutional Amendment to set the maximum state individual income tax rate not to exceed 4.75% for tax years beginning after December 31, 2021.
- Constitutional Amendment shall provide that the Legislature may allow as a deductible item in computing state income taxes the federal income tax deduction.
- Constitutional Amendment shall be put before the voters on November 13, 2021.

Act 395, H.B. 278, 2021 Regular Session. Individual Income Tax Rate and Deduction Reform.

- Individual income tax rates are reduced as follows: 1.85% on the first \$12,500 of net income (currently 2%), 3.5% on the next \$37,500 of net income (currently 4%), and 4.25% (currently 6.%) on any amount of net income in excess of \$50,000.
- The deduction for federal income taxes paid is eliminated.
- The deduction for excess federal itemized personal deductions is eliminated with the exception of the allowance of medical expense deductions.
- The same reduced tax rates are applied to the taxable income of trusts and estates.
- Effective date, for taxable periods beginning on or after January 1, 2022.

Act 395, H.B. 278, 2021 Regular Session. Individual Income Tax Rate and Deduction Reform. (cont'd)

- There is a provision to reduce the income tax rates further starting April 1, 2024 and continuing each April 1st through 2034 provided that income tax collections exceed those of the 2019 fiscal year as adjusted annually by the state expenditure limit growth rate. Rate reductions will occur if (a) both individual income tax and total Revenue Estimating Conference base tax receipts exceed their respective FY19 Growth Adjusted Receipts and (b) the Budget Stabilization Fund balance is at least 2.5% of total state revenue receipts.
- The Department will annually adjust the withholding table and publish the reduced rates if the rate reduction occurs.
- Proposed changes only take effect if the Constitutional Amendment, that is Act 134, is approved by voters on November 13, 2021.

Act 396, H.B. 292, 2021 Regular Session. Corporate Income Tax Reform Changes.

- This reduces the number of corporate tax brackets from five to three.
- New rates and brackets are: 3.5% on the first \$50,000 of Louisiana taxable income (down from 4% and 5%), 5.5% on Louisiana taxable income above \$50,000 but not in excess of \$150,000 (down from 6%), and 7.5% on Louisiana taxable income above \$150,000 (down from 8% for income in excess of \$200,000).
- The deduction for federal income taxes paid is eliminated.
- Legislation also adjusts the taxable rates when a flow-through corporation elects under Section 287.732.2 for the SALT cap limit workaround. The rates are the proposed new individual income tax rates set forth in Act 395.

Act 396, H.B. 292, 2021 Regular Session. Corporate Income Tax Reform Changes. (cont'd)

- This Act shall be applicable for all taxable periods beginning on or after January 1, 2022.
- This Act only takes effect if the Constitutional Amendment contained in Act 134 is approved on November 13, 2021.

Act 389, S.B. 161, 2021 Regular Session. Corporate Franchise Tax Changes.

- Legislation continues the suspension of the corporate franchise tax on the first \$300,000 of taxable capital through tax periods beginning before July 1, 2023. For taxable periods beginning on or after January 1, 2023, there will be no franchise tax on the first \$300,000 of taxable capital and the rate on taxable capital in excess of \$300,000 shall drop from \$3 per thousand to \$2.75 per thousand.
- Further rate reductions could occur through a procedure starting April 2024 and repeated each year thereafter. Rates will be reduced by the percent that actual corporate income and franchise tax receipts in the prior fiscal year have exceeded FY19 growth adjusted receipts.
- Rate reductions occur if (a) corporate income & franchise tax receipts in total REC-Base Tax Revenues in the prior fiscal year exceed FY19 growth adjusted revenues of corporate income and franchise tax receipts and total REC-Base Tax Revenues and (b) the Budget Stabilization Fund balances at least 2.5% of total state revenue receipts of the prior fiscal year.

Act 389, S.B. 161, 2021 Regular Session. Corporate Franchise Tax Changes. (cont'd)

- These changes will only become effective if the Constitutional Amendment, that is Act 134, is approved by the voters on November 13, 2021.

Act 287, S.B. 160, 2021 Regular Session. State Partnership Reporting and Audit Procedural Changes.

- Changes the partnership reporting date for calendar year state partnerships to May 15 and for fiscal year partnerships to the 15th day of the 5th month following the close of the fiscal year.
- Legislation requires all partnerships doing business in Louisiana to file a partnership information tax return with the Department.
- Aligns the Louisiana partnership audit procedural rules with those of the federal tax regime.
- Provides a general rule that the partnership shall report and pay any Louisiana income tax due with respect to final federal adjustments arising from an IRS partnership audit or changes made to a federal partnership return by way of an amended return. The additional Louisiana income tax must be paid no later than 180 days after the final determination date.

