

NOTICE OF INTENT

Department of Revenue Policy Services Division

State Sales Tax Holiday on Purchases of Hurricane- Preparedness Items (LAC 61:I.4423)

Under the authority of R.S. 47:1511 and Sec. 2 of Act 429 of the 2007 Regular Session, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue proposes to adopt LAC 61:I.4423 to provide for the definition of the following enumerated terms for purposes of the impending state sales tax holiday.

This Rule is necessary to allow the secretary to administer the state sales tax holiday for the tax year 2008 and beyond. R.S. 47:305.58 as enacted by Act 429 of the 2007 Regular Session of the Legislature allows for an annual state sales tax exemption on sales made on the last Saturday and Sunday of each May of certain hurricane-preparedness items or supplies. Because Act 429 does not define several terms as they are used in the Act, the Department of Revenue is authorized to define those terms and set a procedure for application of the Act.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 44. Sales and Use Tax Exemptions

§4423. State Sales Tax Holiday on Purchases of Hurricane-Preparedness Items

A. Revised Statute 47:305.58 allows for an exemption of the state sales tax on sales made on the last Saturday and Sunday of each May of certain hurricane-preparedness items or supplies.

1. Tax-free purchases are authorized on the first \$1,500 of the sales price of each hurricane-preparedness item.

2. The sales tax exemption only applies to purchases of the following items or supplies:

- a. any portable self-powered light source, including candles, flashlights and other articles of property designed to provide light;
- b. any portable self-powered radio, two-way radio, or weather band radio;
- c. any tarpaulin or other flexible waterproof sheeting;
- d. any ground anchor system or tie-down kit;
- e. any gas or diesel fuel tank;
- f. any package of AAA-cell, AA-cell, C-cell, D-cell, 6 volt, or 9-volt batteries, excluding automobile and boat batteries;
- g. any cell phone battery and any cell phone charger;
- h. any nonelectric food storage cooler;
- i. any portable generator used to provide light or communications or preserve food in the event of a power outage;
- j. any *storm shutter device*, as defined by R.S. 47:305.58;
- k. any carbon monoxide detector; and
- l. any reusable freezer pack such as "blue ice."

3. The state sales tax exemption provided does not apply to hurricane-preparedness items or supplies sold at any "airport," "public lodging establishment or hotel," "convenience store," or "entertainment complex."

B. Definitions

Airport—any area of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the sheltering, servicing, or repairing of aircraft or for receiving or discharging passengers or cargo; all appurtenant areas used or suitable for airport buildings or other airport facilities; and all appurtenant rights of way including easements through or other interest in air space over land or water and other protection privileges, the acquisition or control of which is necessary to insure safe approaches to the landing areas and efficient operation thereof.

Hotel—any establishment engaged in the business of furnishing sleeping rooms, cottages, or cabins to transient guests, where such establishment consists of six or more sleeping rooms, cottages, or cabins at a single business location. The term *public lodging establishment* is interpreted to include other businesses that offer lodging to transient guests for compensation, including "bed and breakfast" businesses.

Convenience Store—retail businesses that are smaller in square footage than full-line grocery stores, discount stores, department stores, or pharmacies, and that place primary emphasis on providing the public convenient locations from which to quickly purchase from limited lines of consumable products.

a. In order to be considered a *convenience store*, sales must consist primarily of motor fuel and lubricants; snack foods, including sandwiches, hot dogs, candy, nuts, and chips; beer; liquor; wine; tobacco products; soft drinks; fishing baits; newspapers; and magazines, and the sales of the business must be sufficiently diversified within these product lines so that the business is not classified as a specialty retailer such as a liquor store, sandwich shop, newsstand, or tobacco shop.

b. *Convenience stores* typically have the following characteristics:

- i. inside sales areas that are less than 5,000 sq. ft.;
- ii. off-street parking and/or convenient pedestrian access; and
- iii. extended hours of operation with many open 24 hours, seven days a week.

Entertainment Complex—a premise that is a site for the performance of musical, theatrical, or other entertainment; country clubs; tennis clubs; swimming clubs; bowling establishments; skating rinks; movie theatres; amusement parks; zoos; or similar entertainment-oriented businesses.

C. Procedure for State Sales Tax Holiday

1. A taxpayer may make state sales tax-free purchases on the first \$1,500 of the sales price on each of the above enumerated hurricane-preparedness items or supplies on the last Saturday and Sunday of each May.

