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REVENUE AND TAXATION

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Chapter 43. Sales and Use Tax

§4301. Uniform State and Local Sales Tax Definitions

A. General. Words and phrases shall be read with their context and the specific section of law to which they are applicable. They shall be construed according to the common usage of the language. Technical words and phrases, and such others as may have acquired a peculiar meaning in the field of taxation shall be construed according to such peculiar meaning. The word *shall* is mandatory and the word *may* is permissive. Unless otherwise clearly indicated, words used in singular include the plural and words used in the plural include the singular.

B. Words, terms and phrases defined in R.S. 47:301(1) through R.S. 47:301(27), inclusive, have the meaning ascribed to them therein and as further provided in §4301.C.

C. All examples included in the text of these rules and regulations are for illustration only and in no case should they be construed to impose a limitation.

Business—

a. Business covers any activity reasonably expected to result in gain, benefit or advantages, either directly or indirectly; the fact that operations resulted in a loss or did not provide the expected benefits or advantages would not eliminate an activity from the business classification. It is intended that some degree of continuity, regularity or permanency be involved so that the doing of any single act pertaining or related to a particular business would not be considered engaging in or carrying on that business; a series of such acts would be so considered.

b. Continuous employment, occupation, or profession engaged in for livelihood which occupies the majority of time and attention, or activity in which time and capital are invested on future outcome are within the meaning of *business* just as barter or exchange of things, rights or services for value are within the meaning of *business*. It is not necessary for any activity to constitute the sole occupation to remain within the intended definition.

c. The term *business* does not include isolated and occasional sales by persons who do not hold themselves out as engaged in business. This exclusion clearly applies to sales made by the owners of property who had acquired the property for use or consumption, and is not engaged in selling similar property on a repeated or continuing basis.

d. Whether an activity constitutes the carrying on of a business demands an analysis of the continuing nature of the activity, and may change with respect to any particular person. By way of example, trustees or receivers conducting a continuing retail merchandising activity, even though solely by court order, would be construed to be in the merchandising business, while the sale conducted by the same trustees or receivers in order to liquidate the business pursuant to a later court order would not be construed to be carrying on a business. Further, the occasional sale of used equipment made by a person engaged in the equipment rental business would not be construed to constitute the business of selling equipment, but if the same lessor of equipment frequently, routinely or continuously offered used equipment for sale, then he would be construed to be engaged in that business.

Collector—

a. In reference to *state sales* or *use tax*:

i. *Collector*—the secretary and the secretary's duly authorized assistants. Any duly authorized representative of the collector, when acting under his authority and direction, has the same powers and responsibilities as the collector, but only to the extent so delegated.

ii. *Secretary*—the Secretary of the Department of Revenue of the state of Louisiana.

b. In reference to *local sales or use tax*:

i. *Collector*—the director, tax administrator, commission, or collector of revenue for the jurisdiction and includes the collector's duly authorized assistants. Any duly authorized representative of the collector, when acting under his authority and direction, has the same powers and responsibilities as the collector, but only to the extent so delegated.

ii. Article VII, Section 3 of the Constitution of Louisiana and R.S. 47:337.14 provide that sales and use taxes levied by a political subdivision shall be collected by a centralized parish wide collector or commission.

c. The authority to make assessments, impose or waive penalties, enter into agreements legally binding upon the taxing authority relative to extensions of time, for filing, running of prescriptive periods, installment payments of tax liability, and the filing and release of assessments and liens has been delegated extremely sparingly. Most employees of the taxing authority do not have authority to perform these functions on behalf of the collector. Questions involving any of those legal actions should be addressed directly to the collector, who has sole power to delegate his authority in those areas.

d. No action taken by any employee shall be binding upon the collector unless specific authority has been delegated to the employee for the type of action taken.

Commercial Farmer—

a. Commercial Farmer is defined by R.S. 47:301(30) to mean persons, partnerships or corporations who:

i. are occupationally engaged in producing food or agricultural commodities for sale or for further use in producing food or such commodities for consumption or sale;

ii. regularly engage in the commercial production for sale of vegetables, fruits, crops, livestock and other food or agricultural products; and

iii. report farm income and expenses on a federal Schedule F or similar federal tax form, including but not limited to, Forms 1065, 1120 and 1120S under a North American Industry Classification System (NAICS) Code beginning with 11.

b. For purposes of this definition, agricultural products shall mean any agronomic, aquacultural, floricultural, horticultural, maricultural, silvicultural, or viticultural crop, livestock or product.

c. For purposes of this definition livestock means any animal, except dogs and cats. This definition includes bees, cattle, buffalo, bison, oxen, and other bovine; horses, mules, donkeys and other equine; sheep; goats; swine; domestic rabbits; fish, turtles, and other animals identified with aquaculture that are located in artificial reservoirs or enclosures that are both on privately owned property and constructed so as to prevent, at all times, the ingress and egress of fish life from public waters; imported exotic deer and antelope, elk, farm-raised white tailed deer, farm-raised ratites, and other farm-raised exotic animals; chickens, turkeys, and other poultry; and animals placed under the jurisdiction of the commissioner of agriculture and forestry and any hybrid, mixture, or mutation of any such animal.

d. A person, partnership or corporation shall not be considered a commercial farmer if their livestock or crops are produced or maintained for reasons other than commercial use, such as recreational or personal consumption.

e. In order to file a Schedule F or similar federal tax form, a farm must be operated for profit. If farming activity is not carried on for profit, as defined in 26 CFR 1.183-2, then expenses must be itemized on a Schedule A.

f. The department will issue certifications to commercial farmers upon application and satisfaction of all legal requirements.

Cost Price—

a. *Cost price* is defined by R.S. 47:301(3) to mean the lesser of:

i. the reasonable market value of the tangible personal property at the time it becomes susceptible to the use tax; or

ii. the actual cost of the article subject to the use tax liability;

iii. the lesser of the two values applies, regardless of the manner by which the property was acquired, whether by purchase, by manufacture, or otherwise, and regardless of whether acquired within the taxing jurisdiction or outside the taxing jurisdiction.

b. The statutory requirement for a comparison between reasonable market value and actual cost necessarily demands that both elements being compared be on a comparable basis.

c. For purposes of the comparison, the reasonable market value of tangible personal property is the amount a willing seller would receive from a willing buyer in an arms length exchange of similar property at or near the location of the property being valued. The amount which would be realized from a forced sale is not acceptable as the market value for this purpose.

d. In arriving at actual cost of tangible personal property for the purpose of the required comparison, all labor and overhead costs which are billed to the purchaser of the property, except for separately stated installation charges, are included. In the case of property manufactured; fabricated and/or altered to perform a specific function prior to the tax incident, every item of cost must be included. Thus, material, labor, overhead, and any other cost of any nature whatsoever must be included. However; labor, overhead, and other costs which represent services rendered to the property by the owner or his employees are not to be included. *Employees*, are defined to mean personnel who are on the property owner's payroll on a permanent basis, and not for the sole purpose of completing the immediate tasks of rendering their services to the property in question, and for which all payroll taxes are withheld and remitted by the property owner. The only transportation charges which are to be included in the cost are the transportation charges which can be identified as part of the acquisition cost of materials, and only in cases wherein the transportation was either performed or arranged by the vendor of the materials.

e. Although the point of tax incidence is at the location of use, the transportation charges for transporting the property from the owner's location of storage to the point of tax incidence is not included in the cost.

f. In the case of property withdrawn from stock by a manufacturer holding similar property for resale, no element of profit will be added to cost in calculating the amount to be used in comparison with market value.

g. Since installation is not included as a taxable service, the cost of installing tangible personal property should not be included in cost price if such cost were separately billed or accounted for at the time of installation so as to afford positive identification. In the absence of separate billing or accounting for installation costs, they will be included in arriving at actual cost. R.S. 47:301(3)(c) specifically provides that the separately stated charge made by oil field board road dealers for the initial furnishing and installation of board roads shall not be included in the cost price of the rental or sale.

h. Under R.S. 47:301(3)(i), machinery and equipment is excluded from cost price if the property is used to manufacture tangible personal property for sale to another or is used directly in the production, processing, and storing of food, fiber, or timber for sale; is used predominantly and directly in the manufacturing process or in the actual manufacturing for agricultural purposes; and is eligible for depreciation for federal income tax purposes. The exclusion is subject to a phase-in between July 1, 2004, and June 30, 2010. The exclusion applies only to manufacturing businesses that have been assigned, by the Louisiana Department of Labor, North American Industrial Classification System (NAICS) codes within the agricultural, forestry, fishing, and hunting Sector 11 or the manufacturing Sectors 31 through 33 as they existed in 2002. Businesses that are not registered with the Louisiana Department of Labor or that have not been assigned these NAICS codes are not eligible to claim this exclusion. The exclusion applies to state sales or use tax and

local sales or use tax if the political subdivision has adopted this exclusion by ordinance.

i.(a). *Manufacturing*—putting raw materials through a series of steps that brings about a change in their composition or physical nature in order to make a new and different item of tangible personal property that will be sold to another. The manufacturing process begins when a raw material is introduced into the first machine or item of equipment that begins the change of the composition or physical nature of the raw materials into another product. The manufacturing process ends when the final product for sale has been placed into the packaging that will normally be delivered to the final consumer.

(b). *Manufacturing for Agricultural Purposes*—the activities involved in the production, processing, and storing of food, fiber and timber for sale. Manufacturing for agricultural purposes begins when the soil or field is prepared for planting and ends when the harvested product is removed from the farm.

ii.(a). For machinery or equipment used to manufacture tangible personal property for sale, *used predominantly* means that more than 50 percent of the property's use is in the process of causing a change in the composition or physical nature of the raw materials that are to become a final product for sale.

(b). For machinery or equipment used to produce, process, and store food, fiber, or timber for sale, *used predominantly* means the property is used more than 50 percent of the time in the production, processing, and storing of food, fiber, or timber for sale. Equipment that remains idle between growing seasons is considered used for the production, processing, and storing of food, fiber, or timber during that time.

iii.(a). For a manufacturer of tangible personal property for sale, *used directly* describes the manner in which the machinery or equipment used in a plant facility alters the physical characteristics of the product during the manufacturing process. *Used directly* means that the machinery and equipment must have an immediate effect upon those products manufactured for ultimate sale to another person. Machinery and equipment used to manufacture intermediate products for internal use, such as manufacturing tools, internally consumed energy, and processing chemicals do not qualify for the exclusion.

(b). For a manufacturer of food, fiber, or timber for sale, *used directly* describes the manner in which the machinery or equipment is involved in the manufacturing for agricultural purposes. *Used directly* means that the machinery and equipment must have an immediate effect upon the production, processing, or storing of food, fiber, or timber. Examples of machinery and equipment used directly in manufacturing for agricultural purposes include machinery and equipment for planting, cultivating, fertilizing, spraying, harvesting, producing, processing, and storing of food, fiber, or timber for sale. This exclusion includes materials used in the construction of facilities used to store the food, fiber, or timber for sale. Machinery and equipment used directly in manufacturing for agricultural purposes does not include facilities used to store equipment.

iv. *Eligible for Depreciation*—the machinery or equipment is a principal component of the manufacturing process and has a substantially useful life beyond the taxable year, although it does not have to be capitalized and depreciated to qualify for exclusion. Examples of property considered eligible for depreciation are robotic welding machines in a vehicle manufacturing plant; pumps, valves, and compressors in a petrochemical plant; and tractors, trailers, and harvesting equipment on a commercial farm. Examples of items that do not qualify include nuts, bolts, gaskets, lubricants, filters, and fuel.

v. The following also qualify for exclusion as manufacturing machinery and equipment:

(a). computers and software that control, communicate with or control other computer systems that control, or control heating or cooling systems for machinery or equipment that manufactures tangible personal property for sale. Computers and software used for inventory and accounting systems or that control non-qualifying machinery and equipment do not qualify for the exclusion;

(b). machinery and equipment necessary to control pollution at a plant facility where pollution is produced by the manufacturing operation. For purposes of this exclusion, machinery and equipment necessary to control pollution includes equipment that reduces the volume, toxicity, or potential hazards of the waste products generated by the manufacturing operation or transforms the waste product for reuse in the manufacturing operation; and

(c). machinery and equipment used to test or measure raw materials, the property undergoing manufacturing, or the finished product, when such test or measurement is a necessary part of the manufacturing process. This includes machinery and equipment used to test the quality or quantity of the product for sale before, during, or after the manufacturing process.

vi. Persons acting as mandataries (agents) of manufacturers can claim the exclusion on purchases of qualifying machinery and equipment that will ultimately be used by a business assigned an eligible NAICS code by the Department of Labor. The mandatary must obtain the manufacturer's exclusion Form R-1071 and provide it, with a copy of the contract of mandate or the Department's Form R-1072 (Manufacturer's Designation of Mandate), to the seller at the time of purchase.

vii. Repairs to manufacturing machinery and equipment to keep the property in an ordinarily efficient working order generally do not qualify for exclusion under R.S. 47:301(3)(i) because neither the labor nor the materials used in these repairs are eligible for depreciation for federal income tax purposes. However, the purchase of tangible personal property used in the repair would qualify for the exclusion provided the property is a major component of the manufacturing process and has a substantially useful life beyond the current period.

viii. Charges for labor and materials that are classified as capital improvements under Internal Revenue Service Regulations may be excluded as follows.