Act 287, S.B. 160, 2021 Regular Session. State Partnership Reporting and Audit Procedural Changes. (cont'd)

- Legislation sets up a system for reporting federal adjustments from a partnership level audit and for payment of the state income taxes relative to those federal partnership audit adjustments. Legislation indicates that the state partnership representative shall have the sole authority to act on behalf of the partnership and that the partners will be bound by those actions.
- Under one format, the individual partners can elect to make any state tax payments due.
- Alternatively, the partnership can make an election to pay on behalf of the partners the state income tax due as a result of the federal audit adjustments.

Act 287, S.B. 160, 2021 Regular Session. State Partnership Reporting and Audit Procedural Changes. (cont'd)

- The partnership would pay these taxes at the highest individual rate or the highest rate for trusts and estates. Legislation provides that in tiered partnerships all of the partners in the tiered partnerships that are subject to the tax in Louisiana are entitled to make the election to either pay the tax directly or have the partnership pay the tax. The legislation also provides for a modification of the reporting and payments method if so desired by the audited partnership or tiered partner entering into an alternative agreement with the Department of Revenue. The Secretary of the Department may promulgate rules and regulations to establish a de minimis amount exception which will free a taxpayer from having to comply with the other requirements of these procedures.
- Legislation also provides for prescriptive periods for the assessment of the additional tax, interest and penalties arising from these adjustments to federal taxable income.

Act 287, S.B. 160, 2021 Regular Session. State Partnership Reporting and Audit Procedural Changes. (cont'd)

- Generally, the Department will have the normal prescriptive period as provided by the State Constitution or one year following the date of the filing with the Department of the federal audit adjustments report, whichever is later.
- Legislation also provides for estimated tax payments to be made during the course of a federal audit by the affected taxpayer.
- Any adjustments made by the Department or by the taxpayer as a result of a federal audit after the expiration of the normal prescriptive period provided in the State Constitution will be limited to changes to the taxpayer's tax liability that arise from the federal adjustments only. Legislation also allows the Secretary to extend these same procedures to state audits of partnerships that are not the subject of a federal partnership audit.
- Legislation is effective June 14, 2021.

Act 595 (S.B. 28), 2022 Regular Session, Partnership Audit Adjustments.

- Technical correction to clarify the computation of the distributive share of any amount of a partnership audit adjustment attributable to tiered partners that are not subject to sourcing to Louisiana by a nonresident partner.

Act 185, H.B. 200, 2021 Regular Session. Income Tax Exemption for Military Survivor Benefit Plan Payments.

- This legislation provides a state income tax exemption for any payments made pursuant to a military survivor benefit plan authorized by 10 U.S.C. 1447 through 1455 to the surviving spouse or other named beneficiary of the plan.
- Legislation is effective for taxpayers beginning on or after January 1, 2021.

Act 54, S.B. 11, 2021 Regular Session. Exemption for COVID-19 Relief Benefits.

- Legislation provides both an individual income tax and a corporate income tax exemption for COVID-19 relief benefits that were included in the individual's or corporation's federal adjusted gross income or gross income.
- COVID-19 relief benefits are defined as any gratuitous grant, loan, rebate, tax credit, advance refund, or other qualified disaster relief benefit directly or indirectly provided to a corporation or individual by the state or federal government as a COVID-19 relief benefit.
- The Act is to be applied retroactively and prospectively to allow for the largest coverage of exclusion for the COVID-19 benefits.
- This legislation is not applicable to any unemployment compensation benefits provided to a taxpayer.
- The Act is effective June 4, 2021.

Act 459, S.B. 36, 2021 Regular Session. Unlimited Carryforward of Net Operating Loss Deductions.

- Legislation provides that for all claims for net operating loss deductions on any return filed on or after January 1, 2022, for net operating losses relating to loss years beginning on or after January 1, 2001, the net operating loss may be carried to each taxable year following the loss year until the net operating loss deduction is fully recovered.
- Legislation is effective June 24, 2021.

Act 161, S.B. 46, 2021 Regular Session. Increase of Income Tax Exclusion for Income Earned While on Active Military Service Duty.

- Legislation increases the exclusion from Louisiana taxable income for active duty service in the armed forces from \$30,000 per year to \$50,000 per year beginning January 1, 2022.
- To qualify for the exclusion, the military service must be performed by the individual during continuous and uninterrupted full-time duty for 120 or more consecutive days.
- Legislation effective June 11, 2021.

Act 296, S.B. 239, 2021 Regular Session. Increase of Federal Tax Liability for Hurricane Loss Deductions.

- Legislation increases an individual income taxpayer's federal tax liability for purposes of the Louisiana federal income tax deduction by the amount by which the taxpayer's federal income tax was reduced by using the increased federal standard deduction for disaster losses.
- Legislation adds the losses associated with Hurricanes Delta or Zeta to the losses to which the federal income tax increase can be applied.
- Legislation applies both prospectively and retroactively.
- Legislation effective June 14, 2021.

