

# Chapter 6

## REVENUE SOURCES AND INVESTMENT OF PUBLIC FUNDS

Reviewed January 2, 2009

### REVENUE SOURCES

The type and level of municipal public services depend upon the revenues available to municipal governments to fund service programs. Municipal revenue sources are limited by the *Louisiana Constitution* and by general law. As a result, there is little flexibility afforded municipal governments in financing public services. What follows is a listing and brief explanation of the revenue sources available to municipal governments.

### MUNICIPAL TAXES AND FEES

#### Ad Valorem Tax (Property Tax)

Under Article VI, Section 27 of the *Louisiana Constitution*, municipalities are granted the authority to levy an ad valorem tax for general purposes not to exceed seven mills. Any additional millage must be approved by the voters. This general purpose millage is subject to adjustment after reassessment to assure that the same amount of revenue is produced. If the millage is reduced after reassessment, the governing authority of the municipality is authorized to roll forward the millage to the previous level by a two-thirds vote. (*Louisiana Constitution*, Article VII, Section 23.) A constitutional amendment approved in 1998 requires that notice of the public hearing to consider the millage roll-forward to be advertised twice in the official journal and, if available, in another newspaper with a larger circulation within the taxing authority. Such advertisement shall occur at least 30 days prior to the public hearing, but need not include the amount of the increase, since the millage adjustment may not be known 30 days in advance of the meeting.

In addition to the above notice requirements any municipality that proposes to levy additional or increased millages on property without voter approval shall also provide additional notice requirement as follows:

1. Publish by July 15<sup>th</sup> a public notice of the date, time and place of the hearing.
2. The notice shall contain a statement that the municipality intends to consider at the hearing levying additional or increased millage rates without further voter approval.
3. The notice must be published on two separate days in the official journal of the municipality, and in another newspaper with a larger circulation within

- the municipality, if there is one.
4. The requirements for the notice must be prescribed by the Louisiana Tax Commission which shall include:
    - i. a. Prominent placement in the newspaper in a section other than the classified advertisement or public notice section.
    - ii. b. Formatting in a box with a bolded outline.
    - iii. c. A size of not less than two inches by four inches.
    - iv. d. Print in bold face type.
  5. The additional publication shall be provided by the official journal at a charge not in excess of regular commercial advertising rates.
  6. Failure to meet the notice requirements shall make the ordinance or resolution adopting the additional or increased millage null, void, and of no effect.
  7. Requires the municipality also provide notice of the date, time, and place of the hearing to the tax assessor of the parish or the district and that the assessor maintain a list of pending hearing dates in his office and may publish the dates on his web site.
  8. The municipality shall issue a press release to the newspapers with substantial distribution within the municipality and to area broadcast media.

Since the roll-forward provision did not go into effect for the first reassessment in 1976, and since some municipalities did not take advantage of the authority to roll forward, not all municipalities are at the maximum rate of seven mills. The Legislative Auditor uses the municipality's prior year's rate as the maximum. A municipality may "roll forward" in any year prior to the next reassessment. Once a municipality fails to "roll forward" a millage to their prior years maximum millage rate, the adjusted rate becomes the new maximum authorized millage as listed in the files of the Legislative Auditor. As a result, many municipalities have "maximum" rates which are lower or higher than seven mills.

As also authorized by Section 27, ad valorem taxes levied for other than general purposes must be approved by the voters. The proposition must state the purpose for which the tax is to be levied and the length of time the tax is to remain in effect. However, there is no limitation on the amount of mills which may be levied for special purposes.

*Note:* Debt limits place indirect millage limits on local taxing bodies. For municipalities, debt is limited to 35 percent of the taxable assessed value of the subdivision, including homestead-exempt values, although homestead exemption applies only in the City of New Orleans.

### **Property Taxes on Motor Vehicles**

Act 512 of 2005 amended Article VII, Section 21(E) of the Constitution of Louisiana exempting motor vehicles from municipal ad valorem taxes. This constitutional amendment was approved by the voters on November 7, 2006. The legislature must also amend, RS 33:2621, to exempt motor vehicles from municipal ad valorem taxes as provided by Article VII, Section 21(E).

## **Sales and Use Taxes**

With voter approval, a municipality can levy a sales tax. The rate, when combined with other parish and school board sales and uses taxes levied in the parish, may not exceed five percent, unless a taxing jurisdiction in the parish receives legislative approval for a higher rate. In addition, municipalities are limited by statute to a maximum sales tax of two-and-one-half percent, unless special legislative approval is granted for a higher rate.

