RULE
Department of Revenue
Policy Services Division

Sales and Use Tax Exemptions
(LAC 61:I.4401)

Under the authority of R.S. 47:301 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.4401 to provide for uniform state and local sales tax definitions in accordance with the provisions of Act 73 of the 2003 Regular Legislative Session.

Act 73 enacted the Uniform Local Sales and Use Tax Code, R.S. 47:337.1 et seq., to promote uniformity in the administration of state and local sales and use taxes by compiling the local sales and use tax laws in the revised statutes. Revised Statute 47:337.2(C)(2), which provides for the development of uniform state and local sales and use tax regulations, allowed local sales tax collectors until January 1, 2004, to file written requests with the Secretary of Revenue for amendments to any Department of Revenue regulation in effect on July 1, 2003, so that the regulation applies to both state and local sales and use taxes. Local collectors, through the Louisiana Association of Tax Administrators, filed a request with the Secretary of Revenue in December 2003 for amendments to several regulations. Requested amendments to the sales tax definitions are included in this Rule.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 44. Sales and Use Tax Exemptions
§4401. Various Exemptions from the Tax

A. While state and local sales or use tax laws are classified as general sales or use tax laws indicating that they apply broadly across all sales, use, consumption, or lease of tangible personal property as well as to some selected services, these laws do provide many exemptions.

B. R.S. 47:305(A) and (B) deal primarily with agricultural commodities, and the tax liabilities associated therewith, as they apply to all phases from production to final consumption or disposition. The broadest exemptions apply to the producer of agricultural commodities, and the tax liabilities associated therewith, as they apply to all phases from production to final consumption or disposition. The broadest exemptions apply to the producer of agricultural commodities. The sale at retail, use, consumption, distribution or the storage to be used for farm products if they are sold directly to the farmer directly from the farm. There are, however, very broad exemptions from state and local sales or use tax for all agricultural commodities sold by any person other than a producer as raw materials for use or for sale in preparing, finishing or manufacturing the commodities into merchandise intended for ultimate retail sale. This exemption applies to all horticultural, viticultural, poultry, farm and range products, livestock and livestock products.

C. R.S. 47:305(C) provides for the use tax cost basis of motor vehicle dealers' service vehicles which are withdrawn from resale inventory for use, such as towing trucks, parts trucks, delivery vehicles, etc. It provides that in determining the cost basis for use tax, a reduction is allowed if used and previously taxed vehicle is simultaneously returned to resale inventory. That reduction in the cost basis of the newly withdrawn vehicle will be the wholesale value of the returned vehicle according to the current value published by the National Automobile Dealers Association.

D. In addition to exemptions granted for broad categories of property or transactions, R.S. 47:305(D) grants exemption for the sale or use of specific items of property. The sale at retail, use, consumption, distribution or the storage to be used or consumed, of gasoline, steam, electric power or energy, newspapers, natural gas, or fertilizer and containers used for farm products if they are sold directly to the farmer are specifically exempted from state and local sales or use tax.

E. In addition to the exemption for electric power or energy in R.S. 47:305(D)(1)(d), the sale and purchase of all materials and energy sources used to fuel the generation of electric power for resale by utility companies, and the sale and purchase of materials and energy sources for use by an industrial manufacturing plant to produce electric power for self-consumption or cogeneration are exempt from state and local sales or use tax.

F. Other fuels and specific applications of energy sources are exempted from the tax. R.S. 47:305(D)(1)(h) exempts all energy sources used for boiler fuel except refinery gas. A boiler, for purposes of this exemption, means a pressure-regulated vessel into which water is placed and converted to steam by the application of heat, after which the...
steam is sold, used for heating purposes, electrical
generation, or any other industrial use. R.S. 47:305(D)(1)(h),
together with R.S. 47:305(D)(l)(g), also provides a limited
exemption for refinery gas. The language in these two
subparagraphs exempt refinery gas from both state and local
sales or use tax, except when it is used as boiler fuel. Refinery
gas, for sales tax purposes, is defined as a
by-product gas or waste gas which is produced in the process
of distilling crude petroleum into its refined marketable
products. R.S. 47:305(D)(l)(h) also provides the formula by
which the cost basis shall be computed annually for use
taxation purposes. For the period of July 1, 1985, through
December 31, 1985, the value shall be $0.52 per 1,000 cubic
feet, or MCF. For each succeeding calendar year thereafter,
the cost basis shall be adjusted by multiplying $0.52 by a
fraction the numerator of which shall be the posted price for
a barrel of West Texas Intermediate Crude Oil on December
first of the preceding calendar year, and the denominator of
which shall be $29. Each annual cost basis, as computed by
the Department of Revenue, shall be the maximum value
placed upon refinery gas by any taxing authority.