Act 410 (S.B. 54), 2022 Regular Session, Extensions of Time to File Income Tax Returns.

- An automatic six-month extension of time to file individual, partnership and fiduciary income tax returns for taxable periods beginning on or after January 1, 2022.
- With respect to corporation income tax returns, the legislation provides that for taxable periods beginning on or after January 1, 2022, the Secretary shall grant an extension of time to file provided the taxpayer timely requested an extension of time from the IRS to file the federal return for the same period. The extension of time to file shall not exceed six months or the extended due date of the federal income tax return, whichever is later.
- Extensions are conditioned upon the filing of the required return within the extended time period.

Sales Tax

Act 449, H.B. 7, 2021 Regular Session. Sales Tax Exemption for Diapers and Feminine Hygiene Products.

- Legislation adopts a state and local sales and use tax exemption for feminine hygiene products and diapers for personal use.
- “Diaper” is defined to include both adult and infant or child use diapers.
- “Feminine Hygiene Product” is defined to include tampons, menstrual pads, sanitary napkins, panty liners, menstrual sponges, and menstrual cups, including disposable and washable versions.
- Legislation removes the December 31, 2021 sunset on the parish/local option to exempt feminine hygiene products and diapers
- The exemption is applicable starting July 1, 2022.

Act 7, H.B. 50, 2021 Regular Session. Sales Tax Exemption for Certain Re-lease and Re-rentals of Tangible Personal Property.

- Lease or rental tax shall not apply to the lease or rental of any item of tangible personal property by a short term equipment rental dealer for the purpose of re-lease or re-rental.
- “Short Term Equipment Rental Dealer” is defined to include those whose principal business is the short-term rental of tangible personal property classified under NAICS codes 532412 and 532310.
- “Short Term Rental” is defined as a rental period of less than 365 days, for an undefined period, or under an open-ended agreement.
- The exemption is effective October 1, 2021.

Act 53, S.B. 6, 2021 Regular Session. Sales Tax Exemption for Utilities Used by Commercial Farmers for On-Farm Storage.

- Legislation adds state sales tax exemption for the sale of utilities used by commercial farmers for on-farm storage.
- “Commercial Farmer” is defined as persons who produce food or commodities for sale, file their farm income and expenses on a federal Schedule F, and are assigned a NAICS code beginning with 11.
- “On-Farm Storage” is defined as facilities or containers located in Louisiana that are separately metered for utilities and that contain raw agricultural commodities, including but not limited to feed, seed, and fertilizer, to be utilized in preparing, finishing, manufacturing, or producing crops or animals prior to the first point of sale.
- “Utilities” is defined as steam, water, electric power or energy, natural gas, or other energy sources.
- Legislation is effective June 4, 2021, but the exemption is effective beginning October 1, 2021.

Act 166, S.B. 77, 2021 Regular Session. Sales Tax Exemption for Certain School Buses.

- Legislation adds to the list of applicable state sales and use tax exemptions for purchases of new or used school buses that are less than five years old.
- Exemption covers the purchases of new school buses or used school buses that are less than five years old and that will be used exclusively for public elementary or secondary schools, public elementary or secondary laboratory schools that are operated by a public college or university, or non-public elementary or secondary schools approved by BESE. Qualifying buses must meet or exceed the safety specifications established by the State Department of Education and must be painted national school bus chrome in the shade designated by BESE and must be purchased from a licensed new or used vehicle dealer.
- Legislation is effective July 1, 2021.

Act 286, S.B. 125, 2021 Regular Session. Sales Tax Exemption for Infused Prescription Drugs.

- Legislation creates a mandatory local sales and use tax exemption for certain infused prescription drugs that are administered by a medical professional in a physician's office where patients are not regularly kept as bed patients for 24 hours or more.
- Legislation contains a long list of the diseases and conditions (23) for which the qualifying drugs apply.
- Legislation is effective July 1, 2021.

Act 299, S.B. 172, 2021 Regular Session. State Sales Tax Exemption for Charitable Construction Materials.

- Legislation fully exempts from state and local sales and use tax sales of construction materials to animal shelters when such materials are intended for use in constructing new animal shelters.
- The legislation exempts the sale of construction materials for animal shelters when the materials are intended for use in constructing new animal shelters and constructions begins between July 1, 2021 and June 30, 2025.
- Legislation fully exempts from state and local sales and use tax sales of construction materials to Habitat for Humanity and affiliates, Fuller Center for Housing Covenant Partners in Louisiana, or the Make It Right Foundation when such materials are intended for use in constructing new, residential dwellings, effective October 1, 2021.