(a). Charges for labor are excluded from tax when performed on qualifying manufacturing machinery and equipment that is movable property at the time of the capital improvement. The vendor that provides the labor is allowed to treat the materials used as purchased for resale. All materials that are incorporated into qualifying machinery and equipment during the capital improvement qualify for exclusion from tax.

(b). Materials incorporated into qualifying manufacturing machinery and equipment that is immovable property at the time of the capital improvement are eligible for exclusion as follows.

(i). In instances when a manufacturer purchases materials that will become a component part of qualifying machinery or equipment, the materials are excluded from tax.

(ii). A repair vendor's purchases of materials that will become component parts of qualifying machinery or equipment are excluded from tax if the vendor has been designated as a mandatary of a manufacturer. The vendor must obtain the manufacturer's exclusion Form R-1071 and provide it, with a copy of the contract of mandate or the department's Form R-1072, to the seller at the time of purchase. Manufacturers that supply this form to their mandataries must maintain a schedule of the tangible personal property used in these capital improvements.

(c). Purchases of spare machinery and equipment, such as compressors, pumps, and valves, qualify for the exclusion provided these items satisfy the definition of machinery and equipment provided in R.S. 47:301(3)(i). Spare machinery and equipment, such as bolts, nuts, gaskets, oil, etc., which cannot be depreciated for federal income tax purposes, do not qualify for the exclusion.

Dealer—

a. State and local sales or use tax is imposed upon the sales of tangible personal property within a taxing jurisdiction, the use, consumption, distribution and the storage for use or consumption within a taxing jurisdiction of tangible personal property, the lease or rental within a taxing jurisdiction of tangible personal property, and upon the sales of certain services. The tax in each instance is collectible from the dealer.

b. In view of the total reliance of the sales tax statutes upon the dealer for collection of the tax, the law meticulously ascribes to the term *dealer* the broadest possible meaning relevant to the taxes imposed by the taxing jurisdictions. R.S. 47:301(4) clearly holds either party to any transaction, use, consumption, storage, or lease involving tangible personal property and either the performer or recipient of services liable for payment of the tax through the broad statutory definition of *dealer*.

c. R.S. 47:301(4) includes as a *dealer* every person who manufactures or produces tangible personal property for sale at retail, use, consumption, distribution or for storage to be used or consumed in a taxing jurisdiction. Thus, the firm which manufactures or produces a product used or consumed by it in the conduct of its business becomes a dealer for sales and use tax purposes, even though none of that particular product is offered for sale.

d. Any person who imports property into a taxing jurisdiction, or who causes property to be imported into a taxing jurisdiction is a dealer for purposes of the sales and use tax whether the property is to be used, consumed, distributed, or for storage to be used or consumed in the taxing jurisdiction, or is intended for resale.

e. Persons who sell tangible personal property, who hold such property for sale, or who have sold tangible personal property are dealers. Similarly, any person who has used, consumed, distributed or stored tangible personal property for use or consumption in a taxing jurisdiction is defined as a *dealer*, unless it can be proved that sales or use tax has previously been paid to the taxing jurisdiction to the extent required by *s*tate and local sales or use tax law on the particular item.

f. Both the lessor (or rentor) and the lessee (or rentee) are defined as *dealer*s by the statute, as are both the person who performs services of a nature subject to tax and the person for whom the services are performed. See R.S. 47:301(14) and LAC 61:I.4301.C.*Sales of Services* for a list of the services subject to the tax.

g. *Dealer* also includes any person engaging in business in a taxing jurisdiction. See R.S. 47:301(1) and LAC 61:I.4301.C.*Business* for the definition of *business*. *Engaging in business* is further defined to include the maintaining of an office, distribution house, sales house, warehouse or other place of business, either directly, indirectly, or through a subsidiary or through a seller authorizing an agent, salesman or solicitor to operate within a taxing jurisdiction or by permitting a subsidiary to authorize the solicitation activity. Engaging in business also includes making deliveries of tangible personal property into a taxing jurisdiction by any means other than by a common or contract carrier. Qualification to do business within a taxing jurisdiction is not among the considerations of whether a person is engaged in business for this purpose. Neither is it material whether the place of business or personnel are permanent or temporary in nature.

h. Persons who sell tangible personal property to operators of vending machines are dealers.

i. For state sales or use tax purposes, such sales are taxable *sales at retail* as defined under R.S. 47:301(10)(b) and LAC 61:I.4301.C.*Retail Sale or Sale at Retail*. A vending machine operator is also a dealer, however, his sales of tangible personal property through coin-operated vending machines are not retail sales.

ii. For local sales or use tax purposes, such sales are sales for resale. A vending machine operator is a dealer

and must report his sales of tangible personal property through coin-operated vending machines as retail sales.

i. R.S. 47:301(4)(i) also includes in the definition of *dealer* any person who makes deliveries of tangible personal property into a taxing jurisdiction in a vehicle which is owned or operated by that person.

Drugs—

a. R.S. 47:301(20) applies a broader definition of *drugs* than the term indicates in common usage, for purposes of applying the exemption from state sales or use tax, which is offered under R.S. 47:305(D)(l)(j) and (s). This definition encompasses not only pharmaceutical remedies and chemical compounds, but also medical devices which are prescribed for use in the treatment of any medical disease. Devices which do not properly fall into the already established categories of orthotic or prosthetic devices or patient aids, could qualify for this category of tangible personal property. Examples of these would be pace-makers and heart catheters.

b. Except as otherwise provided, the exemption for drugs and medical devices does not apply to local sales or use tax.

Gross Sales—

a. *Gross Sale*—the total of the sales prices for each individual item or article of tangible personal property subject to state or local sales or use tax with no reduction for any purpose, unless specifically provided by statute.

b. The only deductions allowed from the total of the sales prices of all items of tangible personal property subject to tax are those provided in R.S. 47:301(13), R.S. 47:315, and R.S. 47:337.34.

c. R.S. 47:301(13)(a) permits the total sales price of an article of tangible personal property to be reduced by the part of the selling price represented by an article traded in. The allowed deduction is not to exceed the market value of the item traded in. For this purpose, the market value is the amount a willing seller would receive from a willing buyer in an arms length exchange of similar property at or near the location of the property being traded.

d. R.S. 47:315 and R.S. 47:337.34 allow the total of sales prices of all items of tangible personal property subject to the tax to be reduced by the selling price of any article of property returned to the seller in such manner as to cancel the transaction. Repossessions of property sold on the installment basis because of failure by the purchaser to make agreed installment payments do not constitute a return of merchandise allowable as a deduction from gross sales and the sales price for the subsequent sale of repossessed property is fully taxable and must be included in gross sales.

e.i. For sales of certain property specifically exempted from all or a part of the state sales or use tax, see R.S. 47:301(10) with respect to isolated or occasional sales made by a person not engaged in the business of making such sales, R.S. 47:305 with respect to the sales of livestock, poultry and other farm products by the producer and the sales of agricultural products as a raw material for further processing before the sale at retail to the ultimate consumer, R.S. 47:305(D) and R.S. 47:305.1 through R.S. 47:305.52 for various other exemptions.

ii. For purposes of local sales or use tax, only those exemptions referenced in R.S. 47:337.9, R.S. 47:337.10, and R.S. 47:337.11 of the Uniform Local Sales Tax Code will apply.

Hotel—

a. The term *hotel* has been defined under R.S 47:301(6) to be somewhat more restrictive than normally construed relative to the size of the establishment. Those establishments engaged in the business of furnishing sleeping rooms, cottages or cabins to transient guests that consist of six such accommodations at a single business location meet the statutory definition. If an establishment has fewer than six sleeping rooms, cottages or cabins at a single business location for transient guests, the establishment is not a hotel for purposes of state and local sales or use tax. The statutory definition of *hotel* excludes facilities with fewer than the specified number of accommodations from collection of state and local sales or use tax.

b.i. In determining whether an establishment furnishes hotel services to transient guests, it is determined that a guest who transacts for the services of a hotel, regardless of the length of time that the hotel services are used, is considered a transient guest and the transaction is subject to sales tax. Where a hotel provides permanent residences to permanent occupants, the transaction is not subject to state and local sales or use tax. For the transaction to be considered a rental as a permanent residence to permanent occupants, the physical properties of the space must provide the basic elements of a home, including full-sized and integrated kitchen appliances and facilities. Additionally, the occupant must use the facilities of the hotel as a home with the intent to permanently remain. When all conditions of the above two standards are met, the occupant may be considered non-transient for the purposes of the state and local sales or use tax. A lease with a hotel for a period of not less than one year will be considered as evidence in support of permanent residency status, when the area rented contained the required physical properties of the hotel accommodations at the beginning of the lease. Proof that hotel rental contained the requisite physical properties of the hotel accommodations within a unit continuously rented by one person or family for a period greater than one year will be considered as evidence in support of permanent residency status. The department may require additional evidentiary support of claims of non-transient status.

ii. For the purposes of state and local sales and use tax collections under R.S. 47:301 et seq., a guest of a hotel is a natural person.

Lease or *Rental*—

a. General. The lease or rental of tangible personal property for a consideration in Louisiana is a transaction that is subject to the sales or use tax. The term *lease or rental* means the grant to another of the right to use and possess tangible personal property for a period of time and for a

consideration without the transfer of title to the property. In a lease transaction, the lessee obtains possession or use of the tangible personal property, so that the lessee has enjoyment of the property during a certain time period. Re-leases or sub-leases and re-rentals or sub-rentals are also considered as leases or rentals.

b. Statutory Exclusions. Some arrangements or agreements for the use of tangible personal property are specifically excluded in R.S. 47:301(7) (b) through (h) from the definition of *lease or rental*. The types of arrangements or agreements that are not defined as leases or rentals are:

i. the lease or rental for re-lease or re-rental of property to be used in connection with the operating, drilling, completion, or reworking of oil, gas, sulfur, or other mineral wells. The lease or rental for re-lease or re-rental of casing tools, pipe, drill pipe, tubing, compressors, tanks, pumps, power units, and other drilling or related equipment qualifies for exclusion if the property is to be used for one of the specified purposes. The re-lease or re-rental to the ultimate user is not exempt;

ii. the lease or rental of property to be used in the performance of contracts with the United States Navy for the construction or overhaul of U.S. Naval vessels;

iii. the lease or rental of airplanes or airplane equipment by commuter airlines domiciled in Louisiana;

iv. the lease or rental of items that are reasonably necessary for the operation of free hospitals in Louisiana;

v. the lease or rental of certain limited items of educational materials for classroom instruction by approved private and parochial elementary and secondary schools;

vi. the lease or rental by Boys State of Louisiana, Inc., and Girls State of Louisiana, Inc., of materials for use by those organizations in their educational and public service programs for youth; and

vii. the lease or rental of motor vehicles by motor vehicle dealers and manufacturers for use in furnishing to customers in the performance of dealers' or manufacturers' warranty obligations or when the applicable warranty has lapsed and the leased or rented motor vehicle is provided at no charge;

viii. the lease or rental of machinery and equipment used predominantly and directly in the process of manufacturing tangible personal property for sale or used directly in the production, processing, and storing of food, fiber, or timber for sale. The meanings of *manufacturing*, *used predominantly*, and *used directly* provided in LAC 61:I.4301.C.*Cost Price*.h apply. This exclusion applies to state sales or use tax and local sales or use taxes if the political subdivision has adopted this exclusion by ordinance.

c. Transactions involving both the providing of tangible personal property and the performance of a service.

i. A lease or rental does not include providing tangible personal property with an operator who provides some additional service for a fixed or indeterminate period of time when the essence of the transaction is the performance of a service. The essence of the transaction is to provide a service when obtaining the tangible personal property is not an end in and of itself but rather furnishes the mechanism through which a service is provided.

ii. In order to determine the essence of a transaction involving both the performance of a service and the providing of tangible personal property, the facts and circumstances of each transaction must be examined. The following factors suggest, but are not necessarily conclusive, that the essence of the transaction is for the performance of a service:

(a). in order for the tangible personal property to perform as designed, the owner's operator maintains control over the property. This level of control by the owner's operator involves more than maintaining, inspecting, or setting-up the property;

(b). the contract between the owner of the property and the person receiving the services and property provides for the performance of a specific job that requires services for a certain number of hours or until completion of a specific job;

(c). the performance of the job using the tangible personal property is conducted in a manner determined by the owner of the property;

(d). the owner of the tangible personal property is responsible for choosing the particular piece of property to be used in the transaction; or

(e). the owner of the tangible personal property has a standard business practice of not allowing customers to rent the property separately from the services provided.

d. Revenue Sharing Arrangements. Agreements, joint ventures, arrangements, or partnerships between exhibitors (movie theater operators) and film distributors place significant restrictions on the use of the movies and on the proceeds from the use of the movies. These agreements are more in the nature of revenue sharing agreements and would not qualify as leases or rentals because of the restrictions placed on the party using the tangible personal property. An example of this arrangement would be an agreement between an exhibitor and a film distributor that not only stipulates that the proceeds from the showing of the film are to be shared, but also specifies the amount to be charged to the movie patron, the number of and/or the time of showings, or the types or sizes of the facilities where the film is shown.

