

CHAPTER IV

THE PUBLISHER AND THE LAW

Many aspects of Louisiana law directly relate to the various departments of a newspaper organization. Other laws of equal importance to the publisher pertain to the newspaper as a viable, ongoing business entity. In general, the laws that apply to ordinary businesses also apply to newspapers. The Louisiana tax laws covered in this chapter are included because of their particular relevance to newspapers and because their interpretation has prompted numerous inquiries by publishers.

TAXES ON NEWSPAPERS

Taxes levied specifically against newspapers may generally be constitutionally challenged as abridgements of the First Amendment guarantees of freedom of speech and expression. Legislation which tends to curtail these constitutional guarantees requires proof that the legislative need greatly outweighs the potential restraint on free speech and expression. The U.S. Supreme Court systematically strikes down legislation which poses a prior restraint on the freedom of the press.

The First and Fourteenth Amendments were intended to preclude Congress and the states from adopting any form of restraint upon printed publications or their circulation, including restraints by means of censorship, license and taxation. Further, these Amendments were intended to preclude any government action which might prevent the free and general discussion of public matters that are essential to prepare the citizenry for an intelligent exercise of their rights. *Grosjean v. American Press Co., Inc.*¹

In *Grosjean*, nine publishers of newspapers in Louisiana filed suit to enjoin the enforcement of a tax passed by the Louisiana Legislature. The Act stated:

That every person, firm, association or corporation, domestic or foreign, engaged in the business of selling, or making any charge for, advertising or for advertisements, whether printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication whatever having a circulation of more than 20,000 copies per week, or displayed and exhibited, or to be displayed and exhibited, by means of moving pictures, in the State of Louisiana, shall, in addition to all other taxes and licenses levied and assessed in this State, pay a license tax for the privilege of engaging in such business in this State of two percent (2%) of the gross receipts of such business.

The nine publishers represented thirteen newspapers in the state having a circulation of 20,000 or more copies a week. Failure to pay the tax constituted a misdemeanor and subjected the offender to a fine not exceeding \$500.00, or imprisonment not exceeding six months, or both, for each violation.

The tax was designated a "license tax for the privilege of engaging in such business." The U.S. Supreme Court held that the tax was a restraint in a double sense. First, its effect was to

¹ 297 U.S. 233 (1936).

curtail the amount of revenue realized from advertising; and second, it directly tended to restrict circulation. Accordingly, the U.S. Supreme Court held that the Act was unconstitutional.

Newspapers are generally not immune from the ordinary and generally applicable forms of taxation for support of the government. However, taxes cannot be misused or disguised to curtail freedom of the press. Thus, ordinary taxation is generally acceptable and extraordinary taxation is generally held to be unconstitutional.

An examination of Louisiana's tax laws, and the courts' interpretation of those laws, leads to the conclusion that Louisiana's taxation structure is complex and confusing. There are general state sales and use taxes (R.S. 47:302), additional state sales and use taxes (R.S. 47:331), state sales and use taxes levied by the Louisiana Recovery District (R.S. 39:2001, *et seq.*), and state sales and use taxes levied by the Louisiana Tourism Promotion District (R.S. 51:1281, *et seq.*). There are exemptions from one or more of these different taxes for certain tangible personal property, and prior to the 2007 legislative session, newspapers were among those items exempt.² (R.S. 47:305(D)(1)(e) was repealed by Acts 2007, No. 480, §2.) Effective July 1, 2008, newspapers are no longer included in the definition of tangible property, and therefore, excluded from the collection of state and local sales and use taxes.³ Following is a brief review of the occupational license tax and state sales and use tax provisions as they relate to Louisiana's newspapers. Newspapers are encouraged to consult with their local taxing authorities or a local tax attorney to better understand the levying and collection of local taxes.