Act 79 (S.B. 129), 2022 Regular Session, Exemption for Infused or Injected Prescription Drugs

- Extends the local prescription drug exemption to those infused or injected by a qualified health professional to a patient in his medical treatment in a medical clinic for listed diseases and conditions. Previously it applied to listed prescription drugs injected in a physician's offices. A detailed definition of the term "medical clinic" is provided in the legislation. The legislation also expands the list of the covered diseases and conditions.

Act 87 (S.B. 242), 2022 Regular Session, Local Interest/Penalty Provisions and Agreements to Abide.

- Beginning January 1, 2023, indicates that no parish can charge any more than 1% per month on outstanding taxes, or 12% per year.
- If a taxpayer has made a payment of local sales taxes under protest, and the collector prevails in that dispute, the taxpayer must pay the collector additional interest calculated on the disputed amount at the same rate established for tax obligations.
- The interest due to a taxpayer on a refund or credit, beginning on or after January 1, 2023, shall be the 1% per month, or 12% per annum, interest rate.
- The penalties found in La. R.S. 47:337.70 for failure to file or filing without the full remittance of the amount due at 5% per thirty-day period capped at five thirty-day periods.

Act 87 (S.B. 242), 2022 Regular Session, Local Interest/Penalty Provisions and Agreements to Abide. (cont'd)

- Upon request of the tax collector and if the principle of law involved in a refund claim filed by the taxpayer is already pending before the collector at the administrative stage, or before the BTA or the courts, the taxpayer may upon agreement to abide by the final decision of the BTA or courts, remit the tax at issue for all current and future periods under protest, but, need not file an additional suit or petition for refund.
- When an agreement to abide is in place, the interest to be paid to the prevailing party is limited to the interest actually earned and received by the collector on the payments. Interestingly, if a taxpayer had not entered into an agreement to abide and the same principle of law is involved, the taxpayer shall not be entitled to any interest on the refunds for the subsequent periods.

Act 88 (S.B. 293), 2022 Regular Session, State Sales/Use Tax Rebate Paid on Agricultural Fencing Materials Utilized to Repair Fencing Damaged in 2020 and 2021 Hurricanes.

- A new state sales/use tax rebate for commercial farmers who had unreimbursed costs for fencing materials used to repair or replace fencing damaged in Hurricanes Laura, Delta, Zeta and Ida.
- No rebate shall be made for qualifying purchases made after December 31, 2022. No rebate shall be issued for applications submitted after December 31, 2023.

Act 428 (S.B. 443), 2022 Regular Session, Local Direct Payment Numbers.

- Creates a uniform regime for manufactures to apply for and obtain Direct Payment numbers from state and local tax collectors.

Act 596 (S.B. 95), 2022 Regular Session, Multi-Parish Audit Program.

- Orders the Uniform Local Sales Tax Board (“Board”) to implement and coordinate an additional local level sales/use tax audit regime for multi-parish audits.
- A taxpayer is qualified to request a multi-parish audit from the Board if the taxpayer:
 - (1) has a physical location in the state and is registered to file and remit local sales and use taxes in at least three parishes;
 - (2) is not a recipient of a jeopardy assessment issued by any collector;
 - (3) is not engaged in a current audit by a collector for which a notice of intent to assess was issued prior to July 1, 2022;
 - (4) agrees to promptly sign all necessary agreements to suspend prescription; and
 - (5) is not involved in litigation with a collector.

Act 596 (S.B. 95), 2022 Regular Session, Multi-Parish Audit Program. (cont'd)

- Beginning July 1, 2023, the legislation authorizes a qualified taxpayer to request a multi-parish audit from the Board within 30 days from the issuance of a notice of examination from all of the parishes in which the taxpayer engaged in taxable transactions during the audit period.
- Parishes have 30 days to opt in or opt out of the multi-parish audit.
- If the parish collector does not respond to the notice within the 30-day period, that parish is considered to have opted out of the multi-parish audit. The new legislation prohibits a parish that opts out of a multi-parish audit from auditing the same taxpayer until after the completion of the multi-parish audit.

Act 596 (S.B. 95), 2022 Regular Session, Multi-Parish Audit Program. (cont'd)

- Requires the Board to facilitate consistent treatment of taxability of transactions between parishes involved in a multi-parish audit.
- Requires each parish participating in a multi-parish audit to review the audit and make an independent determination regarding the issuance of a notice of intent to assess.
- After notices of intent to assess are issued, the taxpayer may request a joint administrative hearing, that the Board must coordinate, in which the parishes that opted into the multi-parish audit may participate.

Act 669 (S.B. 244), 2022 Regular Session, Single Local Tax Collector Uniform Audit Reporting Schedule.

- The legislative auditor and the Louisiana Uniform Local Sales Tax Board must, by generally accepted auditing standards, develop a uniform reporting schedule for audit reports for all entities that serve as the single sales and use tax collector for all taxing authorities within a parish that are compensated based on the cost of collection.
- Collectors must commence to use this uniform reporting schedule developed by the legislative auditor by the end of the calendar year 2023 for collectors operating on a calendar year schedule, or by the end of the fiscal year 2023 – 2024 for collectors operating on a fiscal year schedule.