Local Sales or Use Tax—a sales or use tax imposed by a political subdivision whose boundaries are not coterminous with those of the state under the constitution or laws of the state authorizing the imposition of a sales and use tax.

Person—

a. The term *person* includes:

i. natural persons; and

ii. artificial persons, including, but not limited to, corporations, limited liability companies, estates, trusts, business trusts, syndicates, cities and parishes, parishes, municipalities, this state, any district or political subdivision, department or division thereof, any board, agency, or other

instrumentality thereof, acting unilaterally or as a group or combination, as well as receivers, referees in bankruptcy, agricultural associations, labor unions, firms, copartnerships, partnerships in commendam, registered limited liability partnerships, joint ventures, associations, singularly or in the plural, who have the legal right or duty, whether explicit, implied or assumed, to perform any of the transactions described in this Chapter.

b. A natural or artificial person's classification as exempt under any other tax statute has no effect on that person's status under the sales tax law. For example, a religious, charitable, educational, scientific, civic, social or fraternal organization, including hospitals and similar institutions, may be statutorily exempted from other taxes but remain classified as persons for sales tax purposes.

c. R.S. 47:301(8) provides exclusions from the definition of person for purchases made by certain entities. Although these entities are not responsible for paying sales and use taxes on some or all of their purchases, they must collect and remit sales tax on their taxable sales transactions.

i. The two entities granted exclusions from paying state and local sales and use tax on all of their purchases are:

(a). the state of Louisiana, its parishes, its municipalities, its special districts, its political subdivisions, and any other agencies, boards, commissions, or instrumentalities of the state or its political subdivisions;

(b). the Society of the Little Sisters of the Poor. Before claiming exemptions, the Society must obtain a certificate of authorization from the Sales Tax Division of the Department of Revenue.

ii. The two entities granted exclusions from paying sales and use tax on some of their purchases are:

(a). regionally accredited independent institutions of higher education that are members of the Louisiana Association of Independent Colleges and Universities. Purchases, leases, or rentals of tangible personal property or purchases of taxable services by these institutions that are directly related to the educational missions of eligible institutions are excluded from state sales or use tax. Purchases, leases, and rentals directly related to the educational mission of the eligible institution are interpreted broadly to include those transactions required to construct, maintain, or supply classrooms, libraries, laboratories, dormitories, athletic facilities, and administrative facilities. Examples include purchases of supplies, equipment, utilities, leases or rentals of equipment, and repair services to university property;

(b). churches and synagogues exempt under *Internal Revenue Code* Section 501(c)(3) are excluded from paying state and local sales and use tax on purchases of bibles, songbooks, or literature used for religious instruction classes. Eligible institutions must obtain certificates of authorization from the Taxpayer Services Division of the Department of Revenue.

d. The exclusion from the definition of person is granted only for purchases made by these entities on their own behalf. Representatives of these entities making purchases for the entity may also be excluded from the definition of person when their purchases are deemed the equivalent of an acquisition by the entity itself. The most common examples of representatives purchasing on behalf of these entities are:

i. mandataries (agents) purchasing materials or leasing or renting equipment for immovable property construction contracts; and

ii. employees purchasing lodging services while traveling on official business of the entity.

e. The following elements establish an immovable property contractor's purchases as the legal equivalent of a R.S. 47:301(8) entity's purchases so as to exclude the transactions from sales and use tax. Additionally, due to the federal government's immunity from state taxation under The Supremacy Clause, U.S. Const. Art. VI, §2, federal contractors satisfying the following criteria are also entitled to the exclusion from the definition of person. The following criteria assume that the R.S. 47:301(8) entity is an immovable property contractor with an agency agreement with a government department or agency.

i. The government department or agency must acquire title to the property at the time of purchase. Except as otherwise provided in the contract between the parties, the risk of loss must be with the governmental entity.

ii. There must be a signed agreement authorizing the contractor to act as purchasing agent for the entity. The department's form, Designation of Construction Contractor as Agent of a Governmental Entity, may be used for this purpose, or a custom agreement may be substituted if it includes all terms and conditions listed in the form prepared by the department. The form is available at any department office and through the department's web site at: www.rev.state.la.us. Copies of the signed agreement must be made available to tax authorities and vendors upon request. Purchases by the designated agent will be recognized as those of the government entity if all parties to the contract strictly follow the terms of the agreement.

f. The following elements establish when the renting of a hotel room to an employee of a R.S. 47:301(8) entity is legally equivalent to the entity's purchase of the service. Additionally, due to the federal government's immunity from state taxation under The Supremacy Clause, U.S. Const. Art. VI, §2, federal employees are also entitled to the exclusion from the definition of person when renting hotel rooms in the state. Since most purchases of lodging services for persons excluded by R.S. 47:301(8) are made by government employees, the following criteria are drafted from the perspective of those entities.

i. Renting a hotel room to an employee of the United States government, the state of Louisiana, or a political subdivision of the state of Louisiana who is traveling on official business is considered a sale of a service to the government employer regardless of the form of payment to

the hotel, provided the lodging services are obtained by the employee at the direction of the employer and accounted to and reimbursed by the government agency.

ii. The exclusion must be documented in one of the following ways:

(a). with a copy of the employee's written travel orders certifying that the government employer will reimburse the actual lodging expenses incurred. The travel orders must be on government letterhead or forms and signed by an authorized representative of the government entity other than the employee engaging the hotel services. The orders must state that the employee is authorized to secure a room for a specific time period at a specific hotel or at a hotel within a defined travel area;

(b). if written travel orders are unavailable or if the travel orders are incomplete or insufficient to satisfy all of the requirements in §4301.C.*Person*.f.ii.(a), an exemption certificate signed by the employee and the authorized agent of the governmental agency other than the employee will certify the transaction's exempt status. The hotel can accept the department's certificate entitled Certificate of Governmental Exemption from the Payment of Hotel Lodging Taxes or one used by federal agencies, provided the form states that the employee's expenses are reimbursed by the employer in the actual amount incurred.

iii. Hotels must retain this documentation to support a sales tax deduction for room rentals to government employees on official business. Failure to do so will cause the deduction to be disallowed unless the hotel can provide competent independent evidence to certify the exemption's validity. The exemption will also be disallowed if it is determined that the documentation was obtained fraudulently or that the hotel knew the documentation was invalid when the employee presented it.

iv. This exclusion is not allowed on hotel room charges incurred by other nations, other states and their political subdivisions, or their employees.

Political Subdivision—as provided in Article VI, Section 44(2) of the Constitution of Louisiana, a *political subdivision* means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions.

Purchaser—

a. *Purchaser* is defined to include not only persons who acquire tangible personal property in a transaction subject to state and local sales or use tax, but also any person who acquires or receives the privilege of using any tangible personal property, as in the case of property rented from others, or any person who receives services of a nature subject to tax.

b. The term is construed to complement *dealer* as defined in R.S. 47:301(4) and the collector may proceed against either for any tax due.

Retail Sale or *Sale at Retail*—

a. The major tax levied by state and local sales or use tax is imposed upon retail sales or sales at retail which contemplates the taxing of any transaction by which title to tangible personal property is transferred for a consideration, whether paid in cash or otherwise, to a person for any purpose other than for resale.

b. While specific exclusions are provided in R.S. 47:301(10) with respect to sales of materials for further processing into articles for resale and with respect to casual, isolated, or occasional sales, and exemptions are provided for sales of particular items or classes of property by R.S. 47:305 and R.S. 47:305.1 through R.S. 47:305.52, the intent of the law is to classify every sale made to the final user or consumer for any imaginable purpose, other than for resale, as a retail sale or a sale at retail. For purposes of R.S. 47:301(10), whether a transaction is exempt from taxation by statute, jurisprudence, or by constitution has no bearing on classification of the transaction.

c. Sales made by and to vending machine operators are subject to tax as follows.

i. For purposes of state sales or use tax, sales of tangible personal property to operators of coin-operated vending machines are sales at retail. Thus, dealers who resell tangible personal property through coin-operated vending machines are treated as consumers of the articles of property they purchase for resale by vending machine and are liable for sales or use tax on their acquisition cost of the articles. The resale of the property through vending machines is not a retail sale and is not subject to state sales or use tax.

ii. For purposes of local sales or use tax, the sale of property through vending machines is a retail sale subject to sales tax.

d. Sales of materials for further processing into articles of tangible personal property for subsequent sale at retail do not constitute retail sales. This exemption does not cover materials which are used in any process by which tangible personal property is produced, but only those materials which themselves are further processed into tangible personal property. Whether materials are further processed or simply used in the processing activity will depend entirely upon an analysis of the end product. Although any particular materials may be fully used, consumed, absorbed, dissipated or otherwise completely disappear during processing, if it does not become a recognizable and identifiable component which is of some benefit to the end product, it is not exempt under this provision. The fact that a material remained as a recognizable component of an end product by accident because the cost of removal from the end product was prohibitive or for any other reason, if it does not benefit the property by its presence, it was not material for further processing and the sale is not exempt under this provision.

e. It is not the intention of state and local sales or use tax law to impose a tax on an isolated or occasional sale, frequently termed a *casual sale*, except with respect to the sale of motor vehicles, which are specifically covered by R.S.

47:303(B) and R.S. 47:337.15(B)(2). The primary consideration in determining whether a sale meets exemption requirements is whether the seller is in the business, or holds himself to be in the business, of selling merchandise or tangible personal property of similar nature, and not solely upon the frequency of the transactions. As examples, a firm engaged in the retail grocery business who sold a cash register originally acquired for their own use is not engaged in the business of selling cash registers, and the sale would be exempt; an office machine firm who sold carpeting acquired for their own use is not in the business of selling carpets, and the sale would be exempt; the periodic sale of articles by auction to recover storage, repair or labor liens unpaid by the owner of the property are exempt, provided the person forcing the sale does not hold himself out to be in the business of selling such merchandise. If the person causing the sale of property by auction takes title to the property prior to sale, it will be presumed that he has become engaged in the business and the sales will be taxable.

f. For state and local sales or use tax purposes, R.S. 47:301(10)(o) excludes the sale or purchase of equipment used in fire fighting by bona fide volunteer fire departments from the definition of *retail sale or sale at retail*. This applies to all equipment and special apparel necessary for fighting fires including communications systems, rubber suits, boots, helmets, axes, ladders, buckets, and the furnishings of a firehouse necessary for its operation such as sleeping and cooking facilities. Items purchased solely for the entertainment or recreation of volunteer firemen and meals or services furnished to a firehouse do not qualify for exclusion.

Retailer—

a. The term *retailer* as used in state and local sales or use tax law not only covers persons engaged in the *business* (as defined in R.S. 47:301(1) and LAC 61:I.4301.C.*Business*) of making retail sales or sales at retail (as defined in R.S. 47:301(10) and LAC 61:I.4301.C.*Retail Sale* or *Sale at Retail*, but also includes any person engaged in the business of transferring title to tangible personal property for a consideration to others for their use or consumption, or for distribution or for storage to be used or consumed within a taxing jurisdiction.

b. The term does not include persons who make isolated or occasional sales and who do not hold themselves out to be in the business of selling the particular kind or type of property involved in a casual sale.