Local sales taxes are authorized under R.S. 33:2711-2752, and are subject to state-granted exemptions and exclusions. These exemptions and exclusions can be found in the Uniform Local Sales Tax Code, R.S. 47:337.1-337.86, which statutes also form the basis for administration of local sales taxes. Sales and use taxes are collected locally on all items except for motor vehicles. Local sales taxes on motor vehicles are collected by the Louisiana Department of Public Safety, Office of Motor Vehicles.

Sales tax revenues may be dedicated to a specific purpose in the ordinance levying the tax. In addition, sales tax revenues are often used to secure bonds. (*Note:* See the website of the Louisiana Association of Tax Administrators for more detailed information on sales taxes and occupational license taxes, ([www.laota.com](http://www.laota.com)))

## **Occupational License Taxes**

Municipalities are authorized to levy license taxes on persons, firms, and corporations doing business within their corporate limits. Usually a fixed business location is required, but there are exceptions. The maximum amounts for occupational license taxes are set by state law, R.S. 47:341 through 363. Maximums for municipal license taxes on insurance companies are found in R.S. 22:1076. (See the section on Insurance Premium Tax). The Constitution, in Article VII, Section 28, provides that businesses which pay a municipal occupational license tax are exempt from parish occupational license taxes in the amount of the municipal tax paid.

The state occupational license tax law was revised in 1986 to simplify the classifications and to include professionals in the schedules of taxable businesses. In its current form, almost all businesses are subject to occupational license tax, which is a tax on the privilege of conducting a business in a municipality or parish. Unlike sales tax, which is based on where the transaction takes place, occupational license tax is based on the business location. All receipts statewide are taxable according to the physical location of each place of business, regardless of where a product is delivered or a service is performed. There are some exemptions and deductions, which are provided for in the state law. Copies of the state law are available in the form of an *Occupational License Tax Manual* published and updated annually by the LMA.

## **Insurance Premium Tax**

Often considered a part of occupational license taxes, insurance premium tax is authorized by R.S. 22:1076. Insurance agents are exempt from occupational license taxes, since their companies pay insurance premium taxes to any municipality in which they collect premiums for the year. The maximum rate is set by state law, and a local ordinance must be passed to levy the tax. A copy of the ordinance is sent to the Louisiana Department of Insurance. A deduction of two-thirds of the tax is allowed if the insurance company invests one-sixth of its assets in Louisiana municipal bonds or other qualified investments.

Although insurance premium tax is often referred to as occupational license tax for insurance companies, the two should not be confused. A separate ordinance is required to levy insurance premium tax. The Louisiana Municipal Advisory and Technical Services Bureau (LaMATS), an LMA subsidiary, offers collection programs for both current and delinquent insurance premium taxes.

## **Utility Franchise Fees**

Municipalities are authorized by R.S. 33:4401-4405 and 4461 to grant franchise agreements to utility companies, such as electric, water, gas, telephone, and cable television utilities. In return for permission to use municipal rights of way, the utility agrees to pay a fee, typically, a percent of the gross receipts or sales within the municipality. The rate or amount paid is set by ordinance after negotiation with the utility company. Rates typically range from two percent to five percent. However, in some cases, municipalities accept services in lieu of payment or set a flat fee or a flat fee per utility pole. Franchise agreements can not be granted for a period greater than 60 years.

Data on franchise fees from various municipalities is presented in the LMA Technical Assistance Bulletin, "1998 Municipal Fee Survey." Copies are available upon request from the LMA office. The LMA, through a series of meetings with BellSouth, has developed a model franchise agreement for BellSouth. In addition, LaMATS has developed a model franchise ordinance for Entergy agreements, as well as a standard right-of-way ordinance. Contact the LMA office for copies of these model ordinances.

## **Beer Tax**

Municipalities, along with parishes, are authorized by R.S. 26:491-493 to levy a tax on low alcoholic beverages of up to \$1.50 per standard barrel of 31 gallons. This tax is locally levied, but is collected at the state level by the Louisiana Department of Revenue. Collections are remitted to municipalities and parishes each quarter on the basis of the amount of beer sold within the municipality or parish. Only municipalities which pass a local ordinance levying the tax and submit the ordinance to the Department of Revenue will receive payments from the department. The department retains a small fee for the collection of the tax.