Act 685, 2022 Regular Session, Extending Jurisdiction of Louisiana Sales and Use Tax Commission for Remote Sellers to Non-Remote Sellers, Create a Single Electronic Return.

- Authorizes the Louisiana Sales and Use Tax Commission for Remote Sellers to enter into contracts with collectors of local sales and use taxes and state sales and use tax for the collection of tax from qualifying non-remote sellers.
- The Louisiana Sales and Use Tax Commission for Remote Sellers will develop a single electronic return for all state and local sales and use taxes in consultation with the Louisiana Uniform Local Sales Tax Board and the Department of Revenue.
- On or before January 31, 2023 the Department of Revenue, the Louisiana Uniform Local Sales Tax Board, and the Louisiana Sales and Use Tax Commission for Remote Sellers shall jointly submit an informational report regarding the combined state and local sales and use tax return for remote and non-remote sales and the designation of a centralized processor of state and local sales tax returns and remittances.

Sales Tax DID NOT PASS

H.B. 681

Centralized Collection of State and Local Sales Taxes.

H.B. 438

Would have reduced the additional .45% state sales tax down to .15% over a two-year period from July 2023 to June 2025.

Songy v. Bayou Bridge Pipeline, 2020-0860 (La. App. 1 Cir. 2/19/21); 320 So.3d 434; writ denied, 2021-00412 (La. 5/11/21).

- Bayou Bridge Pipeline purchased piping in West Baton Rouge Parish for use in constructing a pipeline from St. James Parish to Nederland, Texas.
- Bayou Bridge remitted West Baton Rouge Parish sales tax on the purchase, but Iberville Parish sued – arguing that Bayou Bridge should have remitted use tax for the portion of the piping used in Iberville Parish.
- The First Circuit rejected Iberville Parish’s argument. They found that the “taxable moment,” the point of sale between the manufacturer and Bayou Bridge, occurred in West Baton Rouge Parish. Hence, West Baton Rouge Parish was entitled to the sales taxes on the transaction.
- Iberville also made a statutory argument with respect to a West Baton Rouge Parish ordinance, but the First Circuit rejected it as well.

Pinnacle Polymers, LLC v. St. John Parish, 19-0310 (La. App. 5 Cir. 3/24/21); 316 So.3d 1264.

- Pinnacle Polymers purchased a catalyst, ZN 203, for use in manufacturing polypropylene.
- Pinnacle maintained that the purchase was eligible for the further processing exclusion.
- Louisiana Fifth Circuit found that Pinnacle failed the third prong of the further processing exclusion: that the raw materials were purchased for the purpose of inclusion into the end product.
- Though ZN 203 was purchased to facilitate the chemical reaction that yielded the end product, the court concluded that the fact ZN 203 was found in the end product was not intentional, “but merely the result of an inefficiency in the manufacturing process in the nature of an impurity.” As such, it was not purchased for the purpose of inclusion into the end product; Pinnacle Polymers’ purchases were not eligible for the exclusion.

Nucor Steel Louisiana, LLC v. St. James Parish School Board, 2021-C-01814 (La. June 29, 2022).

- Taxpayer submitted a refund claim to the Parish on January 26, 2016.
- Parish expressly denied the claim first on February 23, 2018.
- Taxpayer appealed the refund denied to the Board of Tax Appeals on May 24, 2018, just over two years after the Parish had received the claim.
- Under La. R.S. 47:337.81 the taxpayer has one year and 180 days to appeal to the BTA if the collector failed to act on the claim.
- OR
- Ninety days after from the date of mailing by certified mail of a disallowance of the claim.

Nucor Steel Louisiana, LLC v. St. James Parish School Board, 2021-C-01814 (La. June 29, 2022). Cont'd

- Now, whichever deadline comes first.
- “Failed to act” is interpreted now to mean did not render and provide notice of a decision on the refund claim.

Ad Valorem Tax Legislation and One Case

Act 343, H.B. 573, 2021 Regular Session. Board of Tax Appeals Receives Ad Valorem Property Tax Jurisdiction.

- The legislation adds property tax (ad valorem tax) matters to the jurisdiction of the Louisiana Board of Tax Appeals.
- Taxpayers will have the option to file legality challenges at the Louisiana Board of Tax Appeals instead of in the state district courts.
- Taxpayers in the public service property arena may file valuation appeals from decisions of the Louisiana Tax Commission at the Board of Tax Appeals.
- The legislation adds more detail to the rules regarding evidence to be considered by the Louisiana Tax Commission in regard to correctness challenges.