Sale—

a. R.S. 47:301(12) defines a *sale* as receiving or giving consideration in return for:

i. transferring title or ownership of tangible personal property;

ii. transferring possession of tangible personal property when the seller retains legal title to the property as security to ensure full payment of the selling price;

iii. fabricating tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work; and

iv. furnishing, preparing or serving tangible personal property that is consumed on the premises of the seller.

b. Fabricating or fabrication, for sales tax purposes, means to make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

c. A sale includes, but is not limited to, transactions where:

i. tangible personal property is transferred on a conditional basis (i.e., the customer has the option of returning the property and obtaining a refund of the sales price); and

ii. payment is made in a form other than money, as in a barter agreement, an exchange of property, or a promissory note.

d. When tangible personal property, like food, is served on the vendor's premises, the vendor is required to charge sales tax for:

i. the total price of preparing and serving the food even if these charges are billed separately; and

ii. tips and gratuities, if the vendor fails to separately list these charges on the bill, or if any portion of these amounts (except reimbursement for credit card processing fees) is retained by the vendor. Sales tax is not charged on tips and gratuities if they are separately stated and the total amounts collected are distributed to the employees that prepare and serve the food.

e. When tangible personal property, like food, is served at the customer's premises, sales tax is not charged for preparing and serving the food, provided these charges are separately stated from the *sale* of the food.

Sales of Services—

a. State and local sales or use tax law basically treats the furnishing of services and permission to use certain kinds of property the same as the sale of merchandise, and the law classifies those items as sales of services. Only those services specifically itemized under the provisions of R.S. 47:301(14)(a)-(g), are subject to state and local sales or use tax law. Telecommunications services defined in R.S. 47:301(14)(i) are subject only to state sales or use tax law.

b. The entire amount charged to a customer for any of the taxable items listed in R.S. 47:301(14)(a)-(g) is taxable if billed in a lump sum. Although the law provides many exemptions, unless they are specifically identified and segregated in billings to customers, the entire charge will be subject to the tax. Whether the consideration paid for sales of services is in the form of cash or otherwise is immaterial.

c. R.S. 47:301(14)(a) includes the furnishing of sleeping rooms, cottages, or cabins by hotels as sales of services. *Hotels* have been defined in R.S. 47:301(6) and the regulation issued under LAC 61:I.4301.C.*Hotel*. If an establishment meets the definition of a *hotel* under these laws, all charges for the furnishing of rooms in that establishment,

other than to permanent full-time occupants, constitute sales of services.

d. Under the provisoes of R.S. 47:301(14)(b) charges for admissions to places of amusement, entertainment, recreation, or athletic events, except those sponsored by schools, colleges, or universities, are classified as sales of services and as such are taxable. Note that only those events which are sponsored by schools, colleges, and universities are exempt. The same admissions charged by charitable, religious, social and other organizations are taxable, unless specifically exempted under some other provision.

i. Fees or other consideration and dues paid for the privilege of obtaining access to clubs are similarly classified as sales of services under this particular section of the law. Such dues, fees, or other consideration are taxable even though some personal services may be rendered by the owner of the club after access thereto has been obtained. Dues, fees, or other consideration paid for the privilege of having access to places of amusement, entertainment, athletic, or recreational facilities are also included in the definition of sales of service.

ii. The cost of stock or certificates of membership required to be purchased prior to becoming a member of a club is not included in sales of services if the club member has the prerogative of disposing of the stock or certificate of membership when he ceases to utilize the club or facilities. If a member is required to surrender his stock or certificate of membership upon leaving a club, then the purchase price is considered nothing more than a fee for his participation and is classified as sales of services.

e. R.S. 47:301(14)(c) includes the furnishing of storage or parking privileges by auto hotels or parking lots as taxable sales of services. Parking lots are held to include facilities for the parking of transient trailers. For purposes of this determination, trailers will be presumed to be transient unless the parking space is engaged for a period in excess of 30 consecutive days at any one time and provided the trailers have not been removed from their wheels and placed on permanent foundation. Some hotels advertise free parking facilities for their guests and it is presumed that the room rate charged the guests is sufficiently high to cover the cost of parking, in which event the charge would be taxed under the provisions of R.S. 47:301(14)(a). This charge is taxable under R.S. 47:301(14)(a) if included in the room rate or under R.S. 47:301(14)(c) if billed separately.

f. R.S. 47:301(14)(d) provides that the furnishing of printing or overprinting, lithograph and multilith, blue printing, photostating, or other similar services of reproducing written or graphic matter, shall be included under sales of services. Generally, the activities of persons engaged in this type of business fall within two basic categories. The first is the production of tangible personal property, whereby raw materials are converted into items such as circulars, books, envelopes, folders, posters and other types of merchandise which are sold directly to their customer. These transactions fall within the definition of *sales* at R.S. 47:301(12) and are taxable as sales of tangible personal property. The materials used by the printer in the production of the end product are covered by the exemption provided in R.S. 47:301(10), and are exempt to the printer at the time of purchase by him. In addition, R.S. 47:305.44 and R.S. 47:337.9(D)(20) provide an exemption for raw materials and certain consumables which are consumed by a printer. The second basic business activity engaged in by printers which subject them to the provisions of the sales tax law is the furnishing of services. This classification covers printing done on materials furnished by the printer's customers which are returned to the customer upon completion of the printer's service. In cases where plates, mats, photographs, or other similar items are used in the performance of either a pure service as intended by R.S. 47:301(14)(d) or whether in the production of tangible personal property, if those materials are delivered to the printer's customer and a charge therefore is made, this transaction constitutes a sale of tangible personal property and is taxable. In cases where the materials are delivered to the customer and no charge is made, it is presumed that the charge for services or the charge for other printed matter delivered to the customer is sufficiently high to include the billing for those materials.

g. *Revised Statute* 47:301(14)(e) defines laundry, cleaning, pressing, and dyeing services; including the cleaning and renovation of clothing, furs, furniture, carpets, and rugs; as taxable services.

i. Sales of services under R.S. 47:301(14)(e) includes cleaning, pressing, and dyeing objects made primarily of materials like fabric, fur, leather, or cloth by cleaners, laundries, washaterias, and other cleaning establishments. Examples of taxable services include cleaning the following items:

(a). clothing;

(b). furniture;

(c). carpets;

(d). linens;

(e). pillows; and

(f). draperies.

ii. Cleaning objects made primarily of metal, wood, plastic, glass, or other nonfabric material are not subject to tax under R.S. 47:301(14)(e). Examples of services that are not taxable include cleaning the following items:

(a). automobiles;

(b). barges;

(c). pipes;

(d). tanks; and

(e). jewelry.

iii. Cleaning services performed to restore tangible personal property to a proper working condition, as when cleaning the inner workings of a watch or the fuel injectors in an engine, are considered repairs under R.S. 47:301(14)(g) and subject to tax.

iv. Taxable cleaning services under R.S. 47:301(14)(e) do not include transactions when customers

personally operate cleaning equipment for a fee. An example of this would be patrons' use of commercial coin-operated washing machines at a laundromat. However, taxable leases or rentals exist when customers acquire possession or use of the cleaning equipment in accordance with R.S. 47:301(7). An example of this would be the rental of a carpet shampooer for use at home.

v. *Revised Statute* 47:301(14)(e) also defines the furnishing of storage space for clothing, furs, and rugs as *sales of services*. All charges pertaining to the furnishing of storage space for these items are included in the taxable amount regardless of whether the operator is engaged solely in furnishing storage space or the activity is incidental to another *business*.

h. R.S. 47:301(14)(f) defines the furnishing of cold storage space and preparing tangible personal property for cold storage as services subject to sales and use tax.

i. *Cold Storage Space*—a space that is artificially frozen or refrigerated to prevent the stored items from perishing or deteriorating.

ii. *Furnishing of Cold Storage Space*—transactions in which cold storage space is provided to customers for a consideration when the owner or operator of the cold storage space designates specific areas or volumes of space for the customers' use. The customers are required to compensate for the space allotted regardless of the degree of use of the space.

iii. Transactions that are not considered the furnishing of cold storage space for sales tax purposes include:

(a). storage space in air-conditioned warehouses or mini-storage units that are cooled to a normal room temperature level; and

(b). storage space in facilities where the possession of customers' property is transferred to the owner or operator of a cold storage space for retention and safekeeping as in a bailment or deposit transaction.

iv. *Preparing Tangible Personal Property for Cold Storage*—all activities necessary to prepare the product to be stored for cold storage. This includes but is not limited to packaging, wrapping, containerizing, cleaning or washing.

(a). Preparing tangible personal property for cold storage is included in sales of services only if it is incidental to the operation of cold storage facilities.

(b). Separately stated charges for handling the property to be placed in or removed from the facility are not subject to the sales tax. If handling charges are included in the price for the furnishing of cold storage space or preparing tangible personal property for cold storage, tax is due on the entire amount.

i. R.S. 47:301(14)(g)(i) includes as sales of services the furnishing of repairs to tangible personal property. By clear illustration in the statute, both repair and routine servicing of all kinds of tangible personal property are included as taxable services. For state sales or use tax purposes only, repairs performed within Louisiana on tangible personal property are taxable sales of services except for repaired property which is returned to a customer located in another state by common carrier or by the repair dealer's vehicle. The charge for repairs to property returned to a customer's location in the offshore area are taxable regardless of the mode of transportation. Repair services performed outside the state of Louisiana to property which is normally or permanently located here except for its removal for repair, would not be taxable for state sales or use tax purposes. However, if property is shipped outside the state for repairs, any additions made thereto may subject the property to the use tax imposed by R.S. 47:302(A)(2) upon its return to the state. If personnel normally attached to a repair installation within the state go outside the state, for instance, to a location offshore which is clearly outside the limits of the state of Louisiana to perform repairs, those repairs are not taxable.

i. Prepaid repairs such as maintenance contracts and other similar transactions are included in sales of services, if the tangible personal property to which they apply is located in Louisiana and the agreement calls for any necessary repairs to be performed at the location of the property.

ii. R.S. 47:301(14)(g)(ii) provides that tangible personal property, for purposes of sales of services, shall include machinery, appliances, and equipment which have been declared immovable under the provisions of Article 467 of the Louisiana Civil Code. It also includes things incorporate into land, buildings, or other construction, which have been separated from the land, buildings, or other construction. Similarly, the component parts of buildings and other construction, as defined by Article 466 of the *Louisiana Civil Code*, are movable property when they are separated from the building or other construction, and repairs thereto are includable in taxable sales of services.

Sales Price—

a. R.S. 47:301(13)(a) defines *sales price* as the total amount, including cash, credit, property, or services, that is received or paid for the sale of tangible personal property. Any part of the sales price that is related to costs incurred by the vendor to bring the product to market or make the product available to customers becomes part of the tax base and is subject to sales tax even if a separate charge is made on the invoice.

i. Costs included in the sales price are:

(a). materials used;

(b). resale inventory;

(c). freight or shipping costs from the supplier to the vendor, or from the vendor to the customer where the transportation by the vendor is an essential or necessary element of the agreement of sale, as would normally be true in transactions for the sale and delivery of ready-mixed concrete or similar products:

(i). these transportation expenses are incurred by a seller in acquiring tangible personal property for sale or

in transporting tangible personal property to the place of sale and form part of the seller's overhead; and

(ii). cannot be excluded from the taxable sales price even when separately stated to the purchaser;

(d). utilities;

(e). insurance;

(f). financing for business operations;

(g). labor;

(h). overhead;

(i). service costs:

(i). handling charges are considered service costs; and

(ii). are distinguishable from charges for transportation under the definition of sales price and related court decisions;

(j). costs incurred by a vendor that are charged for the procurement, or purchasing, of tangible personal property on behalf of the customer; and

(k). excise taxes imposed on the producer, processor, manufacturer or importer, as these taxes become a part of the dealer's cost.

ii. The following are examples of charges not considered part of the sales price because they are not related to costs incurred by the vendor to bring the product to market:

(a). freight, shipping, or delivery charges from the vendor or the vendor's agent directly to the customer after the sale has taken place when the following two conditions are met:

(i). the seller of the tangible personal property separately states the charges for the actual delivery or transportation of the sold property from the place of the sale to the destination designated by the purchaser;

(ii). on the invoices for the sale and transportation of tangible personal property, the place of the sale of the property, and the fact that the transportation is rendered subsequent to the sale and purchase and for the buyer's account, must be clearly determinable;

(b). federal retailers' excise tax that must be collected from the consumer or user:

(i). if these taxes are billed to the user or customer separately, they should be excluded from the tax base;

(ii). however, if the retailers' excise tax is not billed separately, the total selling price, including the excise tax, is taxable.

iii. R.S. 47:301(13)(a) specifically excludes the following charges from the definition of *sales price* provided they are separately stated:

(a). the market value of an item traded in on the sale, as specified in R.S. 47:301(13)(a):

(i). the trade-in item must be one the vendor would normally accept in the course of business and must be similar to the item being purchased. An example of this is trading in a motorcycle on the purchase of a pickup truck;

