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# Louisiana Tax Legislation of 1940

M. G. DAKIN\*

More than sixty of the acts passed by the Louisiana legislature during the 1940 regular session deal with taxation matters. Some of them have worked far-reaching changes in the tax structure. Many others have been of merely minor or local significance. The task here attempted is not that of appraising as a whole the structure as it has emerged from the hands of the lawmakers. Such an appraisal must await the accumulation of statistics and the hands of the public finance expert. We can, however, undertake to analyze in some detail the administrative content of both the new and the amendatory enactments. New procedures have been evolved for tax collection and enforcement matters in which both the collector and the taxpayer are actively interested. Important shifts of authority in tax administration have also been made. Surpassing all these in interest to the taxpayer is the fact that existing taxes have in some cases been eliminated or drastically modified and new taxes devised to replace them.

## INCOME TAX<sup>1</sup>

A substantial portion of the loss of revenue which will result from the repeal of the sales tax<sup>2</sup> is expected to be regained through increased taxes levied upon incomes.<sup>3</sup> These increases have been accomplished in the main by a shift in the scope of the individual income brackets, rather than by an increase in the rates themselves.<sup>4</sup> Thus the first *four* thousand dollars of income in excess of credits is now subject to the two per cent rate,

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1. La. Act 21 of 1934 as amended [Dart's Stats. (1939) §§ 8587.1-8587.104].

2. La. Act 82 of 1940 repeals La. Act 2 of 1938 [Dart's Stats. (1939) §§ 8648.4-8648.25]. (Repeal becomes operative December 31, 1940.)

3. While the unemployment insurance tax is not formally a part of the income tax law, it is an income tax. It is therefore relevant to note here that the tax of one-half of one per cent levied on covered employees' earnings has been repealed, thereby offsetting to some extent increases in tax rates in the statute under discussion. The advantage accrues only to covered workers, however. The excise tax on employers continues unchanged. La. Act 97 of 1936, § 6 [Dart's Stats. (1939) § 4434.6], as amended by La. Act 11 of 1940.

4. La. Act 119 of 1940, § 1, amending La. Act 21 of 1934, § 5 [Dart's Stats. (1939) § 8587.5].

instead of the first *ten* thousand previously so subject. Likewise, the next four thousand is now subject to the four per cent rate instead of the next forty thousand as under the old law. Finally, the remaining income in excess of eight thousand dollars is now subject to the six per cent rate instead of the remaining income in excess of fifty thousand dollars, as earlier provided. The personal exemption of twenty-five hundred dollars for a married person or the head of a household with four hundred dollars for each dependent and the exemption of one thousand dollars for a single person, have not been changed.<sup>5</sup> The rate of tax on corporate net income has been increased from four per cent to six per cent and now applies to all the taxable net income without deduction of the three thousand dollars exemption previously allowed.<sup>6</sup>

Clarification with regard to the troublesome question of what is included in taxable nonresident income has been achieved through an amendment. The law now reads:

“Every nonresident shall pay a tax upon such net income as is derived from property located, or from services rendered, or from business transacted within the State, or from sources within the State, except as hereinafter exempted.”<sup>7</sup>

Previously the statute read: “Every nonresident shall pay a tax upon such net income as is derived from property located, or from business transacted, within the State. . . .” The effect of the new language should be a capture of any income previously escaping and a setting at rest of any lingering doubts as to its exclusion. A problem of a similar character has also troubled the Department of Revenue with regard to the exemption from tax of companies engaged exclusively in foreign or interstate waterborne commerce.<sup>8</sup> So many disputes were precipitated when any

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5. La. Act 21 of 1934, § 11 [Dart's Stats. (1939) § 8587.11]. Lowering the amount in the first bracket will tend to penalize persons having personal exemption and credit for dependents in excess of four thousand dollars, since such credits can be taken only against the first bracket. A person having credits in excess of four thousand dollars who is permitted to file a joint return with his wife can utilize the total credit by splitting it between the two of them, whereas the unmarried head of a household has no one with whom to split his credits and must thus lose the credit in excess of the first bracket of four thousand dollars.

6. La. Act 119 of 1940, § 1, amending La. Act 21 of 1934, § 6 [Dart's Stats. (1939) § 8587.6].

7. La. Act 146 of 1940, § 1, amending La. Act 21 of 1934, § 1 [Dart's Stats. (1939) § 8587.1].

8. La. Act 21 of 1934, § 105, as added by La. Act 26 of 1936, § 1 [Dart's Stats. (1939) § 8587.104].

attempt was made to define the meaning of the phrase "exclusively engaged" that the exempting section has now been repealed.<sup>9</sup> With regard to nonresidents engaged in such commerce within the state, repeal of the exemption reduces the problem again to a determination of the income "arising from sources within the state" and devising formulas for the measurement of such income.

In addition to normal income taxes, both individuals and corporations must now pay a surtax on income from certain specified speculative transactions.<sup>10</sup> A surtax of five per cent is levied on net income in excess of five thousand dollars resulting from the following types of transactions: (1) sales of unimproved land<sup>11</sup> or realty, (2) leases of lands for oil exploration or for removal of any minerals, (3) sales of mineral rights or servitudes to explore for minerals, (4) sales of royalties or rights to receive rentals for use of land for exploration purposes, (5) exchanges of rights for leases, mineral rights or servitudes to explore, (6) sales or dealings in mineral leases, where leases are being transferred by any person not the original lessor of the land.

Net income is specially defined for the purpose of this tax to mean the gross amount received by the taxpayer less deductions which may consist of (1) the cost of the right sold or transferred,<sup>12</sup> (2) expenses directly connected with the right so sold or transferred, (3) losses sustained by the taxpayer during the taxable year from any transaction described in the statute, (4) all taxes paid by the taxpayer in connection with the property so sold except the tax presently levied. Since the addition of this tax involves a classification of net incomes and might be subject to question under the present constitutional grant of power to levy a tax on net incomes, it was thought advisable to forestall any doubts on this score by amending the constitution to authorize such classification. Under the amendment,<sup>13</sup> Article X, Section 1, paragraph 2 will read, "Equal and uniform taxes

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9. La. Act 183 of 1940, repealing La. Act 26 of 1936 [Dart's Stats. (1939) § 8587.104].

10. La. Act 119 of 1940, § 1, amending La. Act 21 of 1934, §§ 5, 6 [Dart's Stats. (1939) §§ 8587.5-8587.6].

11. This term is defined to include land or realty on which there are improvements costing not in excess of ten per centum of the original cost of the land or realty.

12. Upon leases and sales of mineral rights by the landowner the full amount received is income not to be reduced by any portion of the cost of the land.

13. La. Act 382 of 1940.

may be levied upon net incomes, which net incomes may be classified, and such taxes may be graduated according to the amount of net income. . . ."

The new reciprocity between the federal government and the states on the matter of taxing each other's obligations and salaries paid to employees<sup>14</sup> has subjected to state taxation substantial amounts of income which were previously exempt. Amendments to the taxing statute make it evident that Louisiana intends to take advantage of this new revenue.<sup>15</sup> Subdivision 8(b) (6), providing for the exclusion of salaries, wages and other compensation received from the United States, has been eliminated. That part of subdivision 8(b) (7) which provided for the exclusion of interest received upon obligations of the United States or obligations of an instrumentality of the United States has also been deleted. Subdivision 8(b) (6) of the amended law now provides only for the exemption of interest received upon obligations of the State of Louisiana or its political or municipal subdivisions. The intent to include salaries, fees and commissions received from the United States is expressly stated in an additional paragraph inserted in subsection 8(a).

Amendments to Section 8 defining gross income also set out a new procedure for including the proceeds from endowment or annuity contracts. Section 8 previously provided for the exclusion of the amount of such proceeds from gross income in an amount equal to the total amount of premiums paid thereon.<sup>16</sup> The language of the amendment, which is copied from the federal income tax law,<sup>17</sup> provides for endowment contracts<sup>18</sup> the same method as previously used; but accords annuity contracts a somewhat different treatment. The recipient of annuity pay-

14. 53 Stat. 574, c. 59, tit. 1, §§ 2, 3, amending § 22(a), Internal Revenue Code (1939), 26 U.S.C.A. § 22(a) (1940).

15. La. Act 146 of 1940, § 1, amending La. Act 21 of 1934, § 8 [Dart's Stats. (1939) § 8587.8].

16. La. Act 21 of 1934, § 8 [Dart's Stats. (1939) § 8587.8].

17. 53 Stat. 10 (1939), 26 U.S.C.A. § 22(b)(2) (1940).

18. In copying the federal provision, part of a parenthetical clause was omitted, thus obscuring somewhat the procedure to be followed. As it appears in the Louisiana law, the provision reads "the following items shall not be included . . . (2) Amounts received . . . under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid *the taxable year* then the excess shall be included in gross income." The italicized words are part of a phrase, the remainder of which has been omitted. The completed parenthetical phrase in the federal law reads "whether or not paid during the taxable year." When this correction is made the procedure is clearly that which was provided in the unamended law. La. Act 21 of 1934, § 8 [Dart's Stats. (1939) § 8587.8].

ments must now report as part of his annual gross income, three per cent of the aggregate premiums paid for such annuity and may exclude any excess over this amount until such time as the aggregate premiums or consideration paid are exceeded by the sum of (1) the aggregate amounts received after December 31, 1939 and not included in gross income, (2) the entire amount received prior to January 1, 1934, and (3) the excess over the product of three per cent of the aggregate premiums paid multiplied by the number of years in which amounts were received during the period of January 1, 1934 to December 31, 1939. The purpose of this provision is to require the annuity recipient to report at least three per cent on his principal as gross income annually and to report all the annual proceeds as gross income in the event that all his principal has been paid back, even though prior to the effective date of the income tax law or the effective date of this provision. Under the old law the annuitant was under no duty to report any income until such time as he had received back an amount equal to the premiums or other consideration which he had paid in.

Under Section 13 of the old law no provision was made for taxing income accrued up to the death of a taxpayer where such death occurred during a taxable period. As a result, substantial portions of income could be excluded from the return made for such partial period. This deficiency has been remedied by an amendment to Section 13<sup>19</sup> providing for the inclusion of such accrued income. The amended provision conforms to a similar provision in the federal law.<sup>20</sup>

The Director<sup>21</sup> already possessed the power to prevent tax evasion effected through strategic sharing of gross income between two or more business units. There exist, however, numerous other tax avoidance devices in which a different technique is used and with which the former limited powers of the Director have not permitted him to cope. Additional subdivisions have now been added to Section 16<sup>22</sup> designed to strengthen the Di-

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19. La. Act 146 of 1940, § 1, amending La. Act 21 of 1934, § 13 [Dart's Stats. (1939) § 8587.13].

20. 53 Stat. 24 (1939), 26 U.S.C.A. § 42 (1940).

21. The change in the title of the head of the Department of Revenue from *Collector* to *Director* was provided for in the Administrative Code of 1940, La. Act 47 of 1940, tit. IV, § 3. The change was carried out by executive order.

22. La. Act 146 of 1940, § 1, amending La. Act 21 of 1934, § 16 [Dart's Stats. (1939) § 8587.16]. This subdivision is modeled after a similar Wisconsin provision. Wis. Stat. (1939) § 71.25.

rector's hand in certain instances where tax evasion has been attempted. Subdivision 16(2) now authorizes the Director to disregard losses resulting from a corporation's sale of its products for an amount below the fair trade price which might have been obtained therefor. The Director is further authorized to disregard losses or fluctuations in net income resulting from dealings by a subsidiary corporation in the stock of its parent corporation. Where necessary in order to properly determine taxable income, the Director may now call for consolidated statements from corporations affiliated with the taxpayer corporation or which control the income of the taxpayer corporation through contract.

A clarifying passage has been added to subsection 27(13)<sup>23</sup> which provided exemption from tax for corporations performing the exclusive function of holding title to property, collecting the income therefrom, and turning such income over to corporations exempt from tax. In order for a corporation to be exempt under the amended subsection, the income must be turned over to a company organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes with no part of the earnings inuring to the benefit of a private stockholder.

The old law contained no provision for an adjusted basis where a taxpayer converted property from personal use to business use. Consequently, some difficulty was encountered in arriving at a basis on which the taxpayer might figure depreciation. The taxpayer seeking large deductions for depreciation would prefer original cost as a basis in most cases. On the other hand, the value at the date of conversion to business use is better correlated with the income derived. This latter valuation has now been fixed in the law by the addition of a new subsection to Section 30.<sup>24</sup> Since the basis now provided is not limited to the computation of depreciation, it will also serve as the basis for determining capital gain or loss in the event of the sale of the property.