Act 343, H.B. 573, 2021 Regular Session. Board of Tax Appeals Receives Ad Valorem Property Tax Jurisdiction. (cont'd)

- Generally, evidence must be presented to the Assessor prior to the close of the deadline for filing a complaint or an appeal with the local Board of Review.
- Taxpayer's can seek to add additional evidence for the Tax Commission appeal hearing on a correctness challenge if the Tax Commission finds that the additional evidence is material and there were good reasons for failure to timely present it to the Assessor.
- Good reason for failure to timely present information to the Assessor shall be presumed for reports and related attachments of any appraiser or other expert ordered prior to the deadline for filing a complaint with the Board of Review.

Act 343, H.B. 573, 2021 Regular Session. Board of Tax Appeals Receives Ad Valorem Property Tax Jurisdiction. (cont'd)

- This additional evidence must be submitted to the Assessor within thirty days of receipt of the reports and attachments by the taxpayer and at least twenty-five days prior to a hearing before the Louisiana Tax Commission. The Tax Commission is given broad authority and latitude to admit additional evidence for review in a correctness challenge appeal.
- Evidence not available to the taxpayer at the time of the deadline for submission to the Board of Review can be provided to the Assessor within fifteen days of its availability; this involves financial or accounting documents, financial statements, useful life information, depreciation schedules, other records of income data, or environmental assessments or reports relating to the property.
- Witnesses may be utilized to authenticate or explain evidence.

Act 343, H.B. 573, 2021 Regular Session. Board of Tax Appeals Receives Ad Valorem Property Tax Jurisdiction. (cont'd)

- Evidence “otherwise admissible” means evidence admissible pursuant to any provision of this Legislation or relevant provisions of the Administrative Procedure Act and the Code of Evidence.
- Legislation contains an additional list of other admissible data, guides and resources that are publicly accessible.
- Legislation indicates that the Louisiana Tax Commission may affirm the correctness of an assessment, remand the matter for further consideration by the Assessor, or reverse or modify the assessment because the assessment is any of the following:
 - In violation of constitutional or statutory provisions,
 - In excess of the authority of the Assessor,

Act 343, H.B. 573, 2021 Regular Session. Board of Tax Appeals Receives Ad Valorem Property Tax Jurisdiction. (cont'd)

- Made upon an unlawful procedure,
 - Affected by another error of law,
 - Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, and
 - Not supported and sustainable by a preponderance of evidence.
- Legislation provides that correctness challenge appeals of an LTC decision at the option of the taxpayer can be filed at the Louisiana Board of Tax Appeals instead of at state district court. Taxpayers can appeal denials of refunds of ad valorem property taxes made by either the Louisiana Tax Commission or the Assessor to the Board of Tax Appeals for review.
 - The legislation is effective January 1, 2022.

Act 343, H.B. 573, 2021 Regular Session. Board of Tax Appeals Receives Ad Valorem Property Tax Jurisdiction. (cont'd)

- The provisions regarding the rules of review for the Louisiana Tax Commission and correctness challenges shall have prospective effect only and shall not be applicable to any cases actually pending before the Louisiana Tax Commission or in any court on the effective date of this legislation (1/1/22).
- The remaining provisions of the Act are considered procedural, but any provisions relating to judicial appeals of property tax matters shall not be applicable to any case actually pending in any court on the effective date of this legislation (1/1/22).

Act 129, H.B. 143, 2021 Regular Session. Constitutional Amendment – Limitation of Assessed Value Increase in Orleans Parish.

- Constitutional Amendment to limit the increase in the assessed value of residential property in Orleans Parish subject to the homestead exemption to no more than 10% of the property's assessed value in the previous year.
- In subsequent years, the adjusted assessed value shall increase by no more than 10% of the previous year's adjusted assessed value.
- Adjusted assessed value shall never exceed the assessed value determined by the most recent reappraisal.
- Any decrease in the total amount of ad valorem tax collected in Orleans Parish as a result of this adjusted assessed value system shall not create additional tax liability for other taxpayers in Orleans Parish in any subsequent reappraisals or valuations or millage adjustments.

Act 129, H.B. 143, 2021 Regular Session. Constitutional Amendment – Limitation of Assessed Value Increase in Orleans Parish.

- Constitutional Amendment will be up for approval on November 8, 2022.
- If approved statewide, these provisions shall become effective in Orleans Parish as of January 1, 2023 and shall be applicable to tax years beginning on or after January 1, 2023.

Act 133, S.B. 154, 2021 Regular Session. Constitutional Amendment – Millage Rate Authorization After Reappraisal Year.

- This Constitutional Amendment will allow the levying of a lower millage rate following a reappraisal year while at the same time maintaining the taxing authority's ability to adjust up to the current maximum authorized millage rate in subsequent years.
- Constitutional Amendment will be on the ballot for approval on November 8, 2022.