(ii). exchanging an item that is not similar to the item being purchased will be treated as a barter or exchange agreement as described in R.S. 47:301(12). An example of this would be the owner of a clothing store providing suits to the owner of an appliance store in return for a dishwasher. In this instance, each selling party must report the transaction on his sales tax return;

(iii). the transfer of ownership of the trade-in must occur simultaneously with the sales transaction;

(iv). the trade-in value must be established prior to the sale;

(b). interest charges not exceeding the legal interest rate to finance the sale;

(c). service charges for financing, up to 6 percent of the amount financed;

(d). cash discounts allowed by the vendor if the customer takes advantage of the discount;

(e). labor to install the tangible personal property;

(f). charges by a seller for installing property that he has sold:

(i). installing includes the charge by the seller of movable property for setting up that property on or the attachment of that property to other movable or immovable property that is already owned or possessed by the purchaser;

(ii). examples of the types of installation charges that are excludable from sales price under this provision are the charges for setting up an appliance in a home or business, or the first-time attachment of a new mobile telephone, new radio, or new speakers to a customer-owned vehicle that previously was without such property;

(iii). exclusion is not intended, however, for the charges for removal and replacement of worn or malfunctioning components of movables, such as the removal and replacement of tires and batteries in vehicles. These types of services constitute repairs to movables that are defined in R.S. 47:301(14)(g) as taxable “sales of services”;

(g). charges to set up the property on the taxpayer's premises;

(h). charges for remodeling or repairing the property sold if:

(i). these services are provided prior to the sale;

(ii). the vendor sends the property to another dealer or service provider for remodeling or repair and pays sales taxes on these taxable services; and

(iii). the services are separately itemized and identified in the billing to the customer;

(iv). if the remodeling or repairing is performed by the vendor either:

[a]. prior to the sale; or

[b]. after the sale but before the customer takes possession of the item;

[c]. then these would be costs of the vendor incurred to bring the product to market or make a product available to customers and would become part of the tax base;

(v). any services performed after the property is in the possession of the customer are taxable under R.S. 47:301(14).

iv. In all instances where an expense is required to be separately stated, the effect of combining the charge with another taxable item included in the sales price will subject the entire amount to sales tax.

v. R.S. 47:301(13)(b) provides an exclusion from sales price for the amounts of cash discounts and rebates that manufacturers and vendors of new vehicles offer to purchasers of vehicles.

(a). The exclusion will apply both to the discounts and rebates that are based on vehicle make and model, as well as to the discounts and rebates that are based on customer usage of manufacturer-issued credit cards.

(b). In order for this exclusion to apply, the customer must assign the discount or rebate to the selling dealer of the vehicle, so that the discount or rebate results directly in a reduction of the price to be paid for the vehicle.

(c). In cases where a customer accepts a rebate or discount in cash, and does not assign the amount to the selling dealer as a deduction from the listed retail price of the vehicle, the exclusion from sales price will not apply.

vi. R.S. 47:301(13)(c) excludes from taxable sales price the first $50,000 paid for new farm equipment used in poultry production.

(a). This exclusion applies only to the price of property that is identifiable at the time of sale as being for use in poultry production.

(b). The exemption is available only to commercial producers who sell poultry or the products of poultry in commercial quantities.

(c). The portion of the sales price of any item of commercial farm equipment in excess of $50,000 will be included in the taxable sales price.

vii. R.S. 47:301(13)(e) excludes the value of payments made directly to retail dealers by manufacturers seeking a reduction in the price retail dealers charge for the manufacturers' products. These payments, often called buy downs, are applied by the retail dealer to the selling prices of the manufacturer's products. Retail dealers must collect the tax on the discounted sales price after applying the manufacturers' payments.

viii. In cases where all or a part of the purchase price of tangible personal property is paid to the selling dealer by the presentation of a coupon, the determination of the taxable sales price will depend on the type of coupon that is presented.

(a). Manufacturer's coupons that the selling dealer accepts from the customer and can be redeemed through a manufacturer or coupon agent are not allowed as a reduction of the sales price. Because the retailer's total compensation includes the amount paid by the customer after presenting the coupon and the amount reimbursed by the manufacturer for the coupon's face value, the tax is based on the actual selling price of the item before the discount for the coupon.

(b). The retailer's own coupons, which the selling dealer is unable to redeem through another party, provides a cash discount that can be excluded from the sales price. The sales tax on a sale involving this type of coupon will be computed on the price paid after an allowance for the selling dealer's coupon discount.

ix. R.S. 47:301(13)(f) provides that sales price excludes any consideration received, given, or paid for the performance of funeral directing services. The term *funeral directing services* is defined and further discussed at R.S. 47:301(10)(s):

(a). no exclusion from taxation is allowed on the sale, lease, or rental, of tangible personal property by funeral directors to customers; or

(b) on the purchase, lease, use, consumption, distribution, or storage for use of tangible personal property by funeral directors in connection with their performance of professional services.

x. R.S. 47:301(13)(k) excludes machinery and equipment used predominantly and directly in the process of manufacturing tangible personal property for sale or used directly in the production, processing, and storing of food, fiber, or timber for sale from the sales price. For purposes of sales price, the interpretations provided under LAC 61:I.4301.C.*Cost Price*.h will apply. This exclusion applies to state sales tax and local sales taxes if the political subdivision has adopted this exclusion by ordinance. To determine sales price subject to tax, this exclusion is deducted from the total amount charged to the customer after allowances for trade-ins and before any exemptions provided elsewhere in the law.

b. R.S. 47:301(13)(d) provides that, in the case of the sale by a manufacturer of refinery gas or other petroleum byproducts that are to be used by the purchasers as other than feedstock, the taxable sales price shall be the greater of:

i. the actual sales price of the byproducts; or

ii. the average monthly spot market price per thousand cubic feet of natural gas delivered into pipelines in Louisiana, as reported by the Natural Gas Clearing House at the time of such sale.

State Sales or *Use Tax*—a sales or use tax imposed by the state under Chapters 2, 2-A, or 2-B of Subtitle II of Title 47 of the Revised Statutes of 1950, as amended, or by a political subdivision of the state whose boundaries are coterminous with those of the state.

Storage—for state sales or use tax purposes only, since storage for use or consumption of tangible personal property is taxed under the provisions of R.S. 47:302, R.S. 47:321, and R.S. 47:331, the term *storage* is defined herein to exclude storage of property which will later be sold at retail and taxed because of the sale. The term does not require the keeping of property in a warehouse but includes the keeping or retention or stockpiling of property in any manner whether indoors or out. If property has come to rest in this state and will later be used or consumed here, it meets the definition of *storage*.

Tangible Personal Property—

a. R.S. 47:301(16)(a) defines *tangible personal property* as personal property that can be seen, weighed, measured, felt, touched, or is perceptible to the senses. The Louisiana Supreme Court has ruled that tangible personal property is equivalent to corporeal movable property as defined in Article 471 of the *Louisiana Civil Code*. The *Louisiana Civil Code* describes corporeal movable property as things that physically exist and normally move or can be moved from one place to another. Examples of tangible personal property include but are not limited to:

i. durable goods such as appliances, vehicles, and furniture;

ii. consumable goods such as food, cleaning supplies, and medicines;

iii. utilities such as electricity, water, and natural gas; and

iv. digital or electronic products such as "canned" computer software, electronic files, and "on demand" audio and video downloads.

b. The following items are specifically defined as *tangible personal property* by law:

i. for state sales or use tax purposes only, prepaid telephone cards and authorization numbers; and

ii. for state and local sales or use tax purposes, work products consisting of the creation, modification, updating, or licensing of canned computer software.

c. Repairs of machinery, appliances, and equipment that have been declared immovable under Article 467 of the *Louisiana Civil Code* and things that have been separated from land, buildings, or other constructions permanently attached to the ground or their component parts as defined by Article 466 of the *Louisiana Civil Code* are treated as taxable repairs of tangible personal property under R.S. 47:301(14)(g).

i. Things are considered separated from an immovable when they are detached and repaired at a location off the customer's immediate property where the immovable is located or at the repair vendor's facility, even if that facility is on property owned, leased, or occupied by the customer. If the thing is detached from the immovable and repaired on the customer's immediate property, it is not considered separated from the immovable and the repair would not be subject to tax.

ii. The customer's immediate property is the tract of land that is owned, leased, or occupied by the customer where the immovable is located.

iii. Tracts of land owned, leased, or occupied by the customer that are separated only by a public road or right-of-way from the land where the immovable is located are also considered the customer's immediate property.

d. Tangible personal property does not include:

i. incorporeal property such as patents, copyrights, rights of inheritance, servitudes, and other legal rights or obligations;

ii. work products presented in a tangible form that have worth because of the technical or professional skills of the seller. Work products are considered non-taxable technical or professional services if the tangible personal property delivered to the client is insignificant in comparison to the services performed and there is a distinction between the value of the intangible content of the service and the tangible medium on which it is transferred. These do not include items that have intrinsic value, like works of art, photographs, or videos. Also, documents that are prepared or reproduced without modification are considered tangible personal property. Examples of sales of technical or professional services that are transmitted to the customer in the form of tangible personal property include but are not limited to:

(a). audience, opinion, or marketing surveys;

(b). research or study group reports;

(c). *business* plans; and

(d). investment analysis statements;

iii. property defined as immovable by the Louisiana Civil Code.

e. Items specifically excluded from the definition of *tangible personal property* include:

i. stocks, bonds, notes, or other obligations or securities;

ii. gold, silver, or numismatic coins of any value;

iii. platinum, gold, or silver bullion having a total value of $1,000 or more;

iv. proprietary geophysical survey information or geophysical data analysis furnished under a restrictive use agreement even if transferred in the form of tangible personal property;

v. parts and services used in the repairs of motor vehicles if all of the following conditions are met:

(a). the repair is performed by a dealer licensed by the Louisiana Motor Vehicle Commission or the Louisiana Used Motor Vehicle and Parts Commission;

(b). the repair is performed subsequent to the lapse of an original warranty that was included in the taxable price of the vehicle by the manufacturer or the seller;

(c). the repair is performed at no charge to the owner; and

(d). the repair charge is not paid by an extended warranty plan that was purchased separately;

vi. pharmaceuticals administered to livestock used for agricultural purposes as defined by the Louisiana Department of Agriculture and Forestry under LAC 7:XXIII.103; and

vii. work products of persons licensed under Title 37 of the Louisiana Revised Statutes such as legal documents prepared by an attorney, financial statements prepared by an accountant, and drawings and plans prepared by an architect or engineer for a specific customer. However, if these items are reproduced without modification, they are considered tangible personal property and subject to sales or use tax.

f. Manufactured or mobile homes purchased in or delivered from another state to Louisiana after June 30, 2001, are excluded from the definition of *tangible personal property* for state sales or use taxes. Manufactured or mobile homes purchased in or delivered from another state to Louisiana after December 31, 2002, are excluded from the definition of *tangible personal property* for *local sales or use tax*es when the buyer certifies the manufactured or mobile home will be used as a residence.

i. For state sales taxes, the entire price paid for used manufactured or mobile homes and 54 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax.

ii. For local sales taxes when the buyer certifies the manufactured or mobile home will be used as a residence:

(a). after December 31, 2002, and before January 1, 2004—25 percent of the price paid for used manufactured or mobile homes and 13 1/2 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax;

(b). after December 31, 2003, and before January 1, 2005—50 percent of the price paid for used manufactured or mobile homes and 27 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax;

(c). after December 31, 2004, and before January 1, 2006—75 percent of the price paid for used manufactured or mobile homes and 40 1/2 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax; and

(d). after December 31, 2005—the entire price paid for used manufactured or mobile homes and 54 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax.

iii. Manufactured or mobile homes are structures that are transportable in one or more sections, built on a permanent chassis, designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and include plumbing, heating, air-conditioning, and electrical systems. The units must be either 8 body feet or more in width or 40 body feet or more in length in the traveling mode, or at least 320 square feet when erected on site. These size requirements may be disregarded if the manufacturer voluntarily certifies to the distributor or *dealer* at the time of delivery that the structure conforms to all applicable federal construction and safety standards for manufactured homes.

iv. Manufactured or mobile homes do not include modular homes that are not built on a chassis, self-propelled recreational vehicles, or travel trailers.

g. The sale or purchase of custom computer software on or after July 1, 2002, and before July 1, 2005, is partially excluded, and on or after July 1, 2005, completely excluded, from the definition of *tangible personal property* under R.S. 47:301(16)(h). This exclusion applies to state sales tax, the sales tax of political subdivisions whose boundaries are coterminous with the state, and the sales tax of political subdivisions whose boundaries are not coterminous with the state that exempt custom computer software by ordinance as authorized by R.S. 47:305.52. Custom computer software is software that is specifically written for a particular customer or that adapts prewritten or "canned" software to the needs of a particular customer.

