

Regular Session, 2011

HOUSE BILL NO. 488

BY REPRESENTATIVE GREENE

REVENUE DEPARTMENT: Prohibits the Dept. of Revenue from collecting tax on any transaction for which no clear intent to tax by the legislature exists unless the department promulgates a rule indicating its intention to do so

1 AN ACT

2 To enact R.S. 47:16, relative to the imposition of certain taxes; to limit the authority of the
3 secretary of the Department of Revenue regarding the imposition of certain taxes
4 under certain circumstances; to require the Department of Revenue to promulgate
5 rules under certain circumstances; to provide for certain requirements and
6 limitations; to provide for the effectiveness and approval of certain rules; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:16 is hereby enacted to read as follows:

10 §16. Department of Revenue; non-taxability of certain transactions; rules and
11 regulations; limitations; legislative approval

12 A. Any transaction occurring after January 1, 2000, the essential nature of
13 which was not technologically and commercially feasible before that date, and for
14 which no clear intent to tax by the legislature exists, shall remain exempt from,
15 excluded from, or otherwise not subject to taxation, and shall not be subject to
16 collection or remittance by an agent unless the Department of Revenue, hereinafter
17 "department", promulgates a rule in accordance with the provisions of Subsection B
18 of this Section. Any transaction generally understood by taxpayers as being exempt

1 from, excluded from, or otherwise not subject to taxation as of January 1, 2000, shall
2 remain so unless the department complies with the provisions of this Section.

3 B.(1) Prior to any tax becoming due or owed on any transaction described
4 in Subsection A of this Section under any provision of this Title, the secretary of the
5 department shall promulgate a rule in accordance with the Administrative Procedure
6 Act which clearly describes the transaction which the department determines is
7 taxable. The rule shall include the statutory authorization providing for the taxability
8 of the transaction, and shall clearly set forth notice to the public of the necessity of
9 paying, collecting, and remitting the tax.

10 (2) For any rule promulgated by the department after January 1, 2000, which
11 purports to identify any transaction described in Subsection A of this Section, the
12 department shall be barred from seeking payment or collection and remittance of any
13 tax provided for in this Title, if the department has not sought enforcement of that
14 transaction within one year of promulgation of the rule.

15 (3) A rule promulgated by the department in accordance with the provisions
16 of this Section shall not become effective before one year following the date of
17 publication of the Final Report in the Louisiana Register and until the rule is
18 approved by the House Ways and Means Committee and the Senate Revenue and
19 Fiscal Affairs Committee. Failure of a committee to conduct a hearing on the rule
20 shall not constitute approval of the rule.

21 C. The department shall be prohibited from issuing an administrative
22 pronouncement of any kind in contravention of the provisions of this Section.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Greene

HB No. 488

Abstract: Prohibits the Dept. of Revenue from collecting tax on any transaction for which no clear intent to tax by the legislature exists unless the department promulgates a rule indicating its intention to do so.

Proposed law provides that any transaction occurring after Jan. 1, 2000, the essential nature of which was not technologically and commercially feasible before that date, and for which no clear intent to tax by the legislature exists, shall remain exempt from, excluded from, or otherwise not subject to taxation unless the Dept. of Revenue, hereinafter "department", promulgates a rule in accordance with the provisions of proposed law.

Proposed law provides that prior to any tax becoming due or owed on any transaction described in proposed law, the secretary of the department shall promulgate a rule in accordance with the Administrative Procedure Act which clearly describes the transaction which the department determines is taxable. Requires the rule to include the statutory authorization providing for the taxability of the transaction, and to set forth notice to the public of the necessity of paying, collecting, and remitting the tax.

Proposed law prohibits the department from seeking payment and remittance of any tax if the department has not sought enforcement of that transaction within one year of promulgation of the rule. Any such rule of the department shall not become effective before one year following the date of publication of the final report and until the rule is approved by the House and Senate committees. Failure of a committee to conduct a hearing on the rule shall not constitute approval of the rule.

Proposed law prohibits the department from issuing an administrative pronouncement of any kind in contravention of the provisions of proposed law.

(Adds R.S. 47:16)