A number of important changes have been made in Section 100 providing for tax refunds and credits. These changes are, for the most part, in the interest of the taxpayer. In subdivision 100(b)(1) providing the period of limitations within which claims for refunds and credits may be filed, the three-year period

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23. La. Act 146 of 1940, § 1, amending La. Act 21 of 1934, § 27(13) [Dart's Stats. (1939) § 8587.27].

24. La. Act 146 of 1940, § 1, adds subsection 14 to La. Act 21 of 1934, § 30(a) [Dart's Stats. (1939) § 8587.30].

now runs from the time the tax return was due instead of from the time the return was filed, as previously provided.<sup>25</sup> The anomalous result that a taxpayer filing his return late thereby prolonged the period in which a claim for a credit or refund could be filed is thus eliminated.

Subsection 100 (c) of the old law provided for the return of overpayments of tax found by the Board of Tax Appeals after the Director had alleged a deficiency and the taxpayer had petitioned the Board disputing such deficiency. No provision was made to care for the situation where no deficiency exists but where the taxpayer has filed a claim for a credit or refund and his claim has been denied by the Director. The taxpayer is now authorized by subsection 100 (f)<sup>26</sup> to file suit against the Director within thirty days of receipt of notice from the Director that the claim has been denied. Where a deficiency is alleged by the Director, the remedy of the taxpayer continues to be by petition to the Board of Tax Appeals. The Director is also authorized under a new subsection 100 (e)<sup>27</sup> to allow three per cent interest<sup>28</sup> on all credits and refunds due for any taxable year beginning after January 1, 1940. The Director is authorized to withhold such interest where an overpayment is deliberately made in order to take advantage of this provision.

#### LOUISIANA GIFT TAX<sup>29</sup>

The gift tax enacted by the legislature is a necessary supplement to the inheritance tax law which has been on the statute books since 1921. The law is modeled in part after the Federal Gift Tax Act, but it also follows the pattern set by the state inheritance tax law in that it preserves the distinctions between various classes of donees as to exemptions and rates of tax.

The tax is levied<sup>30</sup> on transfers inter vivos, real or disguised, and on transfers for an inadequate consideration in money or

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25. La. Act 21 of 1934, § 100(b)(1) [Dart's Stats. (1939) § 8587.100], as amended by La. Act 146 of 1940.

26. La. Act 146 of 1940, § 1, adds subsection (f) to La. Act 21 of 1934, § 100 [Dart's Stats. (1939) § 8587.100].

27. La. Act 146 of 1940, § 1, adds subsection (e) to La. Act 21 of 1934, § 100 [Dart's Stats. (1939) § 8587.100].

28. Amendments to the General License Tax Statute provide for legal interest on credits and refunds. It is difficult to see why money paid as income tax is less valuable than money paid as license tax. Cf. La. Act 125 of 1940, § 1, amending La. Act 15 of 1934 (3 E.S.) § 51 [Dart's Stats. (1939) § 8641].

29. La. Act 149 of 1940.

30. Id. at § 1.



money's worth. Provision is also made that the tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is movable or immovable, or corporeal or incorporeal. The tax is not retroactive and does not affect transfers made before the effective date of the act. It applies to the transfer of all property of a resident which has a situs within the state. There is created a conclusive presumption that all intangible property owned by a resident has such situs.<sup>31</sup> The tax also applies to the transfer of property of a nonresident which has a situs in the state. There is no attempt to tax the transfer of tangible property which has acquired a situs outside Louisiana.<sup>32</sup>

The present inheritance tax act exempts legacies to charitable, religious, or educational institutions located in Louisiana.<sup>33</sup> In addition to allowing these same exemptions, the gift tax also exempts gifts to the United States, the State of Louisiana, a political subdivision thereof, or any civic organization, provided that the donor does not benefit either directly or indirectly therefrom.<sup>34</sup> Of more importance, however, are the specific exemptions granted to "flesh and blood" donees.<sup>35</sup> A direct descendant, ascendant, or surviving spouse of the donor is permitted to receive five thousand dollars before the tax will apply. A collateral relation of the donor may receive one thousand dollars and a stranger five hundred dollars free from tax. On the excess of a gift over and above the stipulated amount in each of the three groups, the rates are the same as those applied to legacies under the inheritance tax law.<sup>36</sup> In the case of a gift to a member of the first class (direct descendants, ascendants, or surviving

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31. *Id.* at § 1(c).

32. Under the terms of a separate act, only tangible property of a nonresident will be subject to this tax. See La. Act 67 of 1940, providing "That no tax be imposed upon any transfer of intangibles . . . by a person, or by reason of the death of a person . . . not domiciled in this State at the time of death." The Attorney General has already ruled in accordance with this statute in connection with the inheritance tax statute. See Opinions of Attorney General, 1936-38, p. 1079. Some ambiguity in the application of the above act to gifts of intangible property might have been avoided by phrasing it "that no tax be imposed upon any transfer of intangibles . . . by a person or by reason of the death of a person . . . not domiciled in this State at the time of death or at date of transfer if other than death." Without this addition its applicability to persons making transfers *inter vivos* is difficult, since whether or not a person will be a nonresident at death cannot be determined at the time a gift is made.

33. La. Act 127 of 1921 (E.S.) § 1 [Dart's Stats. (1939) § 8556].

34. La. Act 149 of 1940, § 3(b).

35. *Id.* at § 4(a).

36. La. Act 127 of 1921 (E.S.) § 2 [Dart's Stats. (1939) § 8557].

spouse), the first fifteen thousand dollars excess is taxed at two per cent and any excess over and above that amount at three per cent. In the case of a gift to a member of the second class (collateral relations), the excess up to nineteen thousand dollars is taxed at five per cent and any excess above that amount at seven per cent. In the case of a gift to a member of the third class (strangers) the excess up to forty-five hundred dollars is taxed at five per cent and any excess above that amount at ten per cent.<sup>37</sup>

The method provided for computing the tax incorporates a device worked out in the Federal Gift Tax Law<sup>38</sup> and is directed at the practice of avoiding the higher tax brackets by spreading the gifts out over several years. Section 5<sup>39</sup> provides that the tax for any single donee shall represent the difference between a tax computed on the aggregate gifts made to such donee in preceding years plus the gifts made in the current year, less the applicable exemption, *and* a tax computed on the aggregate gifts in preceding years less the applicable exemption. This method of computation gives assurance that a donor cannot cut down the gift tax payable over a number of years by making annual gifts which do not exceed the amount included in the first tax bracket. An illustration may make this clearer: A donor plans to give a donee who is a direct descendant a gift of \$75,000. If the gift were made in a lump sum in a single year the tax would be \$1,950.<sup>40</sup>

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37. The phrasing of the sections which set out the rates represents an improvement over that used in similar sections in the inheritance tax law. La. Act 127 of 1921 (E.S.) § 2 [Dart's Stats. (1939) § 8557]. For example, in the schedule of rates applicable to gifts to direct descendants, etc., the inheritance law provides "the tax shall be 2% of the actual value thereof at the time of death on the amount in excess of \$5,000 up to \$20,000." The new gift tax provides "the rates on the excess up to \$15,000 shall be 2%, and on the excess above \$15,000 shall be 3%." Through the language of the older statute, one might gain the impression that the 2% bracket encompassed \$20,000 of the excess over and above the exemption. The phrasing might have been improved further by adding the italicized words in the following re-statement: "the rates on the excess up to *and including* \$15,000 shall be 2%, and on the excess above \$15,000 shall be 3%." This would have made somewhat clearer the inclusion of the figure \$15,000 in the lower bracket. However, the legislative intent to include \$15,000 therein is reasonably inferred from the fact that the next bracket includes "the excess above \$15,000." The argument that gifts comprising an excess of exactly \$15,000 are not covered by the statute would probably receive scant consideration by a court.

38. 53 Stat. 144 (1939), 26 U.S.C.A. § 1001 (1940).

39. La. Act 149 of 1940.

40. Tax on \$70,000 (\$75,000 minus \$5,000 exemption)

\$15,000 taxed at 2%.....	\$ 300
55,000 taxed at 3%.....	1650
	\$1950

If, on the other hand, it were possible to make three annual gifts of \$25,000 and have the tax computed on each gift separately, the total tax bill would be \$1,650,<sup>41</sup> thus effecting a tax saving of \$300. However, this will be eliminated if the computation is made cumulative, as provided by the new law. The method provided in the act, when applied to the situation described above, will operate as follows:

## FIRST YEAR

Tax on \$20,000 (\$25,000 minus \$5,000 exemption) .....	\$450
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## SECOND YEAR

Tax on \$45,000 (\$25,000 gift, plus \$25,000, gift of preceding year, after deducting \$5,000 exemption) .....	\$1,200
Tax on \$20,000 (gift of preceding year, after deducting \$5,000 exemption) ....	450
	<hr style="width: 50px; margin-left: auto; margin-right: 0;"/> 750

## THIRD YEAR

Tax on \$70,000 (\$25,000 gift, plus \$50,000, gifts of preceding years, after deducting \$5,000 exemption) .....	\$1,950
Tax on \$45,000 (\$50,000, gifts of preceding years, after deducting \$5,000 exemption) .....	1,200
	<hr style="width: 50px; margin-left: auto; margin-right: 0;"/> 750

Total tax for three gifts.....	<hr style="width: 50px; margin-left: auto; margin-right: 0;"/> \$1,950
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## 41. 1st year

Tax on \$20,000 (\$25,000 minus \$5,000 exemption)	
\$15,000 taxed at 2% .....	\$ 300
5,000 taxed at 3% .....	150
	<hr style="width: 50px; margin-left: auto; margin-right: 0;"/> \$ 450

## 2nd year

Tax on \$25,000*	
\$15,000 taxed at 2% .....	\$ 300
10,000 taxed at 3% .....	300
	<hr style="width: 50px; margin-left: auto; margin-right: 0;"/> \$ 600

## 3rd year

Tax on \$25,000*	
\$15,000 taxed at 2% .....	\$ 300
10,000 taxed at 3% .....	300
	<hr style="width: 50px; margin-left: auto; margin-right: 0;"/> \$ 600

\* La. Act 149 of 1940, § 4, provides "specific exemption shall be deducted in computing the amount of the gifts made to any single donee." The use of the plural "gifts" would imply that a single donee is entitled to deduct the specific exemption only once.

The total of the taxes computed separately equals \$1,950, or the same tax which is arrived at by computing the tax on the entire \$75,000 in a single year. It is apparent that a donor makes no saving in the total tax payable by spreading his gifts over a three year period.

The computation under the state law varies in at least two respects from the federal computation. Under the federal law no distinction is drawn between classes of donees, hence all gifts made during a taxable year must be considered together.<sup>42</sup> Under the Louisiana law each class of donees must be considered separately, and within a given class of donees a separate computation must be made for each donee's gift or series of gifts. Secondly, under the federal law there are two exclusions to be considered. All gifts of five thousand dollars made during the taxable year are tax-free, provided, however, that the exemption applies only to one gift of five thousand dollars to any one donee in any one taxable year.<sup>43</sup> In addition there is a specific exemption<sup>44</sup> of forty thousand dollars which may be taken as an exemption against a single gift or which may be spread over several gifts over a period of years. This exemption may be taken only once. In making the cumulative computation necessary where gifts have been made over a period of years, this federal specific exemption is deducted in each part of the computation as previously illustrated for the Louisiana law. The specific exemption allowed to a Louisiana donee is analogous to the federal specific exemption, rather than to the federal five thousand dollar exclusion.

The responsibility for collecting the tax is vested in the Director of the Department of Revenue.<sup>45</sup> The donor of the gift is made primarily responsible for the payment of the tax,<sup>46</sup> but in the event of his default the donee is responsible, and he may be subject to proceedings in the event that he fails to pay.<sup>47</sup> Should the death of the donor occur before the tax is due and payable, his executor or administrator is charged with responsibility to pay the tax.<sup>48</sup> In the event of wilful failure to pay the tax, a penalty of twenty-five per cent of the tax may be assessed.<sup>49</sup>

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42. 53 Stat. 144 (1939), 26 U.S.C.A. § 1000 (1940).

43. 53 Stat. 146 (1939), 26 U.S.C.A. § 1003 (1940).

44. 53 Stat. 147 (1939), 26 U.S.C.A. § 1004 (1940).

45. La. Act 149 of 1940, § 13.

46. *Id.* at § 7.

47. *Id.* at § 8(d), (e).

48. *Id.* at § 7.

49. *Id.* at § 10(a).