i. Before July 1, 2002—purchases of prewritten or canned software that are incorporated into and resold as a component of custom computer software before July 1, 2002, are considered purchases of tangible personal property for resale. Use tax is not due on these purchases and any sales tax paid is eligible for tax credit against the tax collected on the retail sale of the custom software.

ii. Phase-In Period—the sales tax exclusion for custom computer software will be phased in at the rate of 25 percent per year beginning on July 1, 2002. During the phase-in period, purchases of prewritten or canned software that are incorporated into and resold as a component of custom computer software will be considered a purchase for resale according to the applicable sales tax exclusion percentage in effect at the time of sale. The custom software vendor must pay sales tax on the purchase price of the canned software and may claim tax credit for the percentage that is resold as tangible personal property. If 75 percent of the sales price of the custom computer software is taxable, the vendor is allowed a tax credit for 75 percent of tax paid on the canned software purchase. Conversely, if sales tax was not paid by the custom software vendor on the purchase of canned software that is incorporated into custom software, use tax will be due on the percentage that is not considered to be a purchase for resale. The sales tax exclusion percentage will increase each year during the phase-in period and guidelines

on the phase in of this exclusion will be published in a revenue ruling.

iii. July 1, 2005—the purchase of prewritten or canned software that is incorporated into and resold as a component of custom computer software sold on or after July 1, 2005, will be considered the purchase of tangible personal property for the personal use of the custom software vendor and subject to sales or use tax.

h. The first purchase of digital television conversion equipment by a taxpayer that holds a Federal Communications License issued pursuant to 47 CFR Part 73 is excluded from the definition of *tangible personal property* for state sales tax and local sales tax if the local authority adopts this exemption by ordinance.

i. *Digital Television Conversion Equipment*—items listed in R.S. 47:301(16)(i).

ii. *First Purchase*—the first purchase of each item from the categories of digital television conversion equipment listed in R.S. 47:301(16)(i).

iii. License holders may obtain a credit for sales taxes paid on the first purchase of digital television conversion equipment made after January 1, 1999, and before June 25, 2002, by submitting a request on forms prescribed by the Department of Revenue. Guidelines for claiming the credit will be published in a revenue ruling.

iv. License holders may obtain an exemption certificate from the Department of Revenue and make first purchases of qualifying digital equipment on or after June 25, 2002, without paying state sales tax or local sales tax in those local jurisdictions that elect to provide an exemption for these purchases. Sales tax paid on first purchases of qualifying digital equipment on or after June 25, 2002, may be refunded as tax paid in error.

v. License holders must submit to the Department of Revenue an annual report of the purchases of digital equipment for which exclusion has been claimed that includes all information required by the Department to verify the value of exclusion claimed. Guidelines for submitting this report will be published in a revenue ruling.

Taxing Authority—the state of Louisiana, a statewide political subdivision, and any political subdivisions of the state authorized to levy and collect a sales or use tax by the Constitution or laws of the state of Louisiana. The state of Louisiana and political subdivisions whose boundaries are coterminous with those of the state are state taxing authorities. Political subdivisions whose boundaries are not coterminous with those of the state are local taxing authorities.

Taxing Jurisdiction—the geographic area within which a taxing authority may legally levy and collect a sales or use tax.

Use—

a. *Use* under state and local sales or use tax law is intended to include not only the commonly accepted concept of *use* but also to cover the consumption, the distribution, or the storage, or the exercise of any right of power over tangible personal property. Since tax is imposed on the sale of tangible personal property, *use* has been defined to specifically exclude property sold at retail in the regular course of business.

b. Neither does use apply to materials or property which are combined with other materials to form an article of tangible personal property which will subsequently be sold at retail. In this instance, the tax on those materials will be collected on the retail sale. It is necessary, however, that materials excluded from the definition of use because they were consumed in creating a new piece of tangible personal property be identifiable in new property and not merely expended during the course of the processing. All such expended materials have been used by the processor or manufacturer and are taxable to him at the time of purchase by him.

Use Tax—the tax paid under state and local sales or use tax law for the use, consumption, distribution, or storage for use, distribution, or consumption within a taxing jurisdiction in lieu of sales taxes. This is the tax required to be paid if no sales tax has been paid on tangible personal property which is used, consumed, distributed, or stored for use within the taxing jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002), LR 28:2554, 2556 (December 2002), LR 29:186 (February 2003), LR 30:1306 (June 2004), LR 30:2870 (December 2004), LR 31:697 (March 2005), LR 32:111 (January 2006), LR 32:865 (May 2006), LR 44:2022 (November 2018).

§4302. Pollution Control Devices and Systems Excluded from the Definition of "Sale at Retail"

A. This Section describes the conditions under which certain sale or lease transactions involving tangible personal property used for pollution control purposes may be excluded from the definition of *sale at retail* for purposes of the 3 percent tax levied by this Chapter and the Louisiana Tourism Promotion District. It contains the qualifications which must be met by the property under consideration, the requirements which are imposed upon the applicant for the tax relief granted under this Act, and the procedures to be followed in applying for the relief.

B. Definitions. For purposes of this Section, the following terms shall have the meaning ascribed herein.

Act or This Act—Act 1019 of the 1991 Regular Session of the Louisiana Legislature.

Industrial Application—use, construction, or installation of a pollution control device or system by a business which is primarily engaged in the exploration for or mining of minerals, the manufacture or processing of raw materials into tangible personal property for resale, or the processing,

treatment, disposition, control or containment, of polluting materials produced by another business.

Pollution—the environment of the state by any means that would tend to degrade the chemical, physical, biological, or radiological integrity of such environment. Pollution includes solid waste, hazardous waste, sludge, chemical waste, radiological wastes, noise, and any other pollutants resulting from industrial emissions, discharges, or releases into air, water, or land.

Pollution Control Device or System—any one or more pieces of tangible personal property which is intended and installed for the purpose of eliminating, preventing, treating, or reducing the volume or toxicity or potential hazards of industrial pollution of air, water, groundwater, noise, solid waste, or hazardous waste in the state of Louisiana and which has been approved by the Department of Environmental Quality and the Department of Revenue and Taxation for the tax relief granted by this Act.

C. Qualifications. To qualify for the tax relief provided under this Act, a pollution control device or system must comply with the following requirements.

1. It must demonstrate to the Department of Environmental Quality its efficacy to a particular process or application. The equipment must be approved by both the Department of Environmental Quality and the Department of Revenue and Taxation in order to be excluded from the definition of *sale at retail* for state sales and use tax purposes.

2. It (or the applicant) must demonstrate either:

a. a net decrease in the volume or toxicity or potential hazards of pollution as a result of the installation of the device or system; or

b. that installation is necessary to comply with federal or state environmental laws or regulations.

3. It must be intended for use in an industrial application. Use in residential, commercial, recreational, or other applications do not qualify.

D. Restrictions. This exclusion and the tax relief provided under this Act does not apply to:

1. modifications to processes carried out primarily for reasons other than the reduction of pollution;

2. installation or replacement of existing process units carried out primarily for reasons other than the reduction of pollution;

3. vehicles used to assist in operations.

E. Application and Documentation

1. Applicants seeking relief under this Act must submit an application to the Department of Revenue and Taxation for a certification of the pollution control device or system.

2. The respective departments may require the applicant to provide cost estimates, engineering drawings, equipment specification sheets, and any other documentation necessary to establish the identity and value of the property qualifying for the exclusion. The documentation must be sufficient to enable the Department of Environmental Quality to establish the efficacy of the pollution control device or system, and to allow the Department of Revenue and Taxation to ascertain the allowable tax relief.

3. After receiving certification from the Department of Environmental Quality, a certificate of tax exclusion and/or refund of taxes paid on approved pollution control equipment will be issued by the Department of Revenue and Taxation. Applicants must assemble and consolidate all invoices on purchases made by themselves and their subcontractors. Refunds will not be issued to subcontractors.

a. Owners and/or operators of qualifying pollution control devices or systems may apply for certification and refund of taxes paid on or after September 6, 1991, and prior to the date of certification.

b. In order for a pollution control device or system to qualify as tax free at the time of purchase, applicants must have received a certification of approval from the Department of Environmental Quality and the Department of Revenue and Taxation prior to the purchase or lease of the equipment. The applicant, or contractors who are duly authorized to act as an agent of the applicant, may present an approved certification in lieu of the tax at the time of purchase.

c. If the application for the tax exemption on the pollution control device or system cannot be processed and approved before purchases are made or property is imported into the state for the project, the state sales or use tax shall be paid at the time of purchase or importation. Tax refunds will be issued upon approval of the project and the filing of proper claims. Applicants filing for refunds will have purchased and installed, or intend to install, the pollution control device or system.

4. The owner and/or operator must report the final cost of the pollution control devices or systems to the Department of Revenue and Taxation. Audits and inspections may be performed by the respective departments to ascertain the efficacy of the equipment. The tax refund will be forfeited if the pollution control device or system does not meet the requirements of this Act.

5. Approval of the equipment for a sales tax refund does not relieve the applicant from obtaining any other permits otherwise required for the pollution control device or system, including permits to install or construct prior to start of construction.

6. Each application for tax relief must be signed by an officer, principal, or other person authorized to act in the behalf of the applicant, and must be accompanied by a certification affidavit executed by the owner and/or operator and a certification affidavit executed by a professional engineer. Both certification affidavits will be prepared on the application form supplied by the Department of Revenue and Taxation.

F. Confidentiality. Applications and all documentation and cost information which are submitted to the Department of Revenue and Taxation under this Act are considered confidential taxpayer information under the provisions of R.S.

47:1508. Information which pertains to pollution control devices or systems costs will be maintained only at the office of the Department of Revenue and Taxation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:301(10)(l).

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 18:1414 (December 1992).

§4303. Imposition of Tax

A.1. R.S. 47:302(A) imposes a tax at the rate of 2 percent upon the sale at retail or the use, consumption, distribution or storage for use or consumption in this state of each article of tangible personal property, as each of those terms are defined in R.S. 47:301. R.S. 47:321(A) and R.S. 47:331(A) each impose an additional 1 percent tax on the same basis, making the combined state sales tax rate 4 percent. If Louisiana sales tax has been paid upon the transfer of title to tangible personal property, then there will be no tax on the use, consumption, distribution, or storage for use or consumption of the item in this state by the purchaser, since R.S. 47:302 provides that there shall be no duplication of the tax.

2. Each and every item of tangible personal property sold at retail in this state is subject to the tax imposed by this Chapter unless a specific exemption is set forth in the statute. The tax is computed on gross sales and must include each and every retail sale. When tangible personal property is used, consumed, distributed, or stored for use or consumption in this state on which, for any reason whatsoever, no Louisiana sales tax has been paid, then the tax will be imposed on such use, consumption, distribution or storage. The tax paid under this provision is commonly referred to as *use tax* as distinguished from *sales tax*. R.S. 47:302(A)(2) provides that the use tax will be 2 percent of the cost price of each item or article of tangible personal property subject to the use tax, and R.S. 47:321(A) and R.S. 47:331(A) provide for an additional 2 percent. It is important that R.S. 47:301(3) and the regulation issued under LAC 61:I.4301.C.*Cost Price* be thoroughly analyzed prior to arriving at the basis upon which the use tax will be computed.

B. Tax on Lease or Rentals

1. General Rule

a. *Revised Statute* 47:302(B) provides that the Louisiana lease tax shall be paid on leases "within this state" and R.S. 47:301(7) defines *lease* or *rental* as "the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter, for consideration, without transfer of the title of such property." Therefore, the Louisiana lease tax is due when a lessee possesses or uses leased tangible personal property within Louisiana, regardless of where the lessor and lessee entered into the lease contract or where the lessor transferred possession of the leased property to the lessee.

b. *Lease* also means *rental* for the purposes of this Subsection.

c. Lease payments on leases within Louisiana are subject to the tax rate provided in Title 47 of the Revised Statutes. The tax rate must be applied to each payment, whether made monthly or according to some other schedule.

d. A lessor of leased property, as a dealer and agent for the Department of Revenue (department), shall collect the lease tax from the lessee of the leased property. The lessor must report lease payments on a cash-receipt basis, as provided in R.S. 47:306(A)(2).

e. Gross proceeds derived from the lease of tangible personal property within Louisiana are subject to the lease tax whether the leasing of tangible personal property is the established business of the taxpayer or is only incidental to the taxpayer's established business. Operating expenses and maintenance costs for keeping leased property in repair cannot be deducted from gross proceeds in arriving at the taxable base.