2. The state sales tax holiday shall not apply to any vendor defined under Subsection B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and Sec. 2 of Act 429 of the 2007 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 34:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. The proposed rule will not affect the stability of the family.
2. The effect on the authority and rights of parents regarding the education and supervision of their children. This proposed rule will not affect the authority and rights of parents regarding education and supervision of children.
3. The effect on the functioning of the family. This rule will not affect the functioning of the family.
4. The effect on family earnings and family budget. This rule will not affect the family earnings or family budget.
5. The effect on the behavior and personal responsibility of children. This rule will not affect the behavior or personal responsibility of children.
6. The ability of the family or a local government to perform the function as contained in the proposed rule. No, this action is strictly an action to provide for an annual state sales and use tax exemption on hurricane-preparedness items.

Interested persons may submit data, views, or arguments, in writing to Ray Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m. on Wednesday, May 28, 2008. A public hearing will be held on Thursday, May 29, 2008 at 1:30 p.m. in the River Room Conference Room on the 7th Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: State Sales Tax Holiday on Purchases of Hurricane-Preparedness Items

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Act 429 of the 2007 Regular Session enacted R.S. 47:305.58 which provides for an annual state sales tax holiday on the first \$1,500 of certain hurricane-preparedness items purchased during the last Saturday and Sunday of each May. This proposed rule provides guidance concerning R.S. 47:305.58 and provides definitions of the terms "airport," "public lodging establishment or hotel," "convenience store," and "entertainment complex" for purposes of participation in the sales tax holiday.

Implementation of this proposed rule will have minimal impact on the Department of Revenue's costs. Costs will be incurred to prepare news releases and inform taxpayers about the sales tax holiday. The proposed rule will have no costs or savings to local governmental units because the holiday does not pertain to local sales and use taxes.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The two-day state sales tax holiday for certain hurricane supply items enacted under R.S. 47:305.58 is estimated to

reduce state sales tax collections by \$2 million per year. The holiday does not affect local sales and use taxes .

The estimated \$2 million reduction in state sales tax collections is based on an analysis conducted by the Department of Revenue after the 2005 sales tax holiday (three days in December 2005, authorized by Act 9 of the 2005 First Extraordinary Session). That analysis estimated state sales tax revenues were reduced by approximately \$11-\$12 million during the three-day holiday. The sales tax holiday in 2005 was different from this one in several important areas. The sales tax holiday in 2005 applied to the first \$2,500 of the sales or cost price of consumer purchases of tangible personal property purchased during a three-day period. The limit per item for this holiday is \$1,500 over two days. Furthermore, this holiday limits purchases to specific hurricane-preparedness items and allows exclusion of purchases from certain locations including airports, public lodging establishments, entertainment complexes and convenience stores. These limitations will likely decrease the potential revenue losses to the state compared to the 2005 sales tax holiday. Additionally, the 2005 sales tax holiday allowed sales tax exemptions for certain businesses located in Hurricane Katrina or Hurricane Rita areas. This holiday has no such provision. The revenue loss associated with the business purchase provision in the 2005 holiday was estimated to total approximately \$3 million, leaving \$9 million of nonbusiness related sales tax loss. Given the lower pricing threshold, the exclusion of convenience store sales, the limited set of items eligible for exemption, and the shorter time span, state revenue loss associated with this proposal is estimated to be in the \$2 million range.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Taxpayers that make purchases of qualifying hurricane-preparedness items on the last Saturday and Sunday of each May will receive the economic benefit. Tax savings on qualified purchases is estimated to be approximately \$2 million per year. In addition, dealers engaged in the sale of qualifying hurricane-preparedness items may see a modest increase in sales during the two-day sales tax holiday as consumers take advantage of the state sales tax holiday.

The sales tax holiday enacted by R.S. 47:305.58 will likely result in some cost to retailers who must reprogram their cash registers for tax exempt items during the two-day sales tax holiday period. These retailers may also need to reprogram their registers again at the end of the holiday period. The estimated cost for reprogramming is expected to be minimal since many registers already include a tax-exempt key or some other method for not charging the state sales tax.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Cynthia Bridges
Secretary
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Robert E. Hosse
Staff Director
Legislative Fiscal Office