Where a fraudulent return is filed this penalty is increased to fifty per cent. Interest at the rate of six per cent is payable on all taxes not paid when due.<sup>50</sup> Returns must be filed with the Director and the tax paid on or before the 15th of April in the calendar year immediately following the year in which the gift or gifts were made.<sup>51</sup> In the event a gift is required to be reported as a legacy under the terms of the inheritance tax law, a credit in the amount of any gift tax previously paid will be allowed against any inheritance tax assessed.<sup>52</sup>

#### GENERAL LICENSE TAX LAW<sup>53</sup>

The general license tax law underwent a thorough overhauling at the hands of the 1940 legislators.<sup>54</sup> While a few rates were changed and certain exemptions eliminated, the major changes incorporated in the amended version of the law have to do with matters of procedure in the collection and enforcement of the statute. In these matters, the new statute is a substantial improvement over the old one. The amended version will be operative for the year 1941 and subsequent years.<sup>55</sup>

Retail dealers in soft drinks and ice cream are no longer taxed in a separate section<sup>56</sup> but are included with businesses selling merchandise at retail.<sup>57</sup> The products previously listed as constituting a separate class are here specifically included in the term "merchandise." Plantation stores, selling exclusively to employees, are no longer made exempt from payment of the license tax.<sup>58</sup> As indicated elsewhere in this article in the sections devoted to the soft drink tax and to the tax on beverages of less than six per cent alcoholic content,<sup>59</sup> purveyors of these products are no longer permitted to exclude sales of such products from

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50. *Id.* at § 10(c).

51. *Id.* at § 7(b).

52. *Id.* at § 12.

53. La. Act 15 of 1934 (3 E.S.), as last amended by La. Acts 33 and 429 of 1938 [Dart's Stats. (1939) §§ 8588-8648.3].

54. La. Act 125 of 1940.

55. La. Act 15 of 1934 (3 E.S.) [Dart's Stats. (1939) § 8588], as amended by La. Act 125 of 1940, § 1.

56. La. Act 15 of 1934 (3 E.S.) § 21, as amended by La. Act 33 of 1938, § 1 [Dart's Stats. (1939) § 8608].

57. La. Act 15 of 1934 (3 E.S.) § 9 [Dart's Stats. (1939) § 8596], as amended by La. Act 125 of 1940, § 1.

58. La. Act 15 of 1934 (3 E.S.) § 9, as amended by La. Act 33 of 1938, § 1 [Dart's Stats. (1939) § 8596], contained language specifically exempting such stores. In Section 9 as amended by Act 125 of 1940, § 1, this language has been deleted.

59. See pp. 75, 78, *supra*.

the sales figure which is used to determine the amount of their general license tax.<sup>60</sup>

Under the terms of Section 10<sup>61</sup> of the old act, providing for a license tax on taxicab companies, collecting agencies, et cetera, a business unit whose gross annual sales fell in the fourteenth class was permitted credit on its state license tax up to five dollars for municipal or parish taxes. This was likewise true under the terms of Section 17<sup>62</sup> providing for a license tax on steamship agencies, toll-bridges and ferries for business units whose gross annual sales fell in the thirty-second, thirty-third, or thirty-fourth classes and in Section 23<sup>63</sup> providing for a license tax on retailers of malt and cereal beverages where sales fell in the seventeenth and eighteenth classes. This credit may no longer be taken.<sup>64</sup> Section 17 has also been amended<sup>65</sup> to exclude stevedores from coverage under the act. In the paragraph of Section 17 devoted to setting out certain professions which are not subject to the terms of the license law, bacteriologists, veterinarians, chemists, and chemical engineers have now been added to the list of excluded professions.

Amusement devices have now been segregated into three classes, which are taxed separately. Section 20,<sup>66</sup> which formerly provided for a license tax on all amusement devices at the rate of five dollars per device, now covers mechanical bowling machines, mechanical baseball machines, other mechanical amusement games operated by a coin or slug in excess of one cent, merry-go-rounds, ferris wheels, and other enumerated devices of a similar nature. A license fee of fifty dollars is levied on each

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60. La. Act 95 of 1936, § 28 [Dart's Stats. (1939) § 8758.29]. Dealers paying the soft drink sales and license tax were exempted from the operation of the general license tax law. La. Act 15 of 1934 (3 E.S.) § 21 [Dart's Stats. (1939) § 8608]. La. Act 151 of 1940, § 1, amending La. Act 95 of 1936, § 28, eliminates this exemption. Likewise, in connection with dealers in beverages of less than six per cent alcoholic content, La. Act 2 of 1933 (E.S.) § 23 [Dart's Stats. (1939) § 8782.23] provided that the excise taxes levied by that act should be exclusive. La. Act 203 of 1940, § 1, amending § 23, eliminates this provision.

61. La. Act 15 of 1934 (3 E.S.) § 10, as last amended by La. Act 33 of 1938, § 1 [Dart's Stats. (1939) § 8597].

62. La. Act 15 of 1934 (3 E.S.) § 17, as last amended by La. Act 33 of 1938, § 1 [Dart's Stats. (1939) § 8604].

63. La. Act 15 of 1934 (3 E.S.) § 23, as amended by La. Act 33 of 1938, § 1 [Dart's Stats. (1939) § 8610].

64. La. Act 125 of 1940, § 1.

65. La. Act 15 of 1934 (3 E.S.) § 17, as amended by La. Act 33 of 1938, § 1 [Dart's Stats. (1939) § 8604], is amended by La. Act 125 of 1940, § 1.

66. La. Act 15 of 1934 (3 E.S.) § 20, as amended by La. Act 429 of 1938, § 1 [Dart's Stats. (1939) § 8607], is amended by La. Act 125 of 1940, § 1.

such device operated. Mechanical music machines are taxed separately at ten dollars per machine. Owners and operators of billiard tables, bowling alleys, and similar devices are now provided for in Section 34<sup>67</sup> and are required to pay a license fee of fifteen dollars per device. The subject matter of Section 34 in the old act, namely merry-go-rounds, ferris wheels, et cetera, is now provided for in Section 20 of the amended act. Mechanical amusement devices which are operated with a coin or slug of one cent or less are taxed at one-tenth of the tax imposed on such machines operating on coins of five cents or more. Section 20 also provides that in cities with a population in excess of 125,000<sup>68</sup> owners and operators shall pay an additional license fee of fifty dollars on all mechanical devices except music boxes.

Owners or operators of hotels, rooming-houses, restaurants, or boarding-houses were formerly required, under Section 39 of the old law,<sup>69</sup> to pay a license fee graded in the same manner as the license fee on retailers of merchandise—on the basis of gross annual sales or receipts.<sup>70</sup> Business units furnishing sleeping accommodations are now provided for separately from those units serving food. Operators of hotels or rooming-houses must now pay a license tax of fifty cents per sleeping room.<sup>71</sup> Operators of restaurants, boarding-houses, et cetera, are now provided for in Section 22<sup>72</sup> and are subject to a license tax determined, as previously, on the base of gross annual sales. Boarding-houses catering exclusively to the employees or students of schools or colleges continue to be exempted.

The drastic method of enforcement accompanying the license tax imposed upon manufacturers, distillers, and refiners of petroleum products<sup>73</sup> has been eliminated<sup>74</sup> from the amended law. Summary seizure and sale of all properties of a business unit failing to pay the tax is no longer provided, and collection

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67. La. Act 15 of 1934 (3 E.S.) § 34 [Dart's Stats. (1939) § 8623] is amended by La. Act 125 of 1940, § 1.

68. I.e., New Orleans.

69. La. Act 15 of 1934 (3 E.S.) § 39 [Dart's Stats. (1939) § 8628].

70. La. Act 15 of 1934 (3 E.S.) § 9, as last amended by La. Act 33 of 1938, § 1 [Dart's Stats. (1939) § 8596].

71. La. Act 15 of 1934 (3 E.S.) § 39 [Dart's Stats. (1939) § 8628] as amended by La. Act 125 of 1940, § 1.

72. La. Act 125 of 1940 adds a Section 22 to La. Act 15 of 1934 (3 E.S.). Section 22 of that act was repealed by La. Act 6 of 1935 (1 E.S.) [Dart's Stats. (1939) § 8609].

73. La. Act 15 of 1934 (3 E.S.) § 41, as amended by La. Act 333 of 1936, § 1 [Dart's Stats. (1939) § 8629.1]. The tax is referred to in this section as an occupational license tax or privilege tax.

74. La. Act 125 of 1940, § 1.

against such business units must follow the ordinary procedures. Section 41½,<sup>75</sup> which vested extraordinary powers in the Governor to suspend the operation of Section 41,<sup>76</sup> has now been repealed and in its stead a new section<sup>77</sup> has been substituted which delegates to the Governor the power to suspend operation of the license tax imposed upon refiners, on condition that contracts have been entered into for the construction of new refinery facilities aggregating refining capacity of fifty thousand barrels daily. Such suspension may be granted for a period not to exceed the twentieth day after adjournment of the regular legislative session of 1942. In the event the tax is suspended, such suspension will extend to refineries in present operation as well as the new refineries built to secure the suspension. The exemption of petroleum refiners from any other wholesale or retail license tax will continue during such suspension.<sup>78</sup>

Section 43 of the old law required separate licenses where two or more businesses were combined or where a number of business units were controlled by another business unit. The new Section 43<sup>79</sup> provides the method of computing the tax generally. Section 3<sup>80</sup> now requires that where an owner has more than one place of business, a separate license shall be secured for each such place. The same section provides that where a business has both gross receipts and gross sales and the aggregate of the two is less than five thousand dollars, such gross receipts and gross sales may be added together to determine the gross business for purposes of computing the license tax. If either the gross receipts or gross sales amount to more than twenty-five per cent of the total, however, the Director is authorized to assess a separate license for each class of receipts. It is also required by this section that the minimum license fee for any given class of business must be paid before beginning such business. Section 44 of the old law formerly furnished the basis for computing the tax. The

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75. La. Act 15 of 1934 (3 E.S.) § 41½, as added by La. Act 5 of 1935 (1 E.S.) § 2 [Dart's Stats. (1939) § 8629.2].

76. The teeth of this punitive measure had already been drawn by an amendment contained in La. Act 333 of 1936.

77. Section 41.1 is added to La. Act 15 of 1934 (3 E.S.) by La. Act 125 of 1940, § 1.

78. La. Act 15 of 1934 (3 E.S.) § 41½ [Dart's Stats. (1939) § 8629.2] as amended by La. Act 125 of 1940, § 1.

79. La. Act 15 of 1934 (3 E.S.) § 43 [Dart's Stats. (1939) § 8632] as amended by La. Act 125 of 1940, § 1.

80. La. Act 125 of 1940, § 1, adds a Section 3 to La. Act 15 of 1934 (3 E.S.). Section 3 of that act was repealed by La. Act 18 of 1936, § 1 [Dart's Stats. (1939) § 8509].



same method of computation is continued in Section 43 of the amended law. However, the provision in the earlier act that persons beginning business after July first shall pay one-half of the regular tax rates has been eliminated. Instead the new Section 43 states that the date of commencing business for the purpose of the act shall be governed by rules and regulations promulgated by the Director of the Department of Revenue.

The new Section 44<sup>81</sup> contains the same requirements as to the records to be kept by the taxpayer that were found in Section 46<sup>82</sup> of the old law. A new Section 45<sup>83</sup> provides that wholesalers shall keep such records as are required under rules and regulations to be promulgated by the Director. The authority to make rules and regulations for different classes of business is specifically delegated to the Director under the terms of the new Section 47.<sup>84</sup> Presumably it is hoped that wholesalers' records can be kept in such a manner as to afford a check upon the sales volume of individual retailers.<sup>85</sup> Under the amended Section 48<sup>86</sup> the Director is required to keep a record showing the names, types of business and fees paid by licensees. The requirement in Section 50 of the old law that a transcript of the license register shall be forwarded to the Auditor of Public Accounts and to the legislature has been omitted. Other methods of internal check will undoubtedly be brought into play under the terms of the new Fiscal Code<sup>87</sup> and Administrative Code.<sup>88</sup> The amount to be withheld from collections of the tax to cover costs of administration is not fixed in the new law, since the office of the Director of the Department of Revenue, along with other departments, will be subject to the new budget requirements incorporated in the Fiscal Code.

Considerable improvement has been made in the provisions

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81. La. Act 15 of 1934 (3 E.S.) § 44 [Dart's Stats. (1939) § 8633] as amended by La. Act 125 of 1940, § 1.

82. La. Act 15 of 1934 (3 E.S.) § 46, as amended by La. Act 429 of 1938, § 1 [Dart's Stats. (1939) § 8635].

83. La. Act 15 of 1934 (3 E.S.) § 45 [Dart's Stats. (1939) § 8634] as amended by La. Act 125 of 1940, § 1.

84. La. Act 15 of 1934 (3 E.S.) § 47 [Dart's Stats. (1939) § 8636] as amended by La. Act 125 of 1940, § 1.

85. It was originally proposed that out-of-state wholesalers selling in Louisiana be required to keep a set of sales records in the state, but this proposal was abandoned. La. House Bill 934 of 1940.

86. La. Act 15 of 1934 (3 E.S.) § 48 [Dart's Stats. (1939) § 8637] as amended by La. Act 125 of 1940, § 1. The amended Section 48 embraces the content of Section 50 of the old law.