## **Hotel Occupancy Tax**

R.S. 33:4574.1A grants tourist commissions the authority to levy a hotel occupancy tax in addition to the local sales tax on room rentals. Commissions are authorized to levy and collect a tax not in excess of the rate provided in R.S. 33:4574.1A. Commissions may increase this limit with special legislative authority that must be approved by the voters of the parish. In recent years, most of the state sales tax levied on room rentals has been dedicated to local agencies. Information on these dedications can be found in the LMA Technical Assistance Bulletin, "Hotel-Motel Occupancy Tax."

## **Chain Store Tax**

In addition to occupational license tax, chain stores are subject to chain store tax, as authorized by R.S. 47:10. Although this tax is no longer levied at the state level, municipalities are authorized to levy and collect a tax of up to \$550 per store, depending on the number of stores in the chain. The tax applies only to stores located within the municipality.

## **Miscellaneous Licenses, Permits, and Fees**

Municipalities may issue permits and collect fees for permits, such as: building permits [R.S. 33:4744], plumber's permits, electrician's permits, alcoholic beverage license fees [R.S. 26:74 and 274]. The issuance of these permits is usually considered regulatory, rather than a revenue source. However, provisions of R.S. 37:2150-2164 establish a statewide standardized nationally recognized test for electricians, plumbers, and mechanical contractors to replace local tests.

Municipalities may fix fines and penalties under the authority of R.S. 33:441 for violation of municipal ordinances. Often court costs and various other fees are added to these and remitted to state agencies. Fees for parking meter violations are authorized by R.S. 33:4871.

## **STATE-SHARED REVENUES**

### **Tobacco Tax**

Since 1948, a portion of state tobacco tax receipts were distributed to municipalities and to parishes in which there are no incorporated municipalities under a formula set forth in R.S. 47:869 and under a formula established in the 1970 appropriations bill. Both formulas are based on a per capita distribution, with some variations as to size of municipality. If fully funded, the tobacco tax would distribute approximately \$25 million to municipalities statewide. The amount distributed has been subject to successive legislative budget cuts in recent years, until the distribution was eliminated in 2000.

In 2007 the Legislature reinstated the Tobacco Tax distribution by amending the General Appropriation Act (Act 18, 2007) to distribute \$3 million to all municipal governments statewide. Additional Tobacco Tax distributions must be approved each year by the State Legislature.

## **Two-Percent Fire Insurance Premium Tax**

The fire insurance tax (R.S. 22:1583 and 1585) is a tax on the premiums for fire insurance policies written on property located in municipalities, fire and waterworks districts in unincorporated areas, and on property served by volunteer fire departments. The state distributes all revenues derived from this tax to the parish governing authority and the fire department or fire protection district based on population.

## **State Revenue Sharing**

All parishes participate in the Revenue Sharing Program, which is intended to replace any revenues lost due to homestead exemptions granted to residents of the parish. If there are funds allocated to a parish in excess of the cost of homestead exemptions, these funds should be distributed to the municipalities within the parish. The parish sheriff is responsible for distributing the revenues as specified by legislative act.

## **Police and Fire Supplemental Pay**

The supplemental pay plan for municipal police officers and firefighters consists of payments by the state directly to full-time municipal officers. The rate of compensation for municipal police officers is determined by the number of years of service. Questions of eligibility are subject to consideration by a board of review. A similar plan is also in effect for employees of municipal fire departments.

## **Video Poker Funds**

The state receives a portion of the gross receipts from video poker devices, which were approved as gaming devices in 1993. Recent revisions of the law have changed the amount of fees paid to the state (and subsequently, to local governments) and allowed for more local control of the location of the devices than was previously provided. Current law (R.S. 27:311) requires a franchise fee of 26 percent for restaurants, bars, and hotels and 32.5 percent for truck stops. Of this, and all other state fees, local governments receive 25 percent, based on actual collections within their jurisdictions (R.S. 27:312).

The 1994 revision of the law limited eligible establishments to those with Class A liquor permits and truck stops, with a set of requirements to be met by truck stops. Act 419 of the 1994 third special session also authorized municipalities to control the placement of video poker devices and the location of truck stops through a municipal zoning ordinance. As authorized by the Legislature, 31 parishes voted to ban video poker, and have not received this revenue since July 1, 1999.

## **OTHER REVENUE SOURCES**

### **Investment of Idle Funds**

Municipalities may invest idle funds under the provisions of R.S. 33:2955, explained in the section on Investment of Public Funds which follows.

