



LOUISIANA UNIFORM LOCAL SALES TAX BOARD

Policy Advice No. 22-003

September 12, 2022

Application of La. R.S. 47:305(D)(2) to Nursing Homes – Response to Inquiry Received from a Local Tax Collector

REDACTED VERSION

Re: Response to Inquiry on Application of La. R.S. 47:305(D)(2) to Nursing Homes

Dear Collector,

You have requested policy advice from the Louisiana Uniform Local Sales Tax Board (LULSTB) regarding the application of the exemption found in La. R.S. 47:305(D)(2) to nursing home taxpayers. The purpose of this correspondence is to provide a response to your request in the form of a Board Tax Advisory pursuant to La. R.S. 47:337.102(C)(1) and (5) and LULSTB Policy and Procedure Memoranda 50.1 and 50.3.

A Board Tax Advisory is issued under the authority of R.S. 47:337.102(C)(1) and (5) to provide guidance to the public and local sales and use tax collectors on matters concerning the imposition, collection, and administration of local sales and use taxes authorized under the constitution and laws of this state. It applies principles of law to a specific set of facts and is an expression of the position of the LULSTB regarding particular issues. A Board Tax Advisory does not have the force and effect of law, is not binding on the public or local collectors and is not subject to appeal to the Louisiana Board of Tax Appeals.

Please note that this Board Tax Advisory only discusses the application and operation of La. R.S. 47:305(D)(2) as to local sales tax. Any inquiries regarding the application of La. R.S. 47:305(D)(2) to state sales taxes should be directed to the Louisiana Department of Revenue.

Factual Background

You have asked for policy advice with regard to the application of the sales tax exemption found in La. R.S. 47:305(D)(2)(a)(ii) relating to sales of meals furnished to the staff and residents of nursing homes, adult residential care providers, and continuing care retirement communities. La. R.S. 47:305(D)(2)(a)(ii) provides as follows:

(2)(a) Sales of meals furnished as follows shall be exempt:

(ii) To the staff and patients of hospitals and to the staff and residents of nursing homes, adult residential care providers, and continuing care retirement communities.

(b) Except as provided for in Item (a)(i) of this Paragraph, the furnishing of such meals shall be exempt from the taxes imposed by this Chapter if the meals are consumed on the premises where purchased.

You have asked for guidance on the following specific questions:

- 1) Does 47:305(D)(2)(a)(ii) apply to the state tax, state and local tax or is it optional for local tax?
- 2) Does 47:305(D)(2)(a)(ii) exempt the sale of meals to the patients or staff?
- 3) Does the statute require a separate sales document for the meals in order to exempt a sale to the patients and staff under 305 D(2)(a)(ii)?
- 4) Does 47:305 (D)(2)(a)(ii) exempt the purchase of food used to prepare meals furnished as a part of a service for the patients or staff?
- 5) What document would be supplied by the nursing home to a vendor to document the exemption for the purchase of food furnished under 47:305 D(2)(a)(ii) if exempt?

Analysis and Discussion

1. Applicability of La. R.S. 47:305(D)(2)(a)(ii) to Local Sales Tax

La. R.S. 47:305 D(1) provides “the following tangible personal property is hereby specifically exempted from the tax imposed *by taxing authorities*, except as otherwise provided in this Paragraph.” (Emphasis added). Section D(2) of La. R.S. 47:305 goes on to provide that “[s]ales of meals furnished as follows shall be exempt.” There is nothing in Section D(2) that “otherwise provides” that the exemption is applicable to something other than “taxing authorities,” a plural term that denotes more than just the State of Louisiana (i.e. both state and local taxing authorities).