Occupational License Tax

R.S. 47:341 allows any municipality or parish to impose an occupational license tax on any person conducting any business within the territorial jurisdiction of the municipality or parish. However, R.S. 47:360(E) provides that certain businesses, including editors and publishers, shall be exempt from the occupational license tax. However, printers are not covered by the exemption. According to R.S. 47:359, for printers who are engaged in the practice of their profession as an individual, or as a firm, partnership, or corporation, the license shall be one-tenth of one percent of the annual gross receipts for professional fees for services rendered, with a minimum tax of fifty dollars and a maximum tax of two thousand dollars. However, editors and publishers, who are otherwise exempt from the licensing tax, may be subject to an occupational license tax under certain circumstances.⁴

History of State Sales and Use Taxation

Prior to July 1, 2008, the Louisiana state sales and use tax was four (4%) percent of the sales price of each item or service subject to the tax. Following is a synopsis of the makeup of the four (4%) percent sales and use tax rate.

² For many years, the exemption for newspapers was suspended by the Legislature. For example, see R.S. 47:302(O).

³ See Acts 2007, No. 480, enacting R.S. 47:301(16)(m).

⁴ **Op. Atty. Gen. 1916-18**, p. 662: *Editor and publisher of newspaper, who sold paper on which letterheads or other matter was printed, was a retail dealer within meaning of general license law, and was liable for the payment of the license tax.* However, commercial printers are exempt where they carry in stock only a small amount of paper, cards, etc., on which they print the customer's order, but do not carry in stock printed forms, books or other articles of commerce. **Op. Atty. Gen. 1936-38**, p. 1011.

R.S. 47:302(A) imposed a tax upon the sale at retail or distribution in this state of each item or article of tangible personal property at the rate of two (2%) percent of the sales price of each item or article of tangible personal property when sold at retail in this state or distributed in this state. For purposes of this 2% state sales and use tax, `retail sale_ or `sale at retail_ meant a sale to a consumer or to any other person for any purpose other than for resale as tangible personal property. R.S. 47:301(10)(a)(i). Therefore, items sold for resale, including newspapers, were not subject to the tax imposed by R.S. 47:302(A) since these sales did not constitute `sales at retail_ as defined in R.S. 47:301(10)(a)(i). Effective January 1, 2009, newspapers that purchase items for resale will be required to provide their vendors with a Louisiana Resale Certificate, Form R-1042, to certify that the items being purchased are for resale and no sales tax will be charged.⁵ R.S. 47:302(C) imposes a tax upon all sales of services at the rate of two (2%) percent of the amount paid or charged for such services. R.S. 47:301(14) provides:

(14) *“Sales of services” means and includes the following:*

* * *

(d) *the furnishing of printing or overprinting, lithographic, multilith, blue printing, photostating or other similar services of reproducing written or graphic matter....*

R.S. 47:305(D) specifically exempted `newspapers_ from the tax imposed by R.S. 47:302.⁶ However, over the years, the Louisiana Legislature repeatedly suspended or nullified many of the exemptions, including the exemption for newspapers.

R.S. 47:305.44 provides a list of items, some of which relate to newspapers, which are exempt from the sales and use taxes imposed by the state, under R.S. 47:302, R.S. 47:321 and R.S. 47:331, and by political subdivisions, as follows:

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|-------------------------------|----------------------------|
| (1) Artwork | (8) Press proofs and photo |
| (2) Blankets and bars | mechanical proofs |
| (3) Chemicals | (9) Layouts |
| (4) Color separations | (10) Typesetting |
| (5) Dye | (11) Rubber plates |
| (6) Film, including negatives | (12) Paper |
| (7) Offset plates | (13) Ink |

However, pursuant to R.S. 47:302(R)(1), 47:321(H)(1) and 47:331(P)(1), these exemptions were `inapplicable, inoperable, and of no effect_ through June 30, 2009.

R.S. 47:331 imposes an `additional_ tax upon the sale at retail or distribution in this state of each item or article of tangible personal property at the rate of ninety-seven one hundredths of one (0.97%) percent of the sales price of each item or article of tangible personal property when

⁵ Please visit the Louisiana Department of Revenue’s website, www.revenue.louisiana.gov, to obtain a Resale Certificate Application.