87. La. Act 48 of 1940.

88. La. Act 47 of 1940.

of the law detailing the procedure to be followed in dealing with defaulting taxpayers. Taxpayers, as previously, are required to apply for a license by affidavit.<sup>89</sup> The Director is authorized to audit and inspect the taxpayer's books in the event he is not satisfied with the facts set forth in the application. In the event such inspection is refused by the taxpayer, the Director is authorized to proceed by rule in a court of competent jurisdiction to require the production of the necessary books and records. The somewhat obscure statement in Section 45 of the old law that production of such books and records in court shall not be construed as entitling the defendant to introduce them in evidence has been omitted from the new provision dealing with the matter.

As provided in the old law, the Director is authorized to proceed by rule to show cause in the collection of delinquent taxes.<sup>90</sup> However, the amended law provides that cause may be shown in not less than two nor more than ten days after service. The old law provided for showing cause on the second day after service by the Director. Certain other procedural matters are clarified also. It is stipulated that all defenses must be filed together at a time prior to the date set for the hearing, and the trial court is forbidden to grant continuances except for those causes set forth in the Code of Practice. In the event that the pleadings of the Director are accompanied by an affidavit, such affidavit must be accepted as constituting a prima facie case, thus casting on the defendant the burden of establishing anything to the contrary. In the event the tax is unpaid, the Director is further authorized to move to take a rule against the taxpayer to show cause why he should not be ordered to cease the further pursuit of his business. In the event such rule is made absolute the order so providing is to be considered as a judgment forbidding the taxpayer from the further pursuit of his business at the risk of being in contempt of court.

Suits by aggrieved taxpayers to recover taxes paid under protest are now specifically dealt with in the amended law.<sup>91</sup> Sec-

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89. La. Act 15 of 1934 (3 E.S.) § 46 [Dart's Stats. (1939) § 8635] as amended by La. Act 125 of 1940, § 1. The amended Section 46 embraces the content of Sections 45 and 49 of the old law.

90. La. Act 15 of 1934 (3 E.S.) §§ 49, 50 [Dart's Stats. (1939) §§ 8638, 8639] as amended by La. Act 125 of 1940, § 1. The content of the amended Sections 49 and 50 was contained in part in Section 47 of the old law. [Dart's Stats. (1939) § 8636].

91. La. Act 15 of 1934 (3 E.S.) § 51 [Dart's Stats. (1939) § 8641] as amended by La. Act 125 of 1940, § 1. The subject matter of the amended Section 51 was not treated in the old law.

tion 51(a) provides that a taxpayer desiring to resist payment shall pay the tax found due, accompanying his remittance by notice of intention to file suit. Taxes so paid under protest must be held for a period of thirty days by the Director, and in the event suit is filed within this period they must be further held pending the outcome of the suit. Should the outcome be favorable to the taxpayer the Director is required to return the amount paid plus legal interest.<sup>92</sup> Subsection 51(b) provides that all matters relative to the enforcement or validity of the tax may be brought up in suits under this section. Resort to an injunction against imposition of the tax will probably be rarely necessary in view of the adequate remedy provided. It is further stated that the section under consideration shall be construed to provide a remedy in those cases where the tax is alleged to constitute a burden upon interstate commerce. Where decision is already pending as to the lawfulness of an assessment of a certain character, persons so requesting may pay similar assessments under protest but with an agreement that they will abide by the outcome of such suits. In the event such a decision is against the Director, he is authorized to refund payments made subsequently under protest without the necessity of additional suits.

The new act continues the power vested in the Governor to designate an attorney at law in each parish to assist the Director in the collection of delinquent taxes.<sup>93</sup> All delinquent taxes continue to be secured by a first lien and privilege in favor of the state on all property used in carrying on the business regardless of the ownership of such property.<sup>94</sup>

A troublesome problem arises from the fact that Section 52 of the old law, which provided a lien on the taxpayer's property, was amended by a separate act of the 1940 session.<sup>95</sup> In the comprehensive act amending the general license tax law the lien provision was made a part of Section 2 in the amended law, and Section 52, which formerly provided for liens, was amended to

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92. The provision for payment of legal interest which is five per cent is somewhat anomalous in view of the fact that only three per cent interest is provided for overpayment of income tax. La. Act 21 of 1934, § 100 [Dart's Stats. (1939) § 8587.100] as amended by La. Act 146 of 1940, § 100(e).

93. La. Act 15 of 1934 (3 E.S.) § 52 [Dart's Stats. (1939) § 8643]. This matter was covered in Section 51 of the old law. [Dart's Stats. (1939) § 8641].

94. La. Act 15 of 1934 (3 E.S.) § 2 [Dart's Stats. (1939) § 8589] as amended by La. Act 125 of 1940, § 1. This lien was provided in Section 52 of the old law.

95. La. Act 368 of 1940, amending La. Act 15 of 1934 (3 E.S.) § 52 [Dart's Stats. (1939) § 8643].

state only that violations of the act should constitute misdemeanors.

The separate 1940 act referred to, however, amends Section 52 by providing in more detail the manner of recording the tax lien and by setting out the specific liens which will prime the tax lien. The question now arises as to the effect of this amendment on the new Section 52, providing for violations. Furthermore, is the amendment to be construed along with Section 2 of the amended law in determining questions relative to tax liens and interest on unpaid taxes, or must Section 2 be ignored? Under the circumstances, it would seem that the subsequent amendatory act would have been an appropriate subject for executive veto.

Whereas Section 50 of the old act provided that receipts from the general license tax should be credited to the General Fund, Section 54<sup>96</sup> of the new law provides that such receipts shall be credited to a special fund to be apportioned by the Governor for purposes which are not indicated in the act. On the matter of the disposition of funds from the special license tax on chain stores, which is apportioned back to the parishes by the state, these funds may now be placed in the general fund of the parish if such proceeds are not needed to retire bonded indebtedness.<sup>97</sup> Previously, it was required that such proceeds, except in Orleans parish, be placed in the parish school fund.<sup>98</sup>

#### TOBACCO TAXES<sup>99</sup>

Amendments to the tobacco sales tax wrought changes in both license fees and tax rates. The former five dollar license fee on retailers has been removed and provision is made for licensing retailers without cost where application is made prior to February first of the calendar year, or prior to beginning a new business.<sup>100</sup> Where such timely application is not made, payment of a fee of one dollar is required.

The discount offered to licensed dealers purchasing stamps in quantities of one hundred dollars or more has been reduced

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96. La. Act 15 of 1934 (3 E.S.) § 54 [Dart's Stats. (1939) § 8645] as amended by La. Act 125 of 1940, § 1.

97. La. Act 321 of 1940, § 1, amends La. Act 19 of 1932, § 6, as amended by La. Act 51 of 1934, § 5.

98. La. Act 19 of 1932, § 6, as amended by La. Act 51 of 1934, § 5 [Dart's Stats. (1939) § 8669].

99. La. Act 4 of 1932 [Dart's Stats. (1939) §§ 8734-8757].

100. *Id.* at § 4 [Dart's Stats. (1939) § 8737] as amended by La. Act 147 of 1940, § 1.

from ten per cent to six per cent.<sup>101</sup> The change results in a substantial increase in the rate of tax for those dealers who ordinarily purchase their tax stamps in large quantities. It also puts in question the status of stamp stocks already purchased by dealers under the old, higher rate of discount. Viewing the discount as a variance in the rate of tax payable by quantity buyers and small buyers, the change in the rate of discount results in an increase in the rate of tax levied upon the quantity buyers. To make these new rates uniformly effective, those dealers having quantities of stamps purchased under the old discount rate would thus have to pay to the Department of Revenue a sum equal to four per cent of the face value of the stamps on hand. On the other hand, if the discount is given as compensation to the dealer for the inconvenience of affixing the stamps, lowering the discount is merely a curtailment of the allowance for this labor. The discount obtained on stocks of stamps on hand may then be viewed as payment in advance for services purchased. Under this view, requiring dealers to pay back part of the discount would in effect be forcing revision of an agreement for services.<sup>102</sup>

The actual rates of tax on certain classes of tobacco were also raised.<sup>103</sup> On Class *D* cigars (retailing at more than fifteen cents but not more than twenty cents) the rate is increased from ten dollars per thousand to twenty dollars per thousand. On Class *E* cigars (retailing at more than twenty cents each) the rate is increased from thirteen dollars per thousand to twenty-seven dollars per thousand. The rate of tax on cigarettes has been increased from one-fifth cent per cigarette to one-fourth cent per cigarette. The rate of tax on packaged smoking tobacco selling for more than ten cents per package has been increased to one and a third cents on each five cents of the retail selling price. The new rates went into effect September 1, 1940.

These increases represent the outcome of a compromise between the administration and the "school" lobby. Two-thirds of the additional revenue provided is to be placed in the State Pub-

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101. La. Act 4 of 1932, § 3 [Dart's Stats. (1939) § 8736] as amended by La. Act 152 of 1940.

102. The Department of Revenue has ordered that unused stamps on hand at the effective date of the act be inventoried and the excess discount computed and returned to the Department.

103. La. Act 4 of 1932, § 2 [Dart's Stats. (1939) § 8735] as amended by La. Act 152 of 1940.

lic School Fund.<sup>104</sup> One-third goes into the General Fund until such time as there is accumulated an amount of \$825,966.66. After this, all the additional revenue is to go into the State Public School Fund. The revenue provided in this act is in addition to the funds provided for the State Public School Fund in the constitution.<sup>105</sup>

#### SOFT DRINKS SALES AND LICENSE TAX<sup>106</sup>

Purveyors of soft drinks also are among those who were affected by changes made in the tax structure by the 1940 legislature. The rate of discount on soft drink tax crowns purchased in quantities of one hundred dollars or more was reduced from five per cent to two per cent.<sup>107</sup> As in the case of tobacco dealers with a quantity of stamps on hand, soft drink manufacturers with a quantity of tax crowns on hand will be concerned as to whether this change in the rate of discount will result in liability on their part to return three per cent of the face value of such tax crowns.<sup>108</sup>

The five dollar permit fee required of soft drink retailers has been remitted. Permits will be issued without cost if applied for prior to February first of the calendar year, or prior to beginning business.<sup>109</sup> Failure to make timely application will, however, result in assessment of a fee of one dollar. Little comfort is to be derived from this change in view of the repeal of the "in lieu" provision, so that retailers are now made subject to the occupational license tax.<sup>110</sup> Milk drinks containing more than fifty per

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104. La. Act 4 of 1932, § 21 [Dart's Stats. (1939) § 8755] as amended by La. Act 152 of 1940. Provision for requiring a third to be credited to the General Fund was made in order to assure repayment of a loan made to the State Board of Education.

105. *Ibid.* The determination to provide this additional revenue resulted in the abandonment of an original plan to amend the constitutional disposition of the severance tax fund. La. House Bill 479 of 1940, as passed by La. Act 380 of 1940, originally contained this amendment. This latter act now provides only for an increase in the amount to be devoted to the collection of the severance tax from \$250,000 to \$500,000 and for the deletion of certain obsolete material which had reference to the Louisiana State University.

106. La. Act 95 of 1936 [Dart's Stats. (1939) §§ 8758.2-8758.29].

107. *Id.* at § 3 [Dart's Stats. (1939) § 8758.4] as amended by La. Act 151 of 1940.

108. *Supra*, p. 74.

109. La. Act 95 of 1936, § 5 [Dart's Stats. (1939) § 8758.6] as amended by La. Act 154 of 1940.

110. La. Act 95 of 1936, § 28 [Dart's Stats. (1939) § 8758.29] as amended by La. Act 150 of 1940. Section 28 formerly provided "that no dealer who pays any tax imposed by this act shall be required to pay the state license tax."

cent fluid milk by volume are not subject to the tax under the terms of the amended act.<sup>111</sup>

### ALCOHOLIC BEVERAGES TAX

#### *Beverages Containing More Than Six Per Cent of Alcohol*<sup>112</sup>

Only beer escaped the upward trend in state taxes levied on alcoholic beverages. On liquors and sparkling wines rates were increased from \$1.00 to \$1.50 per gallon, on still wines the rates were increased from five cents to fifteen cents per gallon where alcoholic content does not exceed fifteen per cent, from ten cents to thirty cents per gallon where alcoholic content does not exceed twenty-four per cent, and from \$1.00 to \$1.50 per gallon where the alcoholic content is in excess of twenty-four per cent.<sup>113</sup> The discount on stamps offered to purchasers in quantities of one hundred dollars or more was reduced, as in the case of soft drink tax crowns, from ten to six per cent.<sup>114</sup> The Director of the Department of Revenue is given assistance in the task of enforcing the law with respect to the traffic in wines by authority to adopt and publish regulations. Such regulations may govern the manufacture, labeling and advertising of wines and must be in conformance with regulations issued under the Federal Alcohol Administration Act.<sup>115</sup>

The five dollar permit fee required of all dealers in alcoholic beverages has been removed and replaced by a schedule of permit fees which takes into consideration the character of the retail business and the size of the community in which the business is carried on.<sup>116</sup> In cities or towns of over five thousand population the operation of a saloon now requires payment of a fee of two

111. La. Act 95 of 1936, § 4 [Dart's Stats. (1939) § 8758.5] as amended by La. Act 115 of 1940.

112. La. Act 15 of 1934, as amended [Dart's Crim. Stats. (Supp. 1939) §§ 1362.1-1362.32]; La. Act 24 of 1935 (3 E.S.) [Dart's Crim. Stats. (Supp. 1939) §§ 1362.33-1362.40].

