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Corporate Taxes

Jones Walker Attorneys Expect More Challenges to New Louisiana Tax Laws

There could be more lawsuits in the pipeline challenging recent tax legislation in Louisiana, Jones Walker attorneys said during the firm's Oct. 8 state and local tax conference in Houston.

As taxpayers file their returns this year, there could be challenges to H.B. 624 and H.B. 629, said Matthew Mantle, a partner at Jones Walker. H.B. 624 reduces certain business tax exclusions and deductions by 28 percent and H.B. 629 reduces certain income and corporate franchise tax credits by 28 percent.

Both bills passed the Louisiana House with less than a two-thirds votes, the threshold for bills that increase revenue, Mantle said. Lawmakers have said these bills do not increase taxes, but critics contend that decreasing deductions and credits is essentially increasing taxes (2015 Weekly State Tax Report 25, 6/19/15).

NOLs. Regarding H.B. 624, there has been a lot of discussion about the treatment of net operating loss and how the law will apply to net operating losses, said Kimberly Robinson, a partner at Jones Walker, during the annual "Cooking with SALT" conference.

The Louisiana Department of Revenue recently released its form for calculating reductions, exclusions and deductions under the new law. The form allows taxpayers to claim 72 percent of NOLs, but it instructs that the original number for NOLs is limited to taxable income, Robinson said. Without that limit, a company could essentially wipe out 100 percent of its taxable income with the NOLs.

"That seems to be counter to what we've heard from the department previously," Mantle said. "They've seem to have gone back and forth on this."

Another law, House Concurrent Bill 8, already has been challenged by the Louisiana Chemical Association. HCR 8 scales back, for one year, a 1 percent sales and use tax break that businesses receive on their utility bills. It is being challenged because it wasn't passed with two-thirds vote, among other reasons.

A hearing on the merits is set for Dec. 7 in state district court. If the judge determines that the law is unconstitutional, it would go straight to the state Supreme Court for an appeals hearing. If the judge determines that the law is constitutional, the association would have to appeal first to a state appeals court.

"It could be possible that we won't get a non-appealable decision until after the law has expired,"

Robinson told Bloomberg BNA during a preview of the conference (see related story, this issue).

Texas Updates. In another session at the conference, Karye Barton, associate deputy comptroller, told seminar attendees that with new Comptroller Glenn Hegar and more money in its budget, the Texas Comptroller's Office is making changes.

Hegar has been emphasizing tax and tax collection in his discussions with taxpayers, Barton said.

"He's the first comptroller in a long time that's out there and talks about collecting tax as a core function of the agency," Barton said. "It's really translating into better morale at the agency, which is translating into better efficiency agency."

This year, through the advice of the Comptroller's Office, the Legislature eliminated eight taxes, ranging from a tax on fireworks to one on sulphur. While these taxes did generate income, they didn't generate a lot and required some administrative costs, Barton said.

The comptroller's office is also looking to improve its IT systems, Barton said. The current system was designed in the 1990s.

The Legislature also gave the Comptroller's Office more money to increase salaries in the department. The Office hopes this will help with retention of auditors: the turnover rate currently ranges from 20 to 25 percent.

The Comptroller's Office is trying to clear a backlog of private letter rulings and to turn those around more quickly.

"We're not in the position right now to go and change the way we address private letter rulings that taxpayers can rely on," Barton said. "As it sits now, we are going to stick with our letter rulings process, in the future to may address how we can change and loosen up the private rulings. That's a future issue."

Barton also discussed some sales tax issues specific to the energy industry, such as regarding compressors and motor vehicles. The tax treatment of compressors will depend on how they are used. And the Comptroller's Office is looking at its rules on motor vehicles and movable specialized equipment, and it will be auditing claims where motor vehicles are traveling between states and where the International Fuel Tax Agreement applies.

By NUSHIN HUQ

To contact the reporter on this story: Nushin Huq in Houston at nhuq@bna.com

To contact the editor responsible for this story: Ryan Tuck at rtuck@bna.com

More information on the conference is available at <http://www.cookingwithsaltlaw.com/2015/09/>

ready-set-hut-the-jw-salt-team-is-back-in-houston-for-the-7th-annual-state-local-tax-seminar/.