⁶ R.S. 47:305(D) provided, in pertinent part:

(D) (1) *The sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this Chapter:*

(e) *Newspapers....*

sold at retail in this state or distributed in this state. For purposes of this additional tax, `retail sale_ or `sale at retail_ also means a sale to a consumer or to any other person for any purpose other than for resale as tangible personal property. Further, R.S. 47:331(C) imposes a tax upon all sales of services at the rate of ninety-seven one hundredths of one (0.97%) percent of the amount paid or charged for such services. R.S. 47:332 makes the `additional_ sales and use tax imposed under R.S. 47:331 subject to the same definitions, exemptions, tax credits, penalties and limitations prescribed for the sales and use tax imposed under R.S. 47:302. Therefore, newspapers were exempt from the `additional_ sales and use tax imposed under R.S. 47:331, pursuant to the exemption found in R.S. 47:305(D)(1)(e). However, Act No. 4 of the 2004 1st Extraordinary Legislative Session enacted R.S. 47:331(P)(1), which made certain exemptions to the tax levied pursuant to R.S. 47:331, including the exemption for newspapers, `inapplicable, inoperable, and of no effect_ for the period July 1, 2004 through June 30, 2009.

In the late 1980s, due to a deficit crisis, the Louisiana Legislature enacted R.S. 39:2001, *et seq.*, commonly known as the `Louisiana Recovery District Act,_ for the purpose of alleviating the state's financial difficulties. Under R.S. 39:2006, the Louisiana Recovery District was a special taxing district created to provide funds to assist the state and to reduce or eliminate its deficit, to remedy its cash flow shortfalls, and to pay obligations of the state. The Louisiana Recovery District was authorized to levy and collect a sales and use tax not to exceed one (1%) percent. However, the Louisiana Recovery District ceased to exist on September 30, 1996 by operation of statute when all bonds issued by it were retired. To make up for the potential shortfall, the Louisiana Legislature in the 1996 Regular Legislative Session enacted R.S. 47:321, creating a new one (1%) percent sales and use tax.⁷ The new tax was subject to the same regulations and exemptions as the other sales taxes. Due to an amendment by the Louisiana Legislature in 2007, newspapers are now exempt from the one (1%) percent sales and use tax imposed by R.S. 47:321.⁸

In the 1990 Legislative Session, the Louisiana Legislature determined that the state should stimulate its tourism industry and, upon determining that a tourism assistance district was needed with a source of revenue for tourism promotion and development, the Louisiana Legislature enacted the Louisiana Tourism Promotion District Act, R.S. 51:1281, *et seq.* The Louisiana Tourism Promotion District Act was also designed as a means of assisting with the continuing economic problems of the state. Under R.S. 51:1286(A), the Louisiana Tourism Promotion District is a special taxing district authorized to levy and collect a sales and use tax upon the sale at retail, the use, the lease or rental, the distribution, the consumption, and the storage for use or consumption in this state of each item or article of tangible personal property, and on sales of services, not to exceed three one-hundredths of one (0.03%) percent. R.S. 51:1286(B) provides that the tax imposed by the Louisiana Tourism Promotion District shall be subject to the tax exemptions otherwise applicable to the sales and use taxes imposed under R.S. 47:331 and the suspensions of those exemptions. Newspapers were subject to the three one-hundredths of one (0.03%) percent sales and use tax imposed by the Louisiana Tourism Promotion District. However, newspapers are not currently subject to this special tax.

⁷ Act 5 of the 1996 Regular Legislative Session enacted R.S. 47:321 and R.S. 47:322, conditioned upon the termination of the Louisiana Recovery District, imposing a 1% sales and use tax subject to the same regulations and exemptions as R.S. 47:302.

⁸ R.S. 47:321I. specifically suspended the exemptions to this 1% tax through June 30, 2007.