3. - 4. …

E.1. R.S. 47:305(D) provides, in part, an exemption
from state sales or use tax upon the sale at retail, the use, the
consumption, the distribution, and the storage to be used or
consumed in this state for orthotic and prosthetic devices and
patient aids prescribed by physicians or licensed
chiropractors for personal consumption or use. Orthotic, by
definition, means a branch of mechanical and medical
science that deals with the support and bracing of weak or
ineffective joints or muscles, and such things as orthopedic
shoes, braces, crutches, wheelchairs, surgical supports, and
traction equipment are exempt from taxation, while such
items as prescription eyeglasses and hearing aids are not
covered by the exemption. Prosthesis, by definition, means
the replacement of a missing part of the body, as a limb or
eye, by an artificial substitute, and such things as artificial
eyes, legs, or arms are exempt from taxation. Toupees,
eyeglasses, corrective lenses, and similar items are not
covered by the exemption. Patient aids mean such equipment
as sickroom supplies and other tangible personal property
used for the convenience and comfort of the patient. In all
instances, the orthotic and prosthetic devices and patient aids
must be prescribed by a physician or a licensed chiropractor
for personal use or consumption in order for the sale to be
exempt for sales tax purposes. Further, the rental tax and
sales tax for repairs to orthotic and prosthetic devices and
patient aids are not exempted under R.S. 47:305(D).

2. For the purposes of state and local sales or use tax,
orthotic devices, prosthetic devices, prostheses and
restorative materials utilized by or prescribed by dentists in
connection with health care treatment or for personal
consumption or use and any and all dental devices used
exclusively by the patient or administered exclusively to the
patient by a dentist or dental hygienist in connection with
dental or health care treatment are exempt. Dental prosthesis
includes but is not limited to, full dentures, fixed and
removable dental prosthesis and all parts thereof, and all
other items associated with replacement and restoration of
the teeth, which by law also necessitates a prescription from
the attending dentist for fabrication.

F.1. R.S. 47:305(D) provides an exemption from state
sales or use tax upon the sale at retail of food sold for
preparation and consumption in the home as well as for
some other expressed types of food sales. For this purpose,
meat, fish, milk, butter, eggs, bread, vegetables, fruit and
their juices, canned goods, oleo, coffee and its substitutes,
soft drinks, tea, cocoa and products of these items, bakery
products, candy, condiments, relishes and spreads, are all
considered food items. Items such as flour, sugar, salt,
spices, shortening, flavoring and oil that are generally
purchased for use as ingredients in other food items
constitute food. Items considered to be food are not limited
to the examples set forth above. The listing is not all
inclusive.

2. - 4. …

5. Sales of meals furnished to the staff and students of
educational institutions including kindergartens; the staff
and patients of hospitals; the staff, inmates and patients of mental
institutions; boarders of rooming houses; and occasional
meals furnished in connection with or by educational,
religious or medical organizations are exempt from state and
local sales or use tax, provided the meals are consumed on
the premises where purchased. Sales of food by any of these
institutions or organizations in facilities open to outsiders or
to the general public are not exempt and tax should be
charged on the entire gross receipts rather than just the
receipts from the outsiders or the general public.

6. …

7. For state sales or use tax purposes, stores,
institutions, and organizations can purchase food items for
resale without paying the advance sales tax that must be
collected by wholesale dealers under R.S. 47:306(B)
provided the ultimate retail sale or consumption of the food
is exempt. Regardless of the type of purchaser, if a majority
of the food purchased and disposed is taxable under the
established rules, advance sales tax must be paid by the
purchaser.