113. La. Act 15 of 1934, § 2 [Dart's Crim. Stats. (Supp. 1939) § 1362.2], as amended by La. Act 202 of 1940, § 1.

114. La. Act 15 of 1934, § 3 [Dart's Crim. Stats. (Supp. 1939) § 1362.3], as amended by La. Act 202 of 1940, § 1. The revenues from these taxes continue to be credited to the Property Tax Relief Fund. The amount to be devoted exclusively to homestead exemptions will not be increased as a result of the increase in the tax, since the percentage of the tax so disposed of has been lowered from forty per cent to twenty-six and two-thirds per cent. Id. at § 23 [Dart's Crim. Stats. (Supp. 1939) § 1362.23] as amended by La. Act 202 of 1940, § 1.

115. *Ibid.*

116. La. Act 15 of 1934, § 4 [Dart's Crim. Stats. (Supp. 1939) § 1362.4], as amended by La. Act 202 of 1940, § 1.

hundred dollars and the operation of a package house a fee of one hundred dollars. In cities, towns, or villages of less than five thousand population the operation of a saloon now requires payment of a fee of one hundred dollars and the operation of a package house a fee of fifty dollars. Operating a wine package house in cities of any size requires a payment of a fee of one hundred dollars. The present permit fees for wholesalers and for individual solicitors are continued. Definitions are added setting out what shall be deemed to constitute a "saloon," "package house," "wine package house," and "wine wholesale dealer."<sup>117</sup>

Under language added to Section 9, a manufacturer of alcoholic beverages may now ship his product out of the state in a conveyance other than a common carrier, provided that he submits evidence to the Director that such beverages have been delivered to a duly licensed wholesale dealer and that taxes thereon have been paid to another state.<sup>118</sup> In the event of failure to submit such evidence, the manufacturer will be liable for the full gallonage tax imposed on beverages not moving in interstate commerce. The inspection fee on such beverages is continued. Restrictions on the movement of beverages on which tax has not been paid is also relaxed with regard to the movement of alcoholic beverages from the floor stock of one licensed wholesale dealer to another licensed wholesale dealer. Such transfers may now be made in a conveyance other than a common carrier without being subject to seizure by the Director.<sup>119</sup>

In an act which went into effect without the Governor's signature, the City of New Orleans is authorized to levy taxes in addition to those imposed by the state.<sup>120</sup> On liquors, sparkling wines, and still wines having over twenty-four per cent alcoholic content, the city is permitted to levy a tax of forty cents per gallon; on still wines having an alcoholic content of fourteen to twenty-four per cent, a tax of ten cents per gallon is allowed; and on still wines having an alcoholic content of less than fourteen per cent, it may levy five cents per gallon. The city is also authorized to levy a tax of forty cents per barrel on beer in barrels containing not more than thirty-one standard gallons.

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117. *Id.* at § 1 [Dart's *Crim. Stats.* (Supp. 1939) § 1362.1], as amended by La. Act 202 of 1940, § 1.

118. *Id.* at § 9 [Dart's *Crim. Stats.* (Supp. 1939) § 1362.9] as amended by La. Act 202 of 1940, § 1.

119. *Id.* at § 16 [Dart's *Crim. Stats.* (Supp. 1939) § 1362.16] as amended by La. Act 202 of 1940, § 1.

120. *Id.* at § 24 [Dart's *Crim. Stats.* (Supp. 1939) § 1362.24] as amended by La. Act 330 of 1940, § 1.



*Beverages Containing Less Than Six Per Cent of Alcohol*<sup>121</sup>

No changes were made in the state rates on light wines and beer during the general revision of the tax structure. As in the case of dealers in intoxicating beverages, however, the retailer's five dollar permit fee has been removed and it will be necessary in the future merely to make timely application in order to obtain such a permit.<sup>122</sup> With the repeal of the provision that excise taxes on included beverages are in lieu of all other excise or license taxes, dealers in light wines and beer will now be subject to the occupational license tax.<sup>123</sup>

SEVERANCE TAXES<sup>124</sup>

The activity of the 1940 legislature with respect to the severance tax structure includes proposals to amend the constitution, as well as changes in the former statutory law.

Statutory changes involve the inclusion of pulpwood in the list of taxed resources at the rate of six cents per standard cord.<sup>125</sup> A new schedule of rates has also been devised applicable to the severance of oil. Oil of twenty-eight gravity and below has now been divided into two classes; oil of twenty-two gravity and below is taxed at six cents per barrel of forty-two gallons and oil above twenty-two gravity and not above twenty-eight gravity is taxed at seven cents per barrel. The lower gravity oils have felt the increase in rates most sharply, the increase ranging from three and one-fourth cents per barrel on oil with gravity above twenty-eight and not above thirty-one, to one-half cent on oil with gravity above thirty-six and not above forty-three. Distillate and condensate, which were not specifically provided for previously, are now taxed at eleven cents per barrel. Natural and casinghead gasoline are not taxed, provided that the regular motor fuel taxes thereon are paid.

In the division of the act levying a tax on natural gas there has been added a provision to the effect that there may be excluded from the quantity of gas taxed, gas injected into the earth for (1) storage, (2) recycling, (3) repressuring, and (4) lifting

121. La. Act 2 of 1933 (E.S.) [Dart's Stats. (1939) §§ 8782.1-8782.24].

122. *Id.* at § 2 [Dart's Stats. (1939) § 8782.2] as amended by La. Act 148 of 1940, § 1.

123. La. Act 2 of 1933 (E.S.) § 23 [Dart's Stats. (1939) § 8782.23] as amended by La. Act 203 of 1940, § 1.

124. La. Act 24 of 1935 (2 E.S.) [Dart's Stats. (1939) §§ 8522-8548].

125. La. Act 145 of 1940, § 2, amending La. Act 24 of 1935 (2 E.S.) §§ 1, 2 [Dart's Stats. (1939) §§ 8522, 8523].

oil. The exemption does not apply to gas severed in lifting oil. Shrinkage in such gas due to the extraction of natural gasoline must be replaced by an additional volume of gas which will be subject to tax. The statutory disposition of the severance tax on natural gas has been omitted from the amended provision.<sup>126</sup>

The rate on sulphur has been reduced from \$2.00 per long ton to \$1.03 per long ton, and the statutory disposition of this tax has also been omitted from the amended provision.

Persons purchasing natural resources on the open market on which a tax is levied under this act are now authorized to deduct the amount of the tax from the purchase price if such tax has not been paid.<sup>127</sup> In the event such tax is not deducted, the purchaser will nevertheless be liable therefor. Section 20,<sup>128</sup> providing for the filing of a return by such purchasers, is amended to include a duty to pay not only the amount of tax deducted or withheld, but also any tax that may be due under the act. This fixes liability for taxes which should have been deducted as well as for those which were actually deducted by the purchaser. A new section<sup>129</sup> has been added to the law defining "severed," "purchasers on the open market" and "owners." "Purchasers on the open market" is defined to mean those who make purchases in the absence of any contract or agreement which requires them to make payment directly to the owner of such oil, gas, or other natural resources. "Owner" is defined to mean the person owning the natural resource at the time of severance.

The constitution presently provides that one-fifth of the severance tax on oil and gas and one-third of the severance tax on sulphur, but not more than \$200,000 on oil and gas and not more than \$100,000 on sulphur, shall be returned to the parishes in which the tax is collected.<sup>130</sup> A proposed amendment<sup>131</sup> to the constitution would change these limitations so as to provide that not more than \$200,000 in the aggregate shall be returned to any parish. This means that a parish producing both sulphur and oil and gas would receive only \$100,000 of the severance tax on oil and gas if it also was receiving \$100,000 of the severance tax on

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126. La. Act 145 of 1940, § 2, amending La. Act 24 of 1935 (2 E.S.) § 2(9) [Dart's Stats. (1939) § 8523(9)].

127. La. Act 145 of 1940, § 2, amending La. Act 24 of 1935 (2 E.S.) § 9 [Dart's Stats. (1939) § 8530].

128. La. Act 24 of 1935 (2 E.S.) § 20 [Dart's Stats. (1939) § 8541] as amended by La. Act 145 of 1940, § 2.

129. La. Act 24 of 1935 (2 E.S.) § 2A, as added by La. Act 145 of 1940, § 3.

130. La. Const. of 1921, Art. X, § 20.

131. La. Act 392 of 1940.

sulphur. The statute which carried into effect the constitutional provisions has also been amended to conform to the new provisions in the event they are adopted.<sup>132</sup>

Another proposed amendment<sup>133</sup> would increase the constitutional limitation on the amount which can be appropriated by the legislature for administration and collection of the severance tax from \$250,000 to \$500,000 per year.

#### TAX ON GATHERING OF NATURAL GAS<sup>134</sup>

In the tax structure affecting the natural gas industry there presently is in force a severance tax of three-tenths of one cent per one thousand cubic feet required of the owner or producer,<sup>135</sup> a license tax of one per cent of gross sales on sellers of natural gas,<sup>136</sup> and natural gas pipe-lines.<sup>137</sup> The present tax on gathering gas rests on none of these participants in the industry but rather on the middleman who buys the gas from the producer at the well and sells it to persons engaged in delivering the gas to the consumer. The preamble to the act states that the tax is imposed for a limited time only<sup>138</sup> for the purpose of raising funds for the Department of Public Welfare to do the following: (1) liquidate indebtedness left by the previous administration, (2) meet the financial emergency created by the repeal of certain taxes, and (3) carry on the public assistance program.

The statute creates an excise or privilege tax of one-half cent per one thousand cubic feet of natural gas gathered, levied on persons engaged in the business.<sup>139</sup> Gas used for recycling, field operations, or carbon black manufacture, and gas legally flared, need not be included in the quantity to be determined for the purpose of calculating the tax. The business of gathering gas is defined as follows:

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132. La. Act 299 of 1940, amending La. Act 24 of 1935 (2 E.S.) § 3 [Dart's Stats. (1939) § 8524].

133. La. Act 380 of 1940, proposing an amendment to La. Const. of 1921, Art. XII, § 14(2). The limitation was previously provided in Art. XII, § 17. The statutory limitation continues as \$172,000 per annum. La. Act 24 of 1935 (2 E.S.) § 3, as amended by La. Act 403 of 1938, § 1 [Dart's Stats. (1939) § 8524].

134. La. Act 153 of 1940.

135. La. Act 24 of 1935 (2 E.S.) § 2, as amended by La. Act 119 of 1936, § 1 [Dart's Stats. (1939) § 8523].

136. La. Act 203 of 1936, § 1 [Dart's Stats. (1939) § 8674.13].

137. La. Act 92 of 1936, § 1 [Dart's Stats. (1939) § 8733.5].

138. Two years from the effective date of the act. La. Act 153 of 1940, § 4.

139. La. Act 153 of 1940, § 1.

“‘Gathering gas,’ for the purposes of this Act, shall mean the first taking or acquiring of custody, possession, title or control of gas produced in Louisiana for transmission through a pipe line, after the severance of such gas, and after the passage of such gas through any separator, drip, trap or meter that may be located at or near the well; provided that in the case of gas containing gasoline or liquid hydrocarbons that are removed or extracted in commercial quantities at a plant by scrubbing, absorption, compression, or any similar process, the term ‘gathering gas’ shall mean the first taking or acquiring of custody, possession, title, or control of such gas for transmission through a pipe line after such gas has passed through the outlet of such plant.”<sup>140</sup>

From this definition it is apparent that the tax is directed at gas which is to be distributed for commercial and domestic consumption.

Persons liable for the tax are required to make quarterly returns which are due thirty days after the end of each quarter.<sup>141</sup> Proceedings for the collection of unpaid taxes may take the form of enforcement of a recorded tax lien with sale of sufficient property to satisfy the lien, or by rule to show cause.<sup>142</sup> The latter procedure is a duplicate of the method provided for enforcement of the general license tax.<sup>143</sup>

Money collected under the act is to go into the General Fund. Parishes and municipalities are expressly forbidden from levying any similar tax.<sup>144</sup>

#### MOTOR FUEL TAXES

New Orleans motorists were probably pleased to learn of the adoption of the joint resolution<sup>145</sup> proposing to repeal the constitutional authority of the city to levy a gasoline tax. However, the two cent per gallon tax which the city has been collecting thereunder since 1936 has been the chief source of funds for the extended program of city improvements carried on in recent years, and ad valorem taxes presumably will now be relied upon

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140. *Ibid.*

141. *Id.* at § 4.