2. Exceptions to the General Rule

a. Revised Statute 47:305(E)(1) provides that: "nor is it the intention of this Chapter (Chapter 2 of Title 47 of the Revised Statutes) to levy a tax on bona fide interstate commerce."

i. The lease tax imposed under R.S. 47:302(B) is a tax levied under Chapter 2 of Title 47 of the Revised Statutes. Therefore, the lease tax is not due on the lease of tangible personal property for those periods of time that it is used in bona fide interstate commerce, whether the use in bona fide interstate commerce is in Louisiana or outside of Louisiana.

b. If the lessee used the leased tangible personal property both in bona fide interstate commerce (whether within or without Louisiana) and in intrastate commerce in Louisiana, the lease tax is due only on the portion of the lease payments attributable to operational usage in Louisiana in intrastate commerce. What constitutes operational usage shall be based on industry custom and the type of property at issue (e.g., flight time, vehicle miles). If average operational usage in Louisiana intrastate commerce is equal to or less than 10 percent of total operational usage during a lease payment billing period, the leased property shall be deemed to be used exclusively in interstate commerce, and no lease tax shall be due for that period. Average operational usage in Louisiana intrastate commerce shall be determined by a ratio, the numerator of which is total Louisiana intrastate operational use, and the denominator of which is total operational use (both intrastate and interstate). If average operational usage in Louisiana intrastate commerce is equal to or greater than 90 percent of total operational usage during a lease payment billing period, the leased property shall be deemed to be used in Louisiana intrastate commerce, and lease tax shall be due on the entire lease payment for that period. Average operational usage in bona fide interstate commerce shall be determined by a ratio, the numerator of which is total bona fide interstate operational use, and the denominator of which is total operational use (both intrastate and interstate). Nothing in this Subparagraph shall be construed to prohibit the department from imposing a lease tax on leased property

stored in Louisiana for use in intrastate commerce in Louisiana.

c. The lease tax is not due if the leased property is leased for use and actually used in an offshore area beyond the territorial limit of Louisiana. In order for this exclusion to apply, the leased property may not be used within Louisiana and the lessee must complete an LGST-9B sales tax exemption certificate stating that the leased property will be used in a specific offshore area. The definition of *use*, for the purposes of Paragraph 2, is found in R.S. 47:301(4)(d)(ii).

d. The department shall authorize lessees, who are registered with the department on a form to be provided by the department, and who used leased property in whole or in part outside Louisiana and/or in whole or in part in bona fide interstate commerce (whether within or without Louisiana), to issue exemption certificates to the lessors of the leased property for such use. A lessor receiving such an exemption certificate shall not be required to collect the lease tax for such leases, and lessees issuing such exemption certificates shall be responsible for reporting lease payments and paying the lease tax to the department for leases in accordance with the provisions of this regulation.

3. Treatment of the Tax Levied by Local Taxing Authorities for Inter-jurisdictional Lease or Rental Transactions

a. For the purpose of local sales or use tax levied upon the lease or rental of tangible personal property, the tax for the initial lease or rental period is due to the local taxing jurisdiction where the transfer of possession of the leased property occurs.

b. For subsequent lease or rental periods, when there is no additional transfer of possession, the tax is due to the local taxing jurisdiction where the property is primarily located. The primary location of the property is that location designated by the lessee and made known to the lessor from records maintained in the ordinary course of business.

c. Possession or use of the leased property in a local taxing jurisdiction where the property is not primarily located will subject the lessee to the taxes imposed by that local taxing jurisdiction. However, a credit will be allowed for the lease period for any tax previously paid to another local taxing authority under the provisions of Subparagraphs a or b of this Paragraph. It is the lessee's responsibility to report any additional tax due.

C. R.S. 47:302(C) imposes a tax of 2 percent of the total amount paid or charged for furnishing of the selected services set forth in R.S. 47:301(14). In addition to the 2 percent tax levied under the provisions of R.S. 47:302(C), an additional 2 percent tax is levied under the provisions of R.S. 47:321(C) and R.S. 47:331(C). Only those services defined as sales of services under the provisions of R.S. 47:301(14) are subject to the tax. In the case of all three tax imposition sections, only those services which are performed within the state of Louisiana are subject to the tax. Services performed outside the limits of the state, whether in another state or in a disputed zone offshore which is ultimately held to be outside the boundary of the state of Louisiana even though the normal base of operations may be within the state of Louisiana, are not subject to the tax.

D. The taxes imposed by R.S. 47:302 and by R.S. 47:321 and R.S. 47:331 are in addition to all other taxes, whether levied in the form of an excise tax, a license tax, a privilege tax, or a gross receipts tax, and shall be in addition to taxes levied under the provisions of Chapter 3 of Subtitle II of Title 47 which is the Louisiana occupational license tax law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:302, R.S. 47:337.2, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 13:107 (February 1987), amended LR 19:1033 (August 1993), amended by the Department of Revenue, Sales Tax Division, LR 23:1703 (December 1997), amended by the Department of Revenue, Policy Services Division, LR 30:2864 (December 2004).

§4305. Imposition of Tax

A. R.S. 47:321 adds an additional 1 percent tax to each of the taxes imposed by R.S. 47:302 with the exception that specific exemptions are provided for drugs, orthotic and prosthetic devices and patient aids prescribed by physicians or dentists for personal consumption or use and for food purchased under certain circumstances for personal consumption. This additional 1 percent tax is in addition to all other taxes levied on sales, excise, license, or privilege and in addition to the taxes levied under Chapter 3 of Subtitle 2 of Title 47 and shall be collected from the dealer and/or wholesaler as defined in Chapter 2 of Subtitle 2 of Title 47 as provided therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:321.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987).

§4307. Collection

A. Collection from Dealers

1. All of the taxes imposed under R.S. 47:302, R.S. 47:321, R.S. 47:331, and local sales or use tax ordinances are governed by these provisions. Every person engaged as a dealer, which R.S. 47:301 defines to be either party to a transaction creating a tax liability under state and local sales and use tax law, is made liable for collection of the tax. Dealer includes both the seller and the purchaser of tangible personal property, the person who uses, consumes, distributes, or stores tangible personal property in a taxing jurisdiction to be used or consumed there if an applicable state or local sales or use tax has not previously been paid thereon, the lessor or lessee, the rentor or rentee of tangible personal property rented or leased within the taxing jurisdiction, and the person who performs or furnishes any of the services covered by R.S. 47:301(14) or the person for whose benefit the services are furnished.

2. The importation of tangible personal property from outside of a taxing jurisdiction, to be used, consumed, distributed, or stored to be used or consumed in the taxing jurisdiction is treated the same as if the articles had been sold at retail for any of those purposes within the taxing

jurisdiction, and such articles are thereby taxable to the person who causes them to be imported. The taxes levy immediately, and can be collected immediately. There shall be no tax on the importer, however, if all applicable taxes imposed under state and local sales or use tax law have been previously paid. Sections R.S. 47:303 and 47:337.15 clearly provide that there shall be no duplication of these taxes.

3. Solely for state sales and use tax purposes, if a tax similar to that imposed by R.S. 47:302, 321, and 331 is imposed by the state from which property is imported and if the state from which imported allows a credit to persons who import tangible personal property into that state for any sales or use tax which might have previously been paid to the state of Louisiana, a credit will be allowed against Louisiana's state sales and use tax for the tax paid to the other state. In order for the credit to be operative, both of the qualifying conditions must be met. The importer must have paid a similar tax upon either the sale or use of the same identical property in another state and the other state must allow a credit similar to this credit. The only exception to the double qualification standard is in the case of military personnel who are enlisted for two years or more who purchase automobiles outside the state of Louisiana while on their tour of active duty. In this instance, the credit will be allowed for the taxes paid the other state, whether or not that state allows a similar credit for Louisiana taxes paid.

4. Solely for state sales and use tax purposes, the use tax is based on either the cost of the tangible personal property being imported or its fair market value at the point at which it comes to rest in the state of Louisiana, whichever is the lesser of the two. Most frequently, the value upon which the Louisiana use tax is based will be less than original cost on which the taxpayer paid tax in the state of purchase. In those instances, credit will be allowed against the Louisiana use tax only in an amount equal to the tax rate paid to the other state, as distinguished from local government in the other state, applied to the value being taxed under the Louisiana law. No credit will be allowed against the Louisiana use tax for taxes paid to political subdivisions in another state or to foreign countries. In no event will a credit greater than the tax imposed by Louisiana on any particular piece of tangible personal property be allowed.

5. Solely for state sales and use tax purposes, in any case in which a taxpayer claims credit for a tax paid to another state, he must be in a position to prove payment of the tax before the credit will be allowed. The precise proof required will vary with the nature of the property and the circumstances surrounding its importation into the state.

6. For local sales or use tax purposes, the credit for taxes paid is governed by R.S. 47:337.86.

B. Collection of Tax on Vehicles

1. In view of the regulatory function performed by the vehicle commissioner in issuing license plates for the registration of vehicles and in issuing certificates of title to vehicles, R.S. 47:303(B) provides that all sales taxes levied state and local taxing authorities on the sale or use of vehicles shall be paid to the vehicle commissioner as the agent of the secretary or local collector, if so contractually provided, before a certificate of title or vehicle registration can be issued. The vehicle commissioner serves as agent for the collector only with respect to those vehicles required to be registered and/or titled with the vehicle commissioner. Generally, this covers all vehicles which have been found to be safe for highway use and can pass safety inspection. While R.S. 47:303(B) makes the vehicle commissioner the agent of the collector for purposes of collecting the taxes, the collector is the only proper party to defend or institute any legal action involving the taxes imposed with respect to any motor vehicle, automobile, motorcycle, truck, truck-tractor, trailer, semi trailer, motor bus, house trailer, or any other vehicle subject to the vehicle registration or title requirements. Conversely, the collector has no authority or jurisdiction whatever in the issuance of vehicle registration licenses or vehicle titles. This is the absolute domain of the vehicle commissioner.

2. The sales taxes levied by R.S. 47:302(A)(1), 47:321(A)(1), 47:331(A)(1), and the ordinances of political subdivisions is due at the time of registration or transfer of registration as required by the vehicle registration license tax law. The use taxes levied by R.S. 47:302(A)(2), 47:321(A)(2), 47:331(A)(2), and the ordinances of political subdivisions on the use of a vehicle in this state is due at the time first registration in this state is required by the vehicle registration license tax law. That law basically requires that a vehicle purchased in Louisiana be registered immediately upon purchase. Consequently, the sales taxes are due at the time of the purchase transaction. The vehicle registration license tax law basically provides that the vehicle shall be registered in this state immediately upon its importation for use in Louisiana. The use taxes, therefore, become due when the vehicle has entered the state for use.

3. For purposes of the sales taxes, every vendor is required to furnish to a purchaser at the time of a sale, a sworn statement fully describing the vehicle including the serial number, the motor number, the type, year, and model of the vehicle, the total sales price, the amount of any allowance, and a full description of any vehicle taken in trade, the net difference being paid by the purchaser between the vehicle purchased and the one traded in, and the amount of sales or use tax to be paid. Every component of the vehicle attached thereto at the time of the sale and which is included in the sales price, including any labor, parts, accessories, or other equipment, are considered to be a part of the vehicle and not a separate item of tangible personal property. The vehicle commissioner has the right to examine the statement furnished to the purchaser at the time of the sale and in any case in which he determines that the total sales price or the allowance for the vehicle traded in do not reflect reasonable values, he may adjust either to reflect the fair market value of the vehicle involved. Generally, this will be done by reference to current values published by the National Automobile Dealers Association. This revaluation is solely for the purpose of determining the proper amount of sales or use tax due and in no way influences the prices agreed upon between the

buyer and the seller. The vehicle commissioner also has the authority to require affidavits from either the vendor or the purchaser, or both, to support a contention that some unusual condition adversely affected the cited sales price. In any event, the minimum tax due shall be computed on the consideration cited as the difference paid by the purchaser between the vehicle purchased and the vehicle traded in.