Act 390, S.B. 165, 2021 Regular Session. Limitations on Maximum Authorized Millage Rates Following Reappraisal.

- This legislation is effective only if the Constitutional Amendment that is Act 133 is approved by voters on November 8, 2022.
- Beginning in the 2023 ad valorem tax year, a taxing authority may increase its millage rate up to the maximum authorized millage rate allowed by the Constitution until the authorized millage rate expires, rather than the maximum authorized rate in effect in the prior year.
- Legislation prohibits the taxing authority from increasing the millage rates in excess of the adjusted millage rates established for the 2021 ad valorem tax year, and 2020 ad valorem tax year in Orleans Parish.
- If an immediate subsequent reassessment has an increased taxable value overall, adjusted maximum millage rates must be decreased to the maximum millage rate for the 2020 reassessment year, or the 2019 reassessment year for Orleans Parish.

Act 171 (H.B. 395), 2022 Regular Session, Proposed Constitutional Amendment to Eliminate Annual Income Certification for Special Assessment Level for Permanently Totally Disabled Homeowners

- This proposed Constitutional Amendment to Article VI, Section 18(G) would relieve permanently totally disabled homeowners from having to annually re-certify their income to keep their special assessment level on their residence.
- The proposition will be submitted to the voters at the statewide election to be held on the November 8, 2022.

Act 172 (H.B. 599), 2022 Regular Session, Proposed Constitutional Amendment to Add an Exemption for Veterans with Service Related Disability Rating of 50% or More.

- Proposed Constitutional Amendment to Article VII, Section 21(K) would expand the additional homestead exemption available to disabled veterans and their surviving spouses.
- The proposed Constitutional Amendment would create a sliding scale amount of Section 21(K) exemption based upon the level of service related disability rating by the VA, beginning with a disability rating of at least 50%. From 50% < 70% VA disability rating, the veteran and their qualifying spouse would qualify for an additional two thousand five hundred of assessed value exemption, from 70%<100% VA disability rating, the veteran and their qualifying spouse would qualify for an additional four thousand five hundred of assessed value exemption and at 100% VA disability rating, the veteran and their qualifying spouse would qualify for a complete exemption from ad valorem taxation.
- The proposition will be submitted to the voters at the statewide election to be held on the November 8, 2022.

Act 287 (S.B. 364), 2022 Regular Session, Louisiana Tax Commission Rule Making.

- The Commission must post the current draft of any proposed emergency rule on the Commission's website at least sixty (60) days before the publication of the final version of the emergency rule in the Louisiana Register and must provide for the submission of comments.
- All comments received within thirty (30) days of the posting of the draft emergency rule must be reviewed and considered by the Commission.

Perdido Energy Louisiana, LLC v. Acadia Parish Board of Review, 2022-0115 (La. App. 1st Cir. 9/1/22); _____ So.3d _____.

- Taxpayer challenged the ad valorem tax valuation of its oil and gas wells and related equipment in five parishes.
- Taxpayer had purchased the wells and property for about \$3 million. Assessors valued property at \$58.6 million.
- Taxpayer appealed rejections by the various Boards of Review to the Louisiana Tax Commission (LTC).
- Taxpayer sought valuation reduction based on obsolescence.

Perdido Energy Louisiana, LLC v. Acadia Parish Board of Review, 2022-0115 (La. App. 1st Cir. 9/1/22); _____ So.3d _____. (cont'd)

- LTC affirmed the assessors' valuations despite stating that the assessors had not given genuine consideration to the actual sale and taxpayer's obsolescence request.
- District Court affirmed LTC decision.
- 1st Circuit affirmed the District Court, finding that the taxpayer had not provided the assessors all the factual information necessary to support its request for a valuation reduction.

Severance Tax

Act 165 (H.B. 331), 2022 Regular Session, Timing for Scaling and Measuring Trees, Timber and Pulpwood.

- Average market value shall be applied to the weight or scale of trees and timber at the first time the trees and timber are scaled prior to undergoing the first processing after severance. Furthermore, the average market value shall be applied to the weight or scale of pulpwood at the first time the pulpwood is scaled prior to undergoing the first processing after severance.

Severance Tax DID NOT PASS

H.B. 167

Would have reduced the severance tax rate on oil from 12.5% over eight years down to 8.5%.

H.B. 716

Would have reduced the severance tax rate on oil over eight years from 12.5% down to 2% and then to zero.

Economic Development and Exemption Study Legislation

Act 249 (S.B. 12), 2022 Regular Session, Extend the Sunset Date of Competitive Projects Payroll Incentive Program.

- Extends the expiration date for new contract approval from June 30, 2022 until June 30, 2026.

Act 254 (H.B. 41), 2022 Regular Session, Extension of Application Deadline for Louisiana Quality Jobs Program.

- Extends the expiration date for new advance notifications from June 30, 2022 until June 30, 2026.