142. *Id.* at §§ 5, 6.

143. La. Act 15 of 1934 (3 E.S.) § 49 [Dart's Stats. (1939) § 8638] as amended by La. Act 125 of 1940, § 1.

144. La. Act 153 of 1940, § 13.

145. La. Act 395 of 1940, proposing to amend La. Const. of 1921, Art. XIV, § 24.1.

to carry on this work. The city will continue to receive one cent of the statutory two cent gasoline tax levied<sup>146</sup> by the state and apportioned back to the parishes on the basis of collections. In the course of revising the tax structure, this tax, the so-called Parish Motor Fuel Tax Act, was amended to the extent that one cent of the tax which was formerly dedicated to the Department of Public Welfare now will go into the General Highway Fund.<sup>147</sup>

Two additional constitutional amendments to be submitted to the electorate involve the levying and disposition of gasoline taxes. Article VI of the Louisiana Constitution presently provides that there shall be levied for the General Highway Fund a tax not to exceed four cents per gallon on motor fuels.<sup>148</sup> A proposed amendment would add a paragraph immediately following this provision authorizing an additional tax not to exceed one cent per gallon on such motor fuels.<sup>149</sup> With the statutory imposition of this additional one cent tax the total levy per gallon of motor fuel would be brought up to eight cents.<sup>150</sup>

A second constitutional amendment<sup>151</sup> would authorize the issuance of additional bonds to the amount of ten million dollars for highway construction and maintenance and for sponsors' funds in connection with WPA projects. It is proposed that the bonds be funded out of the four cent tax on motor fuels presently authorized by the constitution. Bonds already funded out of this tax, including those authorized by Act 39 of the Regular Session of 1938, will have precedence over the proposed issue, and the express dedication of one cent of the tax to bonds issued under Act 219 of 1928 is preserved. The new subsection duplicates the

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146. La. Act 87 of 1936, § 5, as amended by La. Act 19 of 1938, § 2 [Dart's Stats. (1939) § 8835.18].

147. La. Act 141 of 1940, amending La. Act 87 of 1936, § 5 [Dart's Stats. (1939) § 8835.18]. The authority for this tax was provided in 1936 by an amendment adding Section 7 to La. Const. of 1921, Art. XVIII, La. Act 61 of 1936. The constitutional purpose is there stated to be to provide funds for social welfare. Is this limitation violated by diverting the tax from the Department of Public Welfare to the General Highway Fund?

148. La. Const. of 1921, Art. VI, § 22(a), carried into statutory effect by La. Act 6 of 1928 (E.S.) [Dart's Stats. (1939) §§ 8806-8826]. Under the new state budgetary plan, appropriation for collection of this tax will no longer be made out of the General Highway Fund. La. Act 173 of 1940 repealed Section 12 of Act 6 of 1928 (E.S.) [Dart's Stats. (1939) § 8824].

149. La. Act 373 of 1940, proposing to amend La. Const. of 1921, Art. VI, § 22(a).

150. Seven cents per gallon is now imposed. La. Act 6 of 1928 (E.S.) § 1, as last amended by La. Act 34 of 1934, § 2 [Dart's Stats. (1939) § 8806], provided a four cent tax; La. Act 87 of 1936 [Dart's Stats. (1939) § 8835.14] imposes a two cent tax; La. Const. of 1921, Art. VI-A, a one cent tax.

151. La. Act 377 of 1940 proposes to amend La. Const. of 1921, Art. VI, by adding a new subsection 22(i).

language of the present subsection 22(h) of Article VI except in certain minor respects.

#### USE FUEL TAX ACT OF 1940<sup>152</sup>

The threat that untaxed butane gas and diesel oil might be widely adopted as a substitute fuel in propelling motor vehicles, hastened the enactment of a comprehensive taxing statute to cope with the problem of tax avoidance thus raised. Merely changing the definition of motor fuel to include these fuels, while seemingly the simple solution, was recognized as inadequate, since butane gas and diesel oil are not distributed through ordinary channels. Hence the present tax collection system would not suffice. A complete taxing act was required containing requisite provisions for the specialized collection problem presented.

A tax of seven cents per gallon is levied on all fuels used to propel motor vehicles on the highways, except those coming within the definition of motor fuel as presently used in the state and parish taxing acts.<sup>153</sup> Users of the fuel are required to obtain a permit<sup>154</sup> and to file monthly reports on forms prescribed by the Director of Revenue. Such reports are to be accompanied by monthly remittances of taxes due.<sup>155</sup> In the event the Director deems it necessary, users of these fuels must file a bond in an amount not to exceed ten thousand dollars with a surety company approved by the Director.<sup>156</sup> Comprehensive provisions are included in the law enabling the Director to compute and determine the tax in the event that he is not satisfied with reports submitted by users.<sup>157</sup> Administrative provisions are included to facilitate collection from delinquent taxpayers,<sup>158</sup> and penalties are provided for violation of the taxing statute.<sup>159</sup> Imposition of this new tax will probably discourage users of ordinary motor fuel from making the mechanical changes in their vehicles neces-

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152. La. Act 244 of 1940.

153. "The term 'motor fuel' is defined as meaning all volatile gas-generating liquids having a flash point below 110 degrees F." La. Act 6 of 1928 (E.S.) § 1, as last amended by La. Act 34 of 1936, § 2 [Dart's Stats. (1939) § 8806]; La. Act 87 of 1936, § 1 [Dart's Stats. (1939) § 8835.14].

154. La. Act 244 of 1940, §§ 4, 5.

155. Id. at §§ 6, 8.

156. Id. at § 7.

157. Id. at §§ 21, 22.

158. Id. at §§ 14, 15, 16, 17, 18, 19.

159. Id. at §§ 27, 28, 29. Section 27 provides that it shall be unlawful to place fuel in a vehicle tank or cause fuel to be placed in a vehicle tank unless a valid use fuel tax permit is held by the owner of the vehicle.

sary in order to burn butane gas or diesel oil, inasmuch as a substantial part of the economy thus affected would have rested in the avoidance of fuel taxes. The economies may still be effected by operators where the motor vehicles are primarily used off the highways as in the case of farm trucks and tractors. This follows from the definition of a motor vehicle as a self-propelled vehicle operated or suitable for operation on the highway and excepting vehicles used on stationary rails or in agricultural pursuits and only incidentally operated upon the highway.<sup>160</sup>

#### REGISTRATION OF MOTOR VEHICLES<sup>161</sup>

In line with the rationalization of the administrative structure of the state government, the function of collecting motor vehicle registration fees has been transferred from the office of the Secretary of State to the Department of Revenue.<sup>162</sup> Other more comprehensive amendments to the Motor Vehicle Registration Tax statute were necessary in order to put into effect Governor Jones' campaign promise of three dollar automobile licenses and to eliminate from the computation of the registration fee the troublesome "horse-power" distinctions. An inconsistency as to delinquent dates which existed under the old law is also removed. Section 13 of the old law designated December thirty-first as the expiration date of all registrations but in the event of delinquency in obtaining a license for the following year, such delinquency was penalized only from February first of the subsequent year. All licenses not obtained by February sixth of the subsequent year are now declared to be delinquent as of January first.<sup>163</sup>

The summary powers of the Department of State Police and the Motor Vehicle Commissioner to rescind and cancel registrations upon their own determinations have been repealed. The power to require inspections remains, but violations of the act

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160. *Id.* at § 2(a).

161. *Dart's Stats.* (1939) §§ 5155-5193.12.

162. La. Acts 214, 344 of 1940 repealing La. Act 111 of 1921 (E.S.) [*Dart's Stats.* (1939) §§ 5190-5193]. This act, designating the Secretary of State as Motor Vehicle Commissioner, was inadvertently repealed twice by the 1940 legislature and the superfluous repeal was overlooked in the vetoing of needless bills. La. Act 346 of 1940 amends La. Act 236 of 1938, §§ 1(v), 11(b) [*Dart's Stats.* (1939) §§ 5198(v), 5255(b)]; La. Act 349 of 1940 amends La. Act 285 of 1938, §§ 1(z), 2 [*Dart's Stats.* (1939) §§ 5155(z), 5156]. These statutes designated the Director of the Department of Revenue as the Motor Vehicle Commissioner.

163. La. Act 191 of 1940, § 1, amending La. Act 285 of 1938, § 13 [*Dart's Stats.* (1939) § 5167].

are now punishable through the ordinary channels of criminal justice.<sup>164</sup> A maximum fine of one hundred dollars or imprisonment for thirty days has been fixed in the law. Under the terms of the old law no maximum fine was set, and imprisonment up to sixty days was possible for violations. The chauffeur's license fee which was formerly remitted directly to the Department of State Police now must be paid into the State Treasury.<sup>165</sup> Expenditures of this department must now necessarily come under the watchful eye of the Budget Division.

The classes into which vehicles are divided for purposes of assessing the registration fee are retained unchanged in the amended law but with the addition of a fourteenth class for vehicles used exclusively for hauling gravel in state highway maintenance work.<sup>166</sup> Vehicles in Class 1, embracing passenger cars, are taxed at a flat fee of three dollars without consideration as to horse-power rating. To the average taxpayer this is by far the most important change.<sup>167</sup> The three dollars represents a minimum and there can be no reduction below this amount for non-use of a vehicle during part of a taxable year.<sup>168</sup> Motorcycles, which were formerly assessed at a flat fee of five dollars, are now assessed at the same three dollar rate as vehicles in Class 1.

In the classes embracing trucks, trailers, and truck-tractors the registration fees are now assessed on the basis of net load actually carried without regard to the horse-power rating of the vehicle and without regard to whether it is equipped with solid or pneumatic tires. Farm tractors continue to be exempted when used for farm purposes only.<sup>169</sup> Farm trucks and semi-trailers

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164. La. Act 191 of 1940, §§ 2, 7, amending La. Act 285 of 1938, §§ 24, 33 [Dart's Stats. (1939) §§ 5178, 5187].

165. La. Act 346 of 1940, § 1, amending La. Act 286 of 1938, § 11(b) [Dart's Stats. (1939) § 5255].

166. La. Act 191 of 1940, § 3, amending La. Act 286 of 1938, § 25(d) [Dart's Stats. (1939) § 5179(d)].

167. This statutory change will not have the force of law until the constitutional amendment proposed in La. Act 373 of 1940 is adopted by the electorate. In addition to authorizing the imposition of a \$3.00 license fee on automobiles for private use and graded fees on other vehicles, this amendment eliminates the dedication of license collections in St. Tammany and Orleans parishes to payment for bridges and highways authorized under La. Act 18 of 1918. All license fees collected in the parishes of Orleans, Jefferson, St. John the Baptist, St. Charles, Tangipahoa, and St. Tammany are now dedicated to payment for bridges and highways authorized under Act 71 of 1936. (Ponchartrain bridge and highways adjacent thereto). The unamended section of the constitution provided for dedication of only part of the licenses to these purposes. La. Const. of 1921, Art. VI, § 22(e).

168. La. Act 191 of 1940, § 3, adds subsection (u) to La. Act 285 of 1938, § 25 [Dart's Stats. (1939) § 5179].

169. La. Act 191 of 1940, § 3, reenacts La. Act 285 of 1938, § 25(1) [Dart's Stats. (1939) § 5179(1)].



continue to be taxed according to capacity. Trucks used in hauling products from farm to factory or other processing point are now accorded the same special treatment accorded to trucks engaged in hauling products of the forest.<sup>170</sup> Provision is made for a pro rata reduction in the event a vehicle is withdrawn from certain commercial uses and used exclusively for transportation of the owner's goods.<sup>171</sup>

A new subdivision has been added to Section 15<sup>172</sup> governing registration of motor vehicles by manufacturers or dealers. Automobile transports making deliveries in the state or passing through the state to make deliveries elsewhere must be licensed, and operators are required to obtain a drive-away-in-transit license, paying an annual fee of one hundred dollars therefor. Plates bearing a distinguishing number are issued to such drivers and must be attached to all vehicles in transit. Where the transporting is done by means of towing, such operators must file with the Vehicle Commissioner a public liability and property damage insurance policy in the conventional amounts of ten thousand dollars and five thousand dollars respectively.

