

LOUISIANA LEGISLATURE BEGINS TAX SESSION

The Louisiana Legislature will have a busy 2005 "fiscal" session as it works its way through a number of tax proposals and, due to rule changes, will consider a number of non-fiscal bills.

Property Law

High on its agenda will be addressing the Louisiana Supreme Court's decision in *Willis-Knighton Medical Center v. Caddo Shreveport Sales and Use Tax Commission*, 2004-0473 (La. 4/1/05), 2005 WL 737481, ___ So.2d ___. In the *Willis-Knighton* case, a majority of the Louisiana Supreme Court reinterpreted Louisiana's property law and suggested that doors, toilets and similar fixtures in a building may not be component parts of the building. The decision could affect many legal issues, including the sales tax treatment of property used in building construction and taxes on repairs. The decision could also affect the extent and validity of mortgages, liens, insurance coverage and other important legal issues.

The Louisiana Law Institute and the Legislature have begun to take steps to clarify the law if the Louisiana Supreme Court declines to reconsider the *Willis-Knighton* case. HB 348 (Rep. Greene), HB 510 (Rep. Labruzzo), HB 536 (Rep. Robideaux), and SB 196 (Sen. Barham) have been filed to amend the property law to deal with the impact of the *Willis-Knighton* decision. Additionally, HB 766 (Rep. Robideaux), SB 263 (Sen. Kostelka), and SB 299 (Sen. Barham) are bills to clarify the sales tax law if one of the property law rewrite bills is not enacted into law.

Headquarters Package

Governor Blanco is promoting legislation to modify the Louisiana income and corporate franchise tax laws

to be more favorable to the establishment of corporate headquarters in Louisiana. HB 679 (Rep. Hammett) would (i) exempt corporate interest and dividends from the corporation income tax, (ii) apportion capital gains from the sales of assets and the sales of intangible property, and (iii) use a sales only single factor formula for most manufacturing and merchandising businesses for purposes of computing the corporate income and franchise tax.

Limitations on Sales Tax on Natural Gas

Since 1986, the Louisiana Legislature has suspended a variety of sales tax exemptions to balance the state's budget, including the exemptions for natural gas and electricity. While residential natural gas and electricity were constitutionally exempted from the sales tax in 2002, commercial and industrial consumers continue to pay the 4% state sales/use tax on natural gas and electricity. During the 2005 regular session, the legislature will consider bills to cap the cost of natural gas that is subject to sales tax (HB 803, Rep. Morrish) and restoring the sales tax exemption for natural gas (HB 804, Rep. Morrish).

For details on these and other bills that will be considered by the Legislature this session, go to www.legis.state.la.us

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ARBITRATION AGREEMENTS: ARE THEY BINDING?

Louisiana courts typically enforce, and broadly construe, contract provisions mandating arbitration to resolve disputes. However, two recent Louisiana appellate court decisions show that arbitration agreements can be avoided. In *Aguillard v. Auction Management Corp.*, 884 So.2d 1257 (La. App. 3d Cir. 2004), a bidder who purchased a residence at an auction sued the auctioneer and others to enforce an auction real estate sales agreement. A request to stay the proceedings, pending arbitration, was denied by the court. Viewing the situation as one involving a business enterprise and an individual consumer, the court focused on the issue of consent to the clause in dispute and concluded that the parties' agreement was a contract of adhesion. Typically, a contract of adhesion involves an agreement prepared by a party of superior bargaining power for adherence or rejection of the weaker party, and are usually contained in standard forms that are typically justified by the volume of business transacted. Finding that the bidder was not in a position to bargain concerning the agreement terms, the court concluded the arbitration clause was adhesionary, lacked mutuality, and was unenforceable.

Likewise, in *Vishal Hospitality, LLC v. Choice Hotels Intern., Inc.*, 2005 WL 675651 (La. App. 1 Cir. Mar. 24, 2005), writ pending, a hotel franchisee filed suit against the franchiser to prevent arbitration proceedings under the franchise agreement. Although the contract provided for Maryland law to control, Louisiana law was applied because the franchiser's reservation for itself to litigate various matters, coupled with the franchisee's obligation to arbitrate in all instances, created a contract of adhesion. Louisiana has a strong public policy in ensuring that arbitration clauses that are adhesionary are not enforced. Consequently, the choice of law rules in the contract were not followed because allowing arbitration under Maryland law would contravene Louisiana public policy.



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