In addition, La. R.S. 47:305 D(6) provides that “[t]he exemptions from the state sales and use tax provided in this Subsection in existence as of the effective date of Act 205 of 1978 shall be applicable to any sales and use tax levied by any local governmental subdivision or school board except as otherwise specifically provided in this Subsection.” Section D(6) further provides that “all Acts after the 1991 Regular Session placing an exemption in this Subsection which is applicable to a political subdivision must, to be effective, specifically provide in the title and body of the bill that it is applicable to a political subdivision.” The exemption that eventually became La. R.S. 47:305 D(2)(a)(ii) was initially enacted into law with regard to hospitals in 1974, meaning those transactions are exempt from local sales tax. *City of Baton Rouge v. Mississippi Valley Food Service Corp.*, 396 So. 2d 353 (La. App. 1 Cir. 1981). The language regarding nursing homes, adult residential care providers, and continuing retirement communities was added via Act 271 of the 2013 Regular Session. Since the 2013 amendment merely expanded the existing exemption to include nursing homes, it stands to reason that the nursing home exemption is applicable at the local level as well. However, even if the “post 1991” requirement found in D(6) applies to the nursing homes exemption language, the title of Act 271 adding applicability of the exemption to nursing homes provided that it was “relative to exemptions and exclusions from *sales taxes*.” (Emphasis added.). The title of Act 271 did not include any limiting qualifier such as “relative to

exemptions and exclusions from *state* sales taxes.” Accordingly, the title of Act 271 indicated it was applicable to political subdivisions.

Finally, and to the extent the structure of La. R.S. 47:305(D) creates any doubt, La. R.S. 47:337.9 in the Uniform Local Sales Tax Code provides for exemptions applicable to sales and use taxes of political subdivisions. La. R.S. 47:337.9 provides that the exemptions identified therein “shall apply to the sales and use taxes of political subdivisions.” La. R.S. 47:337.9(A). La. R.S. 47:337.9(C)(16) then specifically identifies the exemption found in La. R.S. 47:305(D)(2), and references the key words “sales of meals.” Since the language regarding the sales of meals at nursing homes being exempt was added to La. R.S. 47:305(D)(2) in 2013, after La. R.S. 47:337.9 was adopted in the Uniform Local Sales Tax Code in 2003, it is presumed that the Legislature knew the exemption applied to both state and local taxes when it subsequently added the language referencing nursing home meals. *M.J. Farms Ltd . V. Exxon Mobil Corp*, 2007-2371 (La. 7/1/2008), 998 So. 2d 16, 27 (Legislature is presumed to enact each statute with deliberation and with full knowledge of all existing laws on the same subject).

Accordingly, the exemption found in 47:305(D)(2)(a)(ii) is not optional and applies to state and local sales and use tax.

2. Does 47:305(D)(2)(a)(ii) exempt the sale of meals to the patients or staff?

In the case of *City of Baton Rouge v. Mississippi Valley Food Service Corp.*, 396 So. 2d 353 (La. App. 1 Cir. 1981), the court examined the applicability of the exemption with regard to the sale of meals to staff and patients of hospitals. While, as noted before, the provision expanding the exemption to nursing home staff and residents was not added until 2013, the operative language of the exemption as to hospitals was present in La. R.S. 47:305 as of the *Mississippi Valley Food Service Corp.* opinion. In that case, the court held, “[t]here is no doubt that the sale of meals to the staff and patients of hospitals is tax exempt under (La. R.S. 47:305).” The same result is reached for nursing home staff and residents under La. R.S. 47:305(D)(2)(a)(ii). The sale of a meal furnished to the staff or resident of a nursing home is exempt from state and local sales tax, as long as the meals are consumed on the premises where purchased as required by La. R.S. 47:305(D)(2)(b).

3. Does the statute require a separate sales document for the meals in order to exempt a sale to the patients and staff under 305 D(2)(a)(ii)?

La. R.S. 47:305(D)(2)(a)(ii) does not contain any requirement with regard to a separate sales document in order for the exemption to apply. However, for the exemption to apply, there must be a sale of a meal to a staff member or resident. The meal could be provided in a manner that does not constitute the separate retail sale of a meal. For example, if the meal is provided in furtherance of providing services pursuant to a contract or is furnished as an incident of providing a professional service, a sale of a meal to a staff member or patient has not occurred. See. *S&R Hotels v. Fitch*, 25690-CA, 25691-CA (La. App. 2 Cir. 1994), 634 So. 2d 922; *Collector of Revenue v. JL Richardson Co.*, 247 So. 2d 151 (La. App. 4 Cir.1971). A determination of whether

a separate retail sale of a meal to a resident or staff member has occurred is closely linked to the potential application of the sale for resale exemption, and a further discussion of these cases, and others, on that topic is below.

4. Does 47:305 (D)(2)(a)(ii) exempt the purchase of food used to prepare meals furnished as a part of a service for the patients or staff?