#### STATE ANNUAL LEVY<sup>173</sup>

The state annual levy remains at a total of 5.25 mills. The portion of the levy going to the State Bond and Interest Fund, however, is now 1.47 mills instead of 1.15 mills. This was accomplished without increasing the total millage by eliminating the .32 mill levy for the "General Engineer Fund" and adding this .32 mills to the State Bond and Interest Fund levy.<sup>174</sup> That the levy is to pay the interest on specific bond issues is now expressly stated.<sup>175</sup> The requirement that all revenues collected from the levy in excess of \$700,000 must be transferred to the General Fund has been modified so as to provide that the excess remaining after all payments of principal and interest have been met shall be transferred to the General Fund.

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170. La. Act 191 of 1940, § 3, amending La. Act 285 of 1938, § 25(o) [Dart's Stats. (1939) § 5179(o)].

171. La. Act 191 of 1940, § 3, amending La. Act 285 of 1938, § 25(p) [Dart's Stats. (1939) § 5179(p)].

172. La. Act 285 of 1938, § 15 [Dart's Stats. (1939) § 5169], as added by La. Act 306 of 1940.

173. La. Act 109 of 1921 (E.S.) [Dart's Stats. (1939) §§ 8292-8300].

174. La. Act 109 of 1921, § 4 (E.S.) [Dart's Stats. (1939) § 8295], as amended by La. Act 138 of 1940, § 1.

175. Reference to the serial gold bonds of 1914 has been omitted from the amended paragraph, since refunding of this issue was authorized by La. Act 3 of 1938.

A proposed amendment<sup>176</sup> to Article IV of the constitution would add a new section thereto which would authorize the Board of Liquidation to fund into bonds such portion of the surplus from the State Bond and Interest Tax Fund levy as may be necessary to provide for certain emergency purposes. Those purposes are stated to be (1) to pay indebtedness to Fiscal Agent Banks incurred prior to May 15, 1940; (2) to pay past due pensions to Confederate Veterans; (3) to return to the General Highway Fund a sum transferred to the Public School Fund by the Board of Liquidation on March 13, 1940. The principal amount of such bonds is limited to seven million dollars and they are to be issued under the supervision of the Board of Liquidation of the State Debt.

#### PROPERTY TAX RELIEF FUND<sup>177</sup>

Under the original statute creating the Property Tax Relief Fund the disposition of the entire contents of the fund was carefully stipulated therein. The state and local funds, together with the State School Fund, which had suffered as a result of the two thousand dollars homestead tax exemption<sup>178</sup> had first claim on the Relief Fund for reimbursement. The statute provided the detailed apportionment in which this reimbursement should be made, and also provided detailed disposition of any excess in the Property Tax Relief Fund. Such excess was to be returned to local authorities to be used in paying principal and interest due on road bonds. The 1940 extra session of the legislature took the first step toward injecting more flexibility into the disposition of the fund by providing that after the state and local tax funds and the State School Fund had been reimbursed, the residue of the fund should be disbursed in accordance with the resolutions of the Board of Liquidation of the State Debt.<sup>179</sup> In the amended version of the statute as enacted by the regular session of 1940,<sup>180</sup> the administration of the fund emerges completely streamlined. Section 3 now provides that reimbursements shall be made to state and local tax funds (excluding the State School Fund) on the basis of reports submitted by the parish assessors and the

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176. La. Act 383 of 1940 proposing to add Section 12(a) to La. Const. of 1921, Art. IV.

177. La. Act 54 of 1934 [Dart's Stats. (1939) §§ 8506.1-8506.5].

178. La. Const. of 1921, Art. XI, §§ 1-4.

179. La. Act 11 of 1940 (E.S.), amending La. Act 54 of 1934, § 3 [Dart's Stats. (1939) § 8506.3].

180. La. Act 122 of 1940, § 1, amending La. Act 54 of 1934, § 3 [Dart's Stats. (1939) § 8506.3].

State Tax Commission. The State Treasurer is now authorized, with the approval of the Governor, to transfer such amounts from the Property Tax Relief Fund to the General Fund as he may deem in excess of requirements for reimbursing the funds indicated above for losses due to the homestead tax exemption. No other regulation of the disposition of the Relief Fund is provided.

#### PUBLIC UTILITIES LICENSE TAX<sup>181</sup>

No extensive alterations in the public utilities license tax were made during the 1940 session. The only changes effected were brought about by deleting from the law those provisions which sought to levy a tax on the gross receipts from interstate business passing through Louisiana.<sup>182</sup>

The purpose of the law is now stated to be that of levying a license tax on intrastate public utility business.<sup>183</sup> Gross receipts derived from business conducted upon the navigable waters of the United States continue to be exempt from the tax. The provision contained in the old law to make the taxing statute self-extending in the event Congress should extend the power of the state to subject-matter now exempt has been deleted.<sup>184</sup> Provision is made for the outright repeal of two prior acts<sup>185</sup> which levied a tax on gross receipts of public utilities, saving however any tax on intrastate business due thereunder.<sup>186</sup>

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in the latter act, even though a saving clause was mentioned in the title of

181. La. Act 26 of 1935 (2 E.S.) [Dart's Stats. (1939) §§ 8805.1-8805.20].

182. La. Act 116 of 1940, §§ 1-4, amending La. Act 26 of 1935 (2 E.S.) §§ 1, 2, 3, 5, 18 [Dart's Stats. (1939) §§ 8805.1, 8805.2, 8805.3, 8805.5, 8805.18]. The tax as levied on the gross receipts from interstate and intrastate railroad traffic has been held unconstitutional as imposing a burden upon interstate commerce. *Yazoo & M. V. R.R. v. Grosjean*, 16 Fed. Supp. 276 (E.D. La. 1936). Cf. *Maine v. Grand Trunk Ry.*, 142 U.S. 217, 12 S.Ct. 121, 35 L.Ed. 994 (1891); *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 58 S.Ct. 546, 82 L.Ed. 823 (1938); *J. D. Adams Mfg. Co. v. Storen*, 304 U.S. 307, 58 S.Ct. 913, 82 L.Ed. 1936 (1938).

183. La. Act 116 of 1940, § 1, amending La. Act 26 of 1935 (2 E.S.) §§ 1, 2 [Dart's Stats. (1939) §§ 8805.1, 8805.2].

184. La. Act 26 of 1935 (2 E.S.) § 3 [Dart's Stats. (1939) § 8805.3].

185. La. Act 116 of 1940, § 4, amending La. Act 26 of 1935 (2 E.S.) § 18 [Dart's Stats. (1939) § 8805.18]. Under the unamended section two prior laws remained in full force and effect for the collection of all taxes and penalties due thereunder.

186. The status of the tax due on gross receipts from interstate business under the act in effect since 1935 is not clear. Taxes due are not specifically waived. While the tax has been declared unconstitutional by a federal district court, the issue is still unsettled in the state courts. Suits are now pending in the district courts. In the case of *Fournet & Sierrax v. Grosjean*, 191 La. 186, 184 So. 719 (1939) the court held that no proceedings could be brought under the Luxury Tax Law (La. Act 75 of 1936) after its repeal in the Public Welfare Revenue Act (La. Act 2 of 1938) in the absence of a saving clause

## CONSTITUTIONAL TAX EXEMPTIONS

The already lengthy list of constitutional tax exemptions<sup>187</sup> will be further extended if a number of amendments proposed by the legislature are adopted at the November elections.

Act 398 of 1940<sup>188</sup> proposes to exempt the property of a Grand Lodge, Grove, or Council where such property is used for the purpose of raising funds for relief of distressed members of the order or their families.

Act 267 provides partial exemption for mutual associations furnishing hospital care, without resort to a constitutional amendment. The act declares such associations to be charitable and beneficial institutions and within the term "places devoted to charitable undertakings" which are presently exempted from taxation.<sup>189</sup> Only the receipts, surplus and reserves of such associations are exempted; real estate and office equipment owned are still subject to tax. The exemption provided can be obtained only after payment of an annual license fee of \$250. A certificate evidencing such exemption will be issued upon application by the association. Such application must be accompanied by a copy of the charter and by-laws, together with an affidavit signed by the president and secretary setting forth the names of the directors and the non-profit hospital represented.

Act 389 of 1940<sup>190</sup> proposes to exempt from taxation for 1942 and subsequent years shares of stock in banks doing business in Louisiana and which are chartered under either its laws or the laws of the United States. The amendment is subject to criticism in that the limitation on the exempt share value is rather awkwardly constructed and results in exempting a value that can never be attained by the shares affected. Shares are exempted to the extent of value represented by surplus, undivided profits, and reserves (but not exceeding the par value of the common capital) and the assessed value of the assets of the bank. This limitation fails to take into consideration the fact that the value behind *both* the par value of the shares and the surplus, un-

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that act. But see Succession of Popp, 146 La. 464, 469-471, 83 So. 765, 767 (1921) where it was held that an amendment lowering the inheritance tax after the death of the donor could not affect a tax due on the legacy in question, since this would contravene the constitutional limitation on legislation against the release of obligation to the state.

187. La. Const. of 1921, Art. X, § 4.

188. Amending La. Const. of 1921, Art. X, § 4(2).

189. La. Const. of 1921, Art. X, § 4(1).

190. Amending La. Const. of 1921, Art. X, § 4(3).

divided profits, and reserves consists of the assessed value of the assets of the bank. A simpler method would have been to exempt the book value of the shares or, in other terms, the amount remaining after deducting the liabilities of the bank from its assets. Until the exemption takes effect in 1942 the stock continues to be taxable under the terms of Act 14 of 1917 as amended.<sup>191</sup>

Exemption of certain property situated on the Navigation Canal in New Orleans will be extended for four additional years by the adoption of Act 399 of 1940.<sup>192</sup> This same act also extends for an additional three years the power of the State Board of Commerce and Industry or its successor to enter into ten-year tax exemption agreements with incoming new industry.

To facilitate the development of Electric Cooperatives organized pursuant to the Rural Electrification Act of Congress, Act 376 of 1940<sup>193</sup> proposes to exempt the distribution systems of such cooperatives from taxation.

Under the terms of Act 382 of 1940, tax concessions to industries engaged in the utilization of waste products will be possible through the device of lower property valuation for assessment purposes rather than through outright tax exemption. The proposed amendment would authorize the legislature to classify such industries as separate classes for purposes of taxation and to fix the percentage of actual cash value which will constitute the assessed valuation. Such assessed valuation may not be less than twenty-five per cent of the actual cash value. This minimum valuation is actually granted to these industries by the legisla-

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191. A rather obscure situation results from the reenactment of two sections of the act presently governing the assessment of bank stock. La. Act 14 of 1917, §§ 2, 4 [Dart's Stats. (1939) §§ 865, 867], as amended by La. Act 260 of 1940. Prior to amendments in 1938 (La. Act 172 of 1938), Section 2 provided that bank stock should be assessed at actual value and Section 4 provided that such value should be that reported by the bank on its statement to the Comptroller of the Currency. The 1938 amendments, however, deleted the requirement as to assessment at actual value and provided that the value should be fixed by the Louisiana Tax Commission. At the regular legislative session of 1940 the statute was amended and reenacted in the precise form in which it emerged after the 1938 amendments and it is to become operative upon ratification of the constitutional amendment proposed in Act 389 of 1940. No mention of the 1938 amendments was made in the title of the act, which affords support for the view that the amendments had been overlooked, but for the fact that this version contains the very amendments adopted in 1938. *Quaere* whether the original sections as amended prior to 1938 had not been merged in the amended sections in 1938 and hence were incapable of reenactment. See *Mouton v. City of Lafayette*, 130 La. 1063, 58 So. 883 (1912); *State v. Walters*, 135 La. 1070, 66 So. 364 (1914).

192. Amending La. Const. of 1921, Art. X, § 4(6).

193. Adding to La. Const. of 1921, Art. X, § 4.

ture in Act 198 of 1940 which will carry into effect the constitutional amendment if the amendment is adopted. Act 198 defines in considerable detail the character of covered industries and limits the duration of the special classification to December 31, 1950.

#### TAX CHANGES AFFECTING PARISHES AND MUNICIPALITIES

In 1934 an extra legislative session effectively stripped the parish and municipal authorities of their most cherished power by imposing rigid state control over local taxation. Act 10 of the first extra session of 1934 provided:

“Section 1. No municipality or parish of this state shall impose, levy or collect any tax, license, or excise, of any character whatsoever, upon any property, business, occupation, vocation, profession, or upon the exercise of any right or privilege, or upon the performance of any act whatsoever, not taxed by the state.

“Section 2. No tax, license or excise of any character whatsoever, shall be imposed, levied or collected by any municipality or parish of this state without express and special legislative authority describing the tax, license, or excise to be imposed, levied and collected, and no tax, license, or excise shall be imposed, levied or collected under any police, implied or inherent powers of any municipality or parish.”