Act 556 (H.B. 124), 2022 Regular Session, Creation of the Louisiana Competes Regional Economic Development Program.

- Establishes the “Louisiana Competes Regional Economic Development Program” to be administered by the Louisiana Department of Economic Development.
- Identifies eight existing regional economic development organizations (“REDO’s”) who will enter into an initial two year (one year renewable) cooperative endeavor agreements with the state where the state provides the REDO’s with economic support in exchange for providing locally developed and tailored services directly related to attracting new businesses/growing existing business in the region through the use of funds awarded through the "Louisiana Competes Regional Economic Development Program.”
- Calls for the REDO’s to obtain grants from the Louisiana Competes Regional Economic Development Program, which funds must be used to pay for qualified expenditures related to the furtherance of economic development within the region it represents. The REDO’s are not allowed to spend any of the grant funds without simultaneously applying for local matching funds equal to ten percent of the cost being paid. Funds originating from any lawful source other than the state shall constitute local matching funds.

Act 743 (H.B. 1048), 2022 Regular Session, Enhanced Focus on Attracting Manufacturing Facilities.

- Makes it state policy to have a continuing program designed to attract manufacturing establishments to the state.
- Charges the Louisiana Department of Economic Development to develop and implement the strategic plan to attract manufacturing to the state.

House Resolution No. 178, 2022 Regular Session, House Ways and Means Committee to Study Tax Structure.

- Calls for the House Ways and Means Committee to study the state's tax regime and to make recommendations concerning eliminating the state tax levied on individual/corporate income tax and corporate franchise tax, as well as reforming tax exemptions and credits.

Senate Resolution No. 168, 2022 Regular Session, Request Department of Economic Development and Department of Revenue to Study Tax Expenditure Efficiency vis-à-vis Louisiana-Owned Small Businesses.

- Requests that the Louisiana Economic Development and the Louisiana Department of Revenue study the state's tax expenditures, as well as all other state programs and grants in order to determine which tax expenditures and state programs provide the greatest benefit and assistance to Louisiana-owned small businesses.

Credits and Incentives DID NOT PASS

S.B. 151

Const. amendment to put ITEP restrictions in state constitution.

S.B. 495

Incentive rebates for oilfield site restoration for certain oil production.

S.B. 246 and S.B. 247

Const. amendment to exempt inventory from ad valorem taxation and enabling legislation.

Board of Tax Appeals

Act 429 (S.B. 444), 2022 Regular Session, Expanded Jurisdiction to Local Occupancy Taxes, Cease and Desist Orders, Temporary Restraining Orders, Preliminary Injunctions.

- Extends the jurisdiction of the Board of Tax Appeals and its Local Tax Division to hear state and local Occupancy Tax disputes.
- The Board of Tax Appeals and its Local Tax Division are given authority similar to the protective order authority set forth in Article 1426 of the Louisiana Code of Civil Procedure .
- It expands the definition of “state collector” to include state agencies in which the agency action is related to state taxes or fees, including contracts. The taxpayer, the collector, and other parties shall be afforded notice and opportunity to be heard in each proceeding for the redetermination of an assessment, the consideration of the payment under protest petition, the determination of an overpayment, or the consideration of any other matter to be tried, heard, or considered.
- Authorizes the Louisiana Department of Revenue to issue cease and desist orders to certain tax preparers that engage in criminal, fraudulent, frivolous, or willful or reckless conduct if the continued conduct creates an immediate threat to taxpayers, however it may not issue cease and desist orders under this legislation to CPAs, enrolled agents, or attorneys who are authorized to appear before the Board of Tax Appeals.

Act 429 (S.B. 444), 2022 Regular Session, Expanded Jurisdiction to Local Occupancy Taxes, Cease and Desist Orders, Temporary Restraining Orders, Preliminary Injunctions. (cont'd)

- Authorizes the Board of Tax Appeals to issue a temporary restraining order or preliminary injunction while a suit to enjoin is pending if the secretary of the Department of Revenue shows that continued conduct by the preparer creates an immediate threat to taxpayers. Furthermore, if a tax preparer is prohibited from preparing returns as part of a criminal prosecution that prohibition will serve as the injunction order without the Department of Revenue being required to file a separate suit.
- Imposes a penalty of at least \$50 per violation for each return, report, claim for refund, or other claim filed by a tax preparer who violates an injunction, cease and desist, or temporary restraining order.

Act 564 (H.B. 329), 2022 Regular Session, Satisfaction of Claims Against the State.

- Eliminates the option to submit approved claims in excess of \$20,000 but less than \$250,000 from being submitted to the litigation subcommittee of the Joint Legislative Committee on the Budget for review and payment.

Thank You

FOR YOUR TIME AND CONSIDERATION

Robert S. Angleico
rsangelico@liskow.com
504-556-4112