G. For state sales or use tax purposes, drugs prescribed
by a physician, dentist or other persons authorized to issue
medical prescriptions for personal consumption or use are
exempt. For a definition of drugs, refer to R.S. 47:301(20).
Retail establishments are authorized to allow this exemption
for any retail sale thereof which is sold due to the
presentation of a medical prescription authorizing such sale.
Persons selling drugs, medicine, or ingredients thereof to
drug stores which cannot be sold at retail without the
authorization of a medical prescription are deemed to be
making exempt sales, and as such, the advance state sales
tax should not be charged. Since hospitals and sanitariums
are primarily engaged in the business of selling services
supervised and directed by medical doctors, persons selling
drugs, medicine, or ingredients thereof to such institutions
are deemed to be making exempt sales, and as such, state
sales taxes should not be charged. If a hospital or sanitarium
operates any divisions that sell tangible personal property to
the public, such as a prescription department, then the
hospital or sanitarium becomes liable for the tax upon the
gross receipts or gross proceeds derived from such sales,
except for drugs sold on prescriptions which are specifically
exempt from taxation. For sales tax exemptions pertaining to
insulin, see R.S. 47:305.2.

1. In addition to drugs, R.S. 47:305(D) provides an
exemption from state sales or use tax for any and all medical
deVICES, but only when they are used personally and
exclusively by the patient, and only when the medical device
is purchased by the patient on the written authority of a
registered physician for use in the medical treatment of a
disease. Purchases of identical medical devices by hospitals and other medical institutions, for use in administering the medical treatment to a patient would not qualify for exemption under R.S. 47:305(D)(1)(s).

2. All of the exemptions provided by R.S. 47:305(D), except for the exemptions on food and drugs, orthotic and prosthetic devices, and patient aids prescribed by physicians or licensed chiropractors for personal consumption or use apply to state and local sales or use tax. The exemptions for food and drugs, orthotic and prosthetic devices, and patient aids prescribed by physicians or licensed chiropractors apply only to state sales or use tax.

H. R.S. 47:305(D)(1)(i) provides, in part, an exemption from state and local sales or use tax for new automobiles and new aircraft withdrawn from stock by factory authorized new automobile and new aircraft dealers, with the approval of the secretary and titled in the dealers' name for use as demonstrators. There are several restrictions involved in this particular exemption: first, the dealer must be a factory authorized new automobile or aircraft dealer; second, the car or plane withdrawn from stock must be a new automobile or aircraft; and third, the car or plane must be titled in the dealer's name for use solely as a demonstrator. In order to qualify as a demonstrator, the units can be driven or flown only by personnel attached to the respective dealership or by a prospective customer accompanied or supervised by personnel from the respective dealership. The car or plane cannot be used by members of the family of dealership personnel nor can the units be used to run errands or for pleasure purposes. The term demonstrators will be construed in its narrowest sense and is limited to use of the property for display of its qualities to prospective customers. Only a very limited use by authorized dealer personnel is permissible in accordance with the provisions of R.S. 47:305(H). Approval of the secretary is required in titling the car as a demonstrator. Writing of the word demonstrator across the face of the license application will be accepted as sufficient request for approval and issuance of the license by the secretary on an application bearing such notation will constitute full approval by the secretary. Since new aircraft are titled in the name of the dealership upon purchase, a request for and approval of the unit as a demonstrator will be granted provided the dealership dates and signs the bill of sale and retains it in his possession for verification by Department of Revenue personnel. If any misuse of the demonstrator is detected subsequent to approval of the unit as a demonstrator, the transaction immediately becomes taxable, and the dealer will be held responsible for the tax due thereon.

I. R.S. 47:305(E) makes it clear that the taxes imposed under state and local sales or use tax laws do not apply to tangible personal property manufactured or produced in this state or imported in this state for export outside the state. The exemption applies solely to the property for export and does not apply to tangible personal property used, consumed, or expended in the manufacturing process, unless the conditions for exemption set forth in R.S. 47:301(10) are met. Neither do state and local sales or use tax laws levy a tax on bona fide interstate commerce. In addition, it has been provided that when property comes to rest in a taxing jurisdiction and has become a part of the mass of the property in that taxing jurisdiction, it is no longer involved in interstate commerce and its sale, use, consumption, distribution or storage for use there will be taxable. Specific