In 1940 a legislature pledged to restore “home rule” provided for the unqualified repeal of this statute.<sup>194</sup>

Another attempt was made by the 1940 legislature to clarify the procedure for review of property assessments in the Parish of Orleans.<sup>195</sup> Under the terms of Act 231 of 1920<sup>196</sup> there had been created for Orleans Parish a board of equalization composed of the mayor, the council, the president of the board of assessors, a member of the board of liquidation, a member of the sewerage water board, the president of the parish school board, and the assessor of the municipal district in which the property whose assessment was under review was located. In the parishes these boards of equalization were composed of three members, two of

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194. La. Act 70 of 1940 repeals La. Act 10 of 1934 (E.S.) [Dart's Stats. (1939) §§ 8648.1-8648.3].

195. La. Act 135 of 1940 amends La. Act 170 of 1898, § 23; La. Act 136 of 1940 amends La. Act 10 of 1920, §§ 4, 5.

196. La. Act 231 of 1920, §§ 1-3 [Dart's Stats. (1939) §§ 8381-8383].

whom were selected by the police jury and one by the Louisiana Tax Commission. In a subsequent decision the Supreme Court held that the duties assigned to the boards were not applicable to the Parish of Orleans.<sup>197</sup> As a result the duties of equalization continued to be exercised by the Committee on Assessment appointed by the New Orleans Commission Council under the terms of Act 170 of 1898.<sup>198</sup> By Act 135 of 1940, however, the composition of the Board of Equalization for New Orleans created by Act 231 of 1920 is substituted for the appointive Committee on Assessment provided in Act 170 of 1898 and is designated a Board of Review.<sup>199</sup> Act 136 of 1940 further vests this Board of Reviewers with the work assigned to the Committee on Assessments in the Parish of Orleans by Act 170 of 1898. These three acts, considered together, seem to accomplish the end envisaged, namely to transfer the review of assessments to a board composed as contemplated in Act 231 of 1920.

In the matter of making assessments on property in general, the Louisiana Tax Commission originates the assessment for state purposes, but assessors are left free to make their assessments for local purposes at any percentage of the state valuation they may deem fit, provided that the local assessment does not fall below twenty-five per cent of that valuation.<sup>200</sup> On public utilities and chain stores, however, the old law provided that the Tax Commission's valuation and assessment was binding for all purposes.<sup>201</sup> The amended law continues this requirement for public utility assessments. Chain stores, however, are no longer included in the proviso, with the result that valuation of chain store properties for local assessments again falls within the jurisdiction of the local assessor.<sup>202</sup>

The control which the Louisiana Tax Commission has exercised over assessment matters in the Parish of Orleans was relaxed in another important respect. In recent years the President of the Board of Assessors has been appointed with the approval of the Tax Commission and has been subject to removal by the Commission at all times.<sup>203</sup> Likewise, appointment of deputies and

197. *State v. Louisiana Tax Commission*, 171 La. 211, 130 So. 46 (1930).

198. La. Act 170 of 1898, § 23 [Dart's Stats. (1939) § 8395].

199. La. Act 231 of 1920 [Dart's Stats. (1939) §§ 8381-8394] now useless, is repealed by La. Act 134 of 1940.

200. La. Act 140 of 1916, § 10(2) as last amended by La. Act 161 of 1938, § 1 [Dart's Stats. (1939) § 8321(2)].

201. *Ibid.*

202. *Ibid.* as amended by La. Act 236 of 1940.

203. La. Act 170 of 1898, § 3, as last amended by La. Act 18 of 1934 (3 E.S.) § 1 [Dart's Stats. (1939) § 8208].

clerks by the assessors had to run the gauntlet of Commission scrutiny.<sup>204</sup> Under the terms of the newly amended law<sup>205</sup> the Board of Assessors elects its own officers, and each assessor appoints his own clerical force without the assistance of the Commission.

The collection of transfer taxes levied by the state has been centralized in the office of the Director of the Department of Revenue under general authority granted in the Administrative Code of 1940.<sup>206</sup> The provision for appointing local attorneys to advise and assist the tax collectors remains undisturbed.<sup>207</sup> In the Parish of Orleans, however, the amount of the fees which such an appointee may receive for his services has been reduced by half.<sup>208</sup> Fees on taxes up to \$150,000 are reduced from four per cent to two per cent and on taxes in excess of this amount from two per cent to one per cent. The higher fees continue to be allowed to attorneys in other parishes, where transfer taxes less frequently reach substantial amounts.

Authority has been provided<sup>209</sup> sheriffs to designate deputies in charge of tax collections. The sheriffs are further authorized to require such deputies to furnish a surety bond and to defray the expense thereof out of the sheriff's expense fund. Such bond must exceed by one thousand dollars the amount of the taxes levied in the parish but it may not exceed a maximum of twenty thousand dollars.

The proceeds of the amusement tax for emergency welfare work which the city of New Orleans is authorized to levy under Act 212 of 1938 need no longer be deposited with the State Treasurer under the terms of the amended version of Section 5 of this act.<sup>210</sup> The section now provides simply that the funds shall be used solely for relief and that such funds shall be withdrawn only by the parish Director of Public Welfare.

Parish police juries are authorized to defer the time at which taxes shall become delinquent and may postpone the imposition of penalties therefor until October 15, 1940, by virtue of Senate Concurrent Resolution Number 1.<sup>211</sup> The act is deemed to take

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204. *Ibid.*

205. *Ibid.* as amended by La. Act 165 of 1940.

206. Carried out by executive order under La. Act 47 of 1940, tit. IV, § 2.

207. La. Act 127 of 1921 (E.S.) § 22 [Dart's Stats. (1939) § 8577].

208. *Ibid.* as amended by La. Act 323 of 1940.

209. La. Act 131 of 1940.

210. La. Act 212 of 1938, § 5 [Dart's Stats. (1939) § 8787.14] as amended by La. Act 205 of 1940.

211. La. Act 400 of 1940.



effect upon the filing with the State Tax Commission of a copy of a police jury resolution that an emergency exists in the parish. No officer charged with the duty of collection may proceed to enforce such collection during the period of extension.

Louisiana this year adopted the Uniform Federal Tax Lien Registration Act.<sup>212</sup> This act provides that parish recorders shall keep a separate alphabetical Federal Tax Lien Index and shall keep a file of Federal Tax Lien Notices to which the certificates of discharge must be attached when they are subsequently filed with the recorder.

#### UNIFORM SYSTEM OF PROCEDURE FOR THE ADMINISTRATION OF STATE TAXES<sup>213</sup>

As a part of the general reorganization of Louisiana administrative procedure, the 1940 legislature enacted a comprehensive statute authorizing an overhauling of the organization of the Department of Revenue, and providing a detailed set of procedures for handling all tax controversies. The procedures set out in the statute are applicable to all taxes now in effect or hereafter levied except insofar as a procedure is provided by the constitution.<sup>214</sup> The statute does not purport, however, to repeal all statutory procedures provided in the various taxing acts themselves. Section 36 stipulates that the taxpayer is not deprived of any remedy which he previously had, nor is the Director of the Department of Revenue deprived of any remedy for the enforcement of a tax which is provided specifically in a taxing statute. Where there are inconsistencies between the new set of procedures and those presently in use, the new will take precedence.<sup>215</sup> The Director is authorized to make such changes within the department as will effect the purposes of the act. Specifically, he may reallocate functions between divisions, re-route the flow of work, prepare practice instructions for the guidance of those concerned and in general may coordinate the efforts of the staff in carrying out the plan of organization provided.<sup>216</sup>

Twelve sections of the new statute are devoted to defining the status of a tax as a debt and lien, to prescribing security to be given for tax payment, interest on delinquent taxes, penalties,

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212. La. Act 99 of 1940.

213. La. Act 265 of 1940.

214. *Id.* at § 1.

215. La. Act 265 of 1940, § 37.

216. *Id.* at § 2.

and deficiency and jeopardy assessments.<sup>217</sup> Section 7 provides indirectly for the prescription of taxes by providing for the arbitrary assessment of a tax by the Director within six years from the last date on which a tax return could have been filed without penalty.<sup>218</sup> Provision is made in Section 13 for the certification of unpaid taxes to a clerk of court and for entry upon the docket as a judgment with all accompanying rights, but without prejudice to the taxpayer's right of appeal. The Director is authorized to release such liens upon the posting of security and the payment of a one dollar fee.<sup>219</sup> Authority is vested in the Director to determine whether tax payments are to be refunded or deposits returned. The Director may authorize the Controller to issue warrants therefor.<sup>220</sup>

The administrative remedies to be pursued by the taxpayer and the powers of the Director in connection therewith are set out in some nine sections of the statute.<sup>221</sup> An aggrieved taxpayer may file a written protest setting forth the basis for his grievance and may request a hearing from the Director. When requested, granting such hearing is mandatory on the part of the Director.<sup>222</sup> In connection with hearings, the Director is empowered to administer oaths and examine under oath any taxpayer, employees of a taxpayer, or other witnesses summoned to the hearing.<sup>223</sup> The Director and his deputies are vested with subpoena power<sup>224</sup> and, in the event that a witness subpoenaed fails to appear, application may be made to a district court and an order obtained directing such witness to show cause within not less than two nor more than ten days why he should not obey such subpoena. In the event the order of the court is that the subpoena should be obeyed, the witness may refuse further only at the risk of being held in contempt of court. The same fees are provided for witnesses summoned to such hearings as are provided for witnesses in the district courts. The subpoena power extends also to the summoning of any books or records needful to the hearing. In addition, the Director or his deputies are au-

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217. *Id.* at §§ 3-14.

218. No provision has been made, however, for amending La. Const. of 1921, Art. XIX, § 19, which provides a three year prescription on all taxes and licenses except real property taxes. Until such an amendment is adopted, the assessment here provided must be made within the three year period.

219. La. Act 265 of 1940, § 14.

220. *Id.* at §§ 15-18.

221. *Id.* at §§ 19-25, 31-32.

222. *Id.* at § 19.

223. *Id.* at § 22.

224. *Id.* at §§ 23-24.

thorized to make any investigation necessary in the administration of the statute and for this purpose he may enter upon premises and examine books and records or other property of the taxpayer.<sup>225</sup> The Director is further authorized to make and enforce such rules as may be necessary in connection with hearings as well as in the administration of the statute generally.<sup>226</sup> Notice of hearings may be served either personally or by mail. In the event service is by mail, mailing of the notice is presumptive evidence of its receipt by the person to whom it was addressed.<sup>227</sup>

A taxpayer who is not satisfied with the decision of the Director is given the right to appeal to the Board of Revenue<sup>228</sup> under procedural rules to be prescribed by the Director. A judgment or order of the board may in turn be reviewed by certiorari from the state courts.

The Director is required to keep a record of all his official acts.<sup>229</sup> Returns and reports filed with the Director must be kept for a period of two years, and may then be destroyed at the discretion of the Director.<sup>230</sup> All papers in the files of the Director are deemed confidential but are accessible to certain state officials and officials of the United States.<sup>231</sup> The publication of statistics in such manner that individual returns are unidentifiable is permitted.<sup>232</sup>

Dissolutions, mergers, reorganizations or consolidations are forbidden under the statute until taxes due the state have been

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225. *Id.* at § 21.

226. *Id.* at § 20.

227. *Id.* at § 25. This section is subject to criticism in that it does not specify the time in which a taxpayer must appear for hearing after notice has been mailed. Neither is it specified that the notice must be sent by registered letter.

228. La. Act 265 of 1940, § 31. Under the terms of the Administrative Code of 1940, La. Act 47 of 1940, tit. IV, § 5, there is provided a Board of Revenue which is to take over the functions of the Board of Tax Appeals. It is further provided that the Board is to exercise the functions of the Louisiana Tax Commission at such time as the constitution is amended to provide for its abolition.

229. La. Act 265 of 1940, § 26.

230. *Id.* at § 29. Authorizing the destruction of returns and reports at the end of a two year period seems anomalous in view of the fact that taxes are not prescribed until the end of a three year period. (See note 7, *supra*). Furthermore, Section 7 of this act provides for the assessment of taxes within a six year period where no return or report has been filed. The same length of time permitted for uncovering tax delinquency by failure to file a return ought to be guaranteed for uncovering fraud or mistakes in returns actually filed.

231. La. Act 265 of 1940, §§ 27, 28(c), (d), (e).

232. *Id.* at § 28(b).

paid.<sup>233</sup> Filing a false return, failure to file a return, or false swearing in connection with any tax matter are made misdemeanors subject upon conviction to a one thousand dollar fine or imprisonment for not more than one year.<sup>234</sup> For jurisdictional purposes, failure to do any act required under the statute is deemed to be done in part at the office of the Director. Presumably this would eliminate the necessity for filing suits other than in the district court within whose jurisdiction the office of the Director is located.<sup>235</sup>

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233. *Id.* at § 30.

234. *Id.* at §§ 33, 34.

235. *Id.* at § 35.