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Louisiana Department of Revenue will now impose personal liability on individuals who sign agreements on behalf of a taxpayer without proper authorization. Revenue Information Bulletin No. 07-011 (April 3, 2007).

By

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The Louisiana Department of Revenue announced its position on the authority of certain individuals to execute binding agreements with the Department in Revenue Information Bulletin No. 07-011 (April 3, 2007). This RIB appears to be a harmless recitation of individuals that the Department recognizes as authorized to execute agreements for different types of entities (corporations, partnerships and limited liability companies) and the documents that must be executed and maintained by the entity to establish such authorization.

However, nestled in the bowels of the RIB is the following language:

if it is later determined the signatory was not authorized to execute the agreement, ***the individual acknowledges and agrees to be held personally liable for the liability of the entity*** which he lacked authority to bind.

Read that again. And then again.

In case you have any doubt, here's what it means: If you sign an agreement with the Department on behalf of your company, and you do not have the proper authorization to sign such an agreement, you are acknowledging that you will be personally liable for any taxes of the company. The RIB applies to virtually any agreement between a taxpayer and the Department, but is of particular importance to this audience with respect to agreements to waive the prescriptive period for assessing taxes. We are entering that time of year when the Department begins to send out requests for these waivers. In most situations, taxpayers generally agree and an individual representative of the taxpayer signs the agreement. If you are the individual who signs this waiver, you may be exposing yourself to personal liability.

The RIB is the Department's response to the court of appeal's decision in *Bridges v. X Communications, Inc.*, 03-441 (La. App. 5 Cir. 11/12/2003), 861 So. 2d 592; 2003 La. App. LEXIS 3145. In that case, the controller of a corporate taxpayer signed an agreement to waive prescription during the course of a sales tax audit. Subsequently, the corporate taxpayer argued that the agreement to waive the prescriptive period was in-

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valid because the controller did not have the authority to bind the corporation. The court of appeals agreed and the assessment was dismissed because the time for assessing the taxes had been prescribed.

The Department's position in the RIB should be considered in light of the *X Communications* case. We do not expect the Department to affirmatively assert personal liability using this position. However, the Department will use this position as a response to a company assertion that an agreement is not valid because the person executing it (*i.e.*, you) did not have the authority to do so.

To ensure that you are not exposing yourself to personal liability, you should refer to the RIB to ensure: (i) that the Department recognizes you as a person who has the ability to bind your company; and (ii) that you have all necessary company authorizations to bind the company. Dot your i's and cross your t's **before** you sign your name.

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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