The sales tax exemption contained in La. R.S. 47:305(D)(2)(a)(ii), by its clear and unambiguous language, applies to the sale transaction between a nursing home and its staff member or resident. Conversely, La. R.S. 47:305(D)(2)(a)(ii) does not apply to the sale transaction between a vendor of food ingredients and the nursing home for food used to prepare meals furnished at a nursing home. For the sale transaction between a nursing home and its food supply vendor to escape the application of sales tax, another exemption must be applied.

The most likely sales tax exemption or exclusion that could be applicable to the sale of food ingredients to a nursing home for use in preparing meals would be the sale for resale exclusion found in La. R.S. 47:301(10)(a)(ii). In order to assess the potential applicability of the sale for resale exclusion, a determination as to whether the food items are actually resold to staff and residents must be made. On this point, Louisiana courts have provided the following guidance:

[I]n those cases dealing with the initial purchase by a business of goods normally furnished to a customer as an incident of providing a professional service, the initial sale has been held to be a retail sale and not a sale for resale and the business is required to pay sales tax on the purchase. Where goods are not furnished as a normal incident to furnishing professional services and the price of the goods is separable and can be established, the initial sale is not a retail sale but is a sale for resale.

S&R Hotels v. Fitch, 25690-25691-CA (La. App 2 Cir. 1994), 634 So. 2d 922, 927.

Based on the *S&R Hotels* opinion (and the cases cited therein), there is a two-part test to determine whether a meal is resold: 1) the meal is not provided as a normal incident to furnishing professional services; and 2) the price of the meal is separable and can be established.

To qualify as a retail sale of a meal, a nursing home would first have to show that provision of meals is not a normal incident to providing its services. This will be difficult to do for a meal provided in a traditional nursing home setting. All nursing homes are under the jurisdiction of the Louisiana Department of Health. La. R.S. 40:2009.1(A). Louisiana Department of Health regulations provide that all nursing homes “shall provide each resident with a nourishing, palatable, and well-balanced diet that meets the daily nutritional and dietary needs of each resident.” LAC Title 48, Part I §9831. Since nursing homes are required by law to provide meals to their residents, it is axiomatic that the provision of meals is a normal incident to furnishing nursing home services. Thus, nursing homes do not pass the first prong of the *S&R Hotels* test,

and the initial purchase by the nursing home of food to prepare meals for residents is considered a retail sale rather than a sale for resale.¹

This result could potentially differ for sales of meals to staff or residents for another type of facility, such as an assisted living facility or other adult residential facility where the provisions of meals to residents is not required by law and is not provided as a normal incident to providing its services. However, even for sales to staff or for those other facilities, the price of the meal would still need to be separable and established in order to meet the second prong of the *S&R Hotels* test and qualify as the retail sale of a meal.

5. What document would be supplied by the nursing home to a vendor to document the exemption for the purchase of food furnished under 47:305 D(2)(a)(ii) if exempt?

As outlined above, the purchase of food by a nursing home for use in preparing meals to resident and staff is not exempt under La. R.S. 47:305(D)(2)(a)(ii). The exemption that would potentially apply to that transaction is the sale for resale exemption discussed above. Accordingly, the appropriate document would be a resale certificate, if the food items are in fact being purchased for resale.

Please feel free to contact me if you would like to discuss this matter in greater detail.

Sincerely,

Clarence Lymon, Executive Director

Louisiana Uniform Local Sales Tax Board

¹ This result is further supported by a review of the legislative history of the legislation that added nursing homes to La. R.S. 47:305 D(2)(a)(ii), Act 271 of the 2013 Louisiana Legislature. The bill's sponsor (Senator Mike Walsworth) as well as a representative of the Louisiana Nursing Home Association testifying in favor of the legislation confirmed that the exemption was only meant to exempt the provision of "hot meals" to nursing home residents and staff, and that nursing homes had traditionally paid sales tax on their purchases of bulk food ingredients from food vendors and would continue to do so. See Legislative Archive Video of Senate Revenue and Fiscal Affairs Committee on April 29, 2013:

https://senate.la.gov/s_video/videoarchive.asp?v=senate/2013/04/042913r~f

Legislative Archive Video of Senate floor debate on May 6, 2013:

https://senate.la.gov/s_video/videoarchive.asp?v=senate/2013/05/050613SCHAMB