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HOLIDAY TIDINGS FOR LOUISIANA TAXPAYERS:

THE LOUISIANA DEPARTMENT OF REVENUE ISSUES REVENUE INFORMATION BULLETINS ON INTEREST RATES APPLICABLE TO UNPAID TAXES AND REFUNDS

By: *Jesse R. Adams, III*

On December 19, 2008, in two separate Revenue Information Bulletins (“RIBs”), the Louisiana Department of Revenue set forth the applicable interest rates for unpaid taxes and refunds for 2009. Both rates are based on the judicial interest rate established by the Commissioner of the Office of Financial Institutions as provided for by statute. Based upon the economic downturn throughout the United States, both interest rates are at historic lows.

All interest rates in Louisiana are calculated under La. R.S. 13:4202 (B)(1) which establishes the “judicial interest” rate for all periods after January 1, 2002. The judicial interest rate is established by adding 3.25 percentage points to the “discount rate” established by the Federal Reserve Board of Governors on the first business day of October of each year. *See* La. R.S. 9:3500 (B)(1).

La. R.S. 47:1601 sets the interest rate that is to be collected on unpaid taxes. Historically, interest on unpaid taxes was charged at the flat rate of 15.00% per annum. Moreover, the Department was prohibited from compromising or reducing the amount of interest owed on any tax obligation. With the enactment of Act 2005, No. 454, the amount of interest owed on unpaid taxes was tied to the judicial interest rate provided for in La. R.S. 9:3500(B)(1). In § 1601(A)(2)(a), the amount of additional interest over and above the rate calculated in § 3500(B)(1) was originally set at the judicial interest rate *plus* an additional six percentage points for the period January 1, 2006 to December 31, 2006. For the period January 1, 2009 to December 31, 2009, three percentage points will be added to the judicial interest rate.

As announced in RIB No. 09-001, for the period January 1, 2009 through December 31, 2009, interest on unpaid taxes will be collected at the annual simple interest rate of **8.50%**. The annual interest rates on unpaid taxes since 1982 are set forth below:

January 1, 2008 to December 31, 2008....	12.50%
January 1, 2007 to December 31, 2007....	14.50%
January 1, 2006 to December 31, 2006....	14.00%
October 1, 1982 to December 31, 2005....	15.00%

Under La. R.S. 47:1624(B), interest on refunds and credits accrue at the judicial interest rate established under La. R.S. 13:4202. In RIB No. 09-002 (12/19/2008), the Department notified taxpayers that the interest rate on refunds and credits will be 5.50% for the period January 1, 2009 to December 31, 2009. This rate will apply not only to

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refunds and credits, but also to any amounts paid under protest that are ultimately refunded to the taxpayer. The interest rate on refunds and credits for the last few years are set forth below:

January 1, 2008 to December 31, 2008....	8.50%
January 1, 2007 to December 31, 2007....	9.50%
January 1, 2006 to December 31, 2006....	8.00%
January 1, 2005 to December 31, 2005....	6.00%

While everyone will agree that lower interest rates on unpaid taxes are good news, one ought to ask “What does it really mean to me?” Because of the unprecedented nominal difference between the interest rate on unpaid taxes and the interest rate paid on refunds, a taxpayer with an assessment in hand (whether formal or proposed) should carefully consider how best to use its cash. If the cash is better used in the taxpayer’s business, and management and the tax department can live with the 8.50% deficiency rate, the taxpayer should consider foregoing the option to pay the assessment under protest and file a refund suit and either allow the Department to file suit or file an appeal with the Board of Tax Appeals. While interest would accrue on any unpaid tax liabilities until the dispute was resolved (which could take some time), the taxpayer would have the use of the cash. Moreover, considering the current economic environment and the fiscal issues facing state and local governments, it may be difficult to get a refund of any payments under protest made to the state or one of the local taxing jurisdictions. Thus, if a taxpayer has a colorable claim that the assessment is in error, he or she should consider whether holding onto their cash is the best option.

Of course, many factors must be considered by each individual taxpayer when making decisions regarding whether to contest a potential tax liability, including, but not limited to, the assessment of penalties and attorneys’ fees and the risks and costs associated with litigation. Your tax professional or state and local tax attorney can assist in fully analyzing all of the options available and the pros and cons of each approach.

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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