### **Home Rule Charters**

The 1974 Constitution expanded local powers through two broad home rule provisions. One permits a home rule charter municipality to exercise powers not specifically prohibited by law, including levying new types of taxes. The second provision permits a non-home rule charter municipality, with voter approval, to exercise any power or function not denied by law and not inconsistent with the Constitution. Thus far, little or no use has been made of this option to enact new taxes.

### **User Fees**

Municipalities are authorized to charge fees for the use of municipal utilities, such as water, sewer, solid waste collection, natural gas, and electricity. These user fees are set by the municipality and vary from one municipality to the next. The Louisiana Municipal Association conducted a survey on user fees for various municipal services in 1997. The report summarizing the results is available from the LMA office in the LMA Technical Assistance Bulletin, "1998 Municipal Fee Survey." Additional information on user fees can be found in the "LMA Technical Assistance Bulletin "User Fee Collection Enforcement" issued on September 28, 1998.

## INVESTMENT OF PUBLIC FUNDS

R.S. 33:2955 requires all municipalities and any other political subdivisions to invest such monies in any general, special, or other fund which are available for investment in any of the following:

- Direct United States Treasury obligations, the principal and interest of which are fully guaranteed by the United States Government.
- United States government agency obligations, the principal and interest of which are fully guaranteed by the United States Government; or U.S. Government obligations, the principal and interest of which are guaranteed by any U.S. government agency.
- Direct security repurchase agreements of any federal book entry only securities enumerated in the two preceding paragraphs above. A "direct repurchase agreement" is an agreement under which the political subdivision buys, holds for a specified time, and then sells back the securities and obligations.
- Time certificates of deposit of state banks organized under the laws of Louisiana, or national banks having their principal offices in the State of Louisiana; savings accounts or shares of savings and loan associations and savings bonds; or, share accounts and share certificate accounts of federally- or state-chartered credit unions issuing time certificates of deposit. For those funds invested in CDs, the rate of interest paid by the banks must be established by contract; however, the interest rate at the time of investment shall be a rate not less than 50 basis points (one-half of one percent) below the prevailing market interest rate on direct obligations of the U.S. Treasury with a similar length of maturity.
- Mutual or trust fund institutions which are registered with the Securities and Exchange Commission under the Securities Act of 1933 and the Investment Act of 1940, and which have underlying investments consisting solely of securities of the U.S. Government or its agencies.
- Guaranteed investment contracts issued by a bank, financial institution, insurance company, or other entity having one of the two highest short-term rating categories of either Standard & Poor's or Moody's, *provided* that no such investment may be made except in connection with a financing program for political subdivisions which is approved by the State Bond Commission and offered by a public trust having the state as its beneficiary.

This law also requires that funds invested in CDs, savings accounts, or share accounts in banks, savings and loan associations, or credit unions shall *not* exceed at any time the amount insured by the Federal Deposit Insurance Corporation in any bank or savings and loan association, or the National Credit Union Administration, unless the uninsured portion is collateralized by the pledge of securities in the manner provided for in R.S. 39:1221. Accordingly, deposits of funds in excess of \$100,000.00 must be collateralized by pledges of security as specified in the law. Also, investment of funds in mutual or trust fund institutions is limited to 25 percent of the monies considered available for investment.

In determining whether monies are considered available for investment, the treasurer or chief financial officer of the political subdivision must determine, in the exercise of prudent judgment, that such funds are in excess of the immediate cash requirements of the fund to which the monies are credited. Specifically, any amount of money exceeding \$10,000.00 which is on demand deposit to the credit of a fund and which is not required to meet an obligation for at least 45 days, or any amount of money exceeding \$100,000.00 which is on demand deposit to the credit of any fund and which is not required to meet an obligation for at least 15 days are construed as available for investment.

***Local Government Investment Pool.*** Attorney General Opinion No. 92-192 determined that the creation of a voluntary local government investment pool is authorized as a cooperative endeavor as provided in Article VII, Section 14 of the *Louisiana Constitution* and the Local Services Law [R.S. 33:1321 et seq.]. Implementation of such a pool -- which currently exists in 27 other states and which could provide benefits such as security of funds, liquidity, higher yields, convenience, professional management, diversification, and accounting services -- has become a reality, thanks to negotiations between the Office of the State Treasurer, the Louisiana Municipal Association, and other interested local-government organizations.

For more information, contact the marketing representative of the Louisiana Asset Management Pool at (800) 249-5267.