4. In order for a transaction involving motor vehicles to qualify for trade-in treatment for sales/use tax purposes, the following additional conditions must be met.

a. Ownership of the trade-in vehicle must be transferred to the seller of the new vehicle simultaneously with or prior to the taking of delivery by the purchaser of the new vehicle from the seller.

b. In those cases where special equipment must be installed on the new vehicle or where delivery of the trade-in vehicle cannot be made, an additional period of time will be allowed for the installation of the special equipment or delivery of the trade-in vehicle provided the new vehicle and the trade-in vehicle cannot be in the purchaser's service at the same time.

c. The actual trade-in value of the trade-in vehicle must be established by the purchaser and the seller at or prior to the time of the transfer of ownership of same to the seller, provided such value must be established within 10 days after delivery.

d. The certificate of title to the trade-in vehicle must be in the name of the purchaser of the new vehicle.

e. In the event the new vehicle is not delivered to the purchaser at the time the trade-in vehicle is delivered to the seller, there must be an obligation on the part of the purchaser to take delivery from the seller of the new vehicle.

f. The records of both the seller and the purchaser must reflect a complete description of the transaction.

g. At the time of transfer of ownership of the new vehicle, the invoice from the seller must reflect not only the sales price of the new vehicle but also a complete description of the trade-in vehicle, including the amount of the actual trade-in value.

h. The sales or use tax due to state and local taxing authorities shall be computed on gross sales price of the new vehicle in the case of a sale, or on the cost price of the new vehicle in the case of a transaction subject to the use tax, less the previously established actual trade-in value of the trade-in vehicle.

i. In order to constitute a trade-in to be used as a method of reducing the sales or use tax, there must be a transfer of ownership and the value of the trade-in vehicle must represent a part of the purchase price of the new vehicle. A payment in cash, check or in any other form in lieu of a reduction in or a part of the purchase price of a new vehicle does not constitute a trade-in. The accounting principles used in arriving at the value of any given vehicle for sales or use tax purposes and for trade-in purposes must be consistent.

ii. In any case in which a governing body of any parish or municipality, or the school board of any parish or municipality, has imposed a sales or use tax on the sale or use of motor vehicles, the vehicle commissioner is authorized to enter into an agreement with the governing body by which the vehicle commissioner will collect the tax on behalf of the said parish, municipality, or school board. The vehicle commissioner is authorized to withhold 1 percent of all such taxes collected for parishes, municipalities, or school boards to be used by the commissioner to pay the cost of collecting and remitting the balance of the tax to the respective parishes, municipalities, and school boards. Such local taxes shall be paid to the vehicle commissioner in the same manner as the state sales or use taxes and no title or vehicle registration shall be issued until the taxes have been paid.

5. R.S. 47:303(B)(6) allows automobile lessors or renters that are subject to the Automobile Rental Tax imposed by R.S. 47:551 to transfer to their customers any local sales or use tax paid on automobiles purchased for their rental fleet. However, since July 1, 1996, R.S. 47:301(10)(a)(iii) has excluded automobiles purchased for subsequent lease or rental from local sales or use tax. Therefore, the transfer of local sales and use tax allowed by R.S. 47:303(B)(6) is obsolete and automobile lease or rental dealers are no longer allowed to collect this surcharge.

6. The sales tax exemption for isolated or occasional sales of tangible personal property provided by R.S. 47:301(10)(c)(ii) does not apply to sales of motor vehicles. R.S. 47:303(B)(4) provides that isolated or occasional sales of vehicles are specifically defined to be sales at retail and subject to state and local sales or use tax.

7. The vehicle commissioner may require any dealer engaged in the business of selling motor vehicles, automobiles, motorcycles, trucks, truck-tractors, trailers, semi-trailers, motor buses, house trailers, or any other vehicle subject to the vehicle registration license tax law or the title registration law to furnish information relative to their sales on any periodic basis designated by the vehicle commissioner. The statements shall include the serial number, motor number, type, year, model of the vehicle sold, the total sales price, any allowance for trade-in, a description of the trade-in, the total cash difference to be paid by the purchaser, and any sales or use taxes to be paid. The vehicle commissioner is also authorized to secure whatever other additional information is necessary for proper administration of the tax.

8. R.S. 47:303(A)(3) allows a credit against the state use tax for taxes paid to another state provided the other state allows a similar credit for taxes paid to Louisiana. For credits allowed against taxes imposed by local taxing authorities, see R.S. 47:337.86.

9.a. Generally, a certificate of title or vehicle registration will not be issued to any purchaser for any vehicle on which state or local sales or use tax has not been paid. However, R.S. 47:303(B)(5) provides an exception for purchasers who paid the proper taxes due to the vehicle dealer at the time the vehicle was purchased, but the dealer did not remit the taxes

to the vehicle commissioner. Under this provision, a motor vehicle purchaser who has not been issued a certificate of title or vehicle registration license within six months after the date of the sale, may submit a written request to the secretary showing that:

i. all state and local sales taxes and fees due by the purchaser were paid in good faith to the motor vehicle dealer at the time of purchase;

ii. the motor vehicle dealer has not yet remitted the taxes and fees to the vehicle commissioner;

iii. the motor vehicle dealer has refused or is unable to respond to a written demand by the purchaser for payment of the taxes and fees to the vehicle commissioner; and

iv. the certificate of title or vehicle registration license has not been issued within the six months after the date of the sale.

b. If the purchaser's request appears reasonable and the facts represented are found to be accurate, the secretary may authorize the vehicle commissioner to issue a certificate of title or a vehicle registration license. If the secretary denies the purchaser's request, the denial will be in writing and the purchaser may file an appeal with the Board of Tax Appeals within 60 days after the date of denial by the secretary.

C. Collection of Tax from Auctioneers

1. Generally, the sales tax law contemplates a situation in which the owner of property, or a person having title to property, sells tangible personal property to another person, thereby creating a taxable transaction. In this instance, the sales tax law places a liability upon the seller to collect the state and local sales or use tax from the purchaser and remit the tax to the appropriate collector. Because of this basic concept, special provisions have been included in R.S. 47:303(C) and 47:337.15(C) to cover sales which do not fall within that general method of doing business. In the case of auctioneers, the actual owner of the property turns it over to the auctioneer who conducts the sale and consummates the final transfer of title, as a third party, from the owner to the purchaser. He may well represent a number of property owners at one auction sale.

2. In view of the unique position occupied by auctioneers with relationship to the owner of the property being sold, R.S. 47:303(C) and 47:337.15(C) require that all auctioneers shall register as dealers and must display their registration certificates to the public as a condition of doing business in a taxing jurisdiction. The auctioneer is then held responsible for collecting all state and local sales or use tax on articles sold by him and is responsible for properly reporting and remitting the amount collected.

D. Collection of Tax on Motorboats and Vessels

1. R.S. 47:303(D) and 47:337.15(D) provide that the secretary of the Department of Wildlife and Fisheries shall not issue a certificate of registration on any boat or vessel which is purchased in, or imported into, Louisiana until satisfactory proof is presented showing that all state and local sales taxes have been paid. This will be in the form of a "tax payment certification for boat registration", which is available through the boat dealer or at any office of the Department of Revenue.

2. In the case of a boat or vessel purchased from a Louisiana dealer, the certificate will be completed and signed by both the purchaser and the dealer, and will include the dealer's sales tax registration number.

3. In the case of a boat or vessel brought in from another state, the certificate must be completed and signed by the purchaser and a revenue deputy of the Department of Revenue and also by a tax collecting agent of the local collector where the purchaser resides. The proper use taxes will be due to the appropriate state and local taxing authorities, subject to credit for sales taxes paid in another state, as provided by R.S. 47:303(A) and 47:337.86.

4. In the case of a boat or vessel purchased from an individual owner who is not engaged in the business of selling boats or vessels, the certificate must be completed and signed by the purchaser and a revenue deputy of the Department of Revenue and by a tax collecting agent of the local collector where the purchaser resides. Sales of boats and vessels by individual owners will be regarded as isolated or occasional sales, and not subject to state and local sales or use tax. The purchaser, however, must provide sufficient documentation to support such a basis for exemption, such as a canceled check and a notarized bill of sale, or the prior owner's certificate of registration showing his or her transfer of ownership to the purchaser.

5. The completed "tax payment certification" form will then be presented to an office of the Department of Wildlife and Fisheries to obtain a registration certificate.

E. Collection of Tax on Off-Road Vehicles

1. R.S. 47:303(E) and 47:337.15(E) point out clearly that off-road vehicles are subject to state and local sales or use tax and require that a certificate of title be obtained from the vehicle commissioner in the same manner as with other motor vehicles. The exclusion of motor vehicles from the isolated or occasional provision which appears in R.S. 47:303(B)(4) applies equally to off-road vehicles as it does to cars and trucks. Thus, a purchaser of an off-road vehicle from a person who is not registered with state and local taxing authorities to collect and remit sales taxes shall pay the proper sales taxes at the time the vehicle is titled.

2. Beginning September 1, 1986, all off-road vehicles which are of 1987 model or later manufacture must bear evidence of tax payment by displaying a decal issued by the vehicle commissioner. The decal will be required whether the off-road vehicle is sold as new or used, and must be renewed every two years. The fee for such decals shall be the same as that charged for license fees of other motor vehicles, whether the decal is for new issue, renewal, transfer of ownership, or replacement of a lost or illegible decal.

F. Collection of Tax on Memberships in Health and Physical Fitness Clubs. R.S. 47:303(F) and 47:337.15(F) concern the collection and remittance of sales taxes for memberships in health and physical fitness clubs due under R.S. 47:301(14)(b). Generally, the taxes imposed under state

and local sales and use tax laws are to be reported and remitted for the period in which the sale of tangible personal property or the sale of taxable services occurred, regardless of whether or not the vendor has collected the proceeds or taxes from the customer. R.S. 47:303(F) and 47:337.15(F), however, provide that operators of health and physical fitness clubs may report and remit the taxes due on memberships for the period in which the proceeds are actually collected, for those sales of memberships which are payable over an extended period of time, on a monthly basis. Such extended payment plans typically include actual or imputed interest charges in each monthly payment. Only the membership dues are subject to the tax, so that the club operator may report as sales of services, and remit taxes on, only that portion of the proceeds which represents membership dues, according to the terms of the contract. Also, if the club operator uses a collection agency to collect the amounts due, the collection fees withheld from the proceeds are subtracted from the reported sales of services. When membership contractual payment plans are resold to a financial institution, only the net proceeds received by the club operator will be the amount reported as sales of services for that reporting period. The discount withheld by the financial institution will be regarded as interest, and will not be included in the taxable base.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:303, R.S. 47:337.2, R.S. 47:337.15, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by Department of Revenue and Taxation, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 20:316 (March 1994), amended by the Department of Revenue, Policy Services Division, LR 29:2116 (October 2003), LR 30:2861 (December 2004).

§4309. Collection of Tax

A. R.S. 47:322 provides that all definitions, exemptions, exclusions, tax credits, penalties, or limitations presently contained in or hereinafter added to Chapter 2 as well as all rules and regulations issued by the secretary or which may be adopted in the future, shall apply to the additional 1 percent tax levied by R.S. 47:321 in the same manner and to the same extent as provided elsewhere in Chapter 2 of Subtitle 2 of Title 47.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:322.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987).

§4311. Treatment of Tax by Dealer

A. R.S. 47:304 governs the treatment of state sales and use tax and R.S. 47:337.17 governs the treatment of local sales and use tax that must be collected by dealers. Both statutes place the primary burden for operation of the sales tax system upon the seller of merchandise, the performer of taxable services, and the rentor or lessor of property, and require that he collect the tax from the purchaser, user or consumer. If a dealer fails or refuses to collect the tax, he not only becomes liable for payment of the tax, but also subjects himself to the possibility of being fined a maximum of $100 or imprisoned for a period of time not to exceed three months, or both.

B. This primary burden of collecting and remitting sales tax does not apply to the taxes on motor vehicles subject to the vehicle registration license tax, the collection of which is described in R.S. 47:303(B) (LAC 61:I.4307.B). However, dealers of off-road motor vehicles are charged with the responsibility for collecting and remitting the tax on sales of all such off-road vehicles, notwithstanding that they are also dealers of motor vehicles subject to registration and licensing by the motor vehicle commissioner. Dealers of off-road vehicles shall, in addition to collecting and remitting the tax to the collector, provide the purchaser with a notarized bill of sale, or other documentation, sufficient to prove that the proper taxes have been paid by the purchaser, and to enable the purchaser to obtain a certificate of title from the office of the motor vehicle commissioner.

C. Sellers, as far as practical, must separately list the sales tax from the selling price or payment for the goods or services sold. Sellers are prohibited from absorbing all or any part of the tax except when all of the following conditions are met.

1. Customers must be notified prior to the sale that the seller will remit the tax due to the appropriate taxing jurisdiction. Advertising through newspapers, magazines, television or radio commercials, billboards, and in-store displays or brochures are considered adequate notification. Oral comments made to customers immediately prior to the sale are not adequate notification to satisfy this requirement.

2. The dealer must absorb the tax for all of the customers from a predetermined class of purchases. Privately agreeing to absorb the tax for a particular customer in order to secure a sale is prohibited.

3. The sales invoices or receipts given to customers must list the amount of tax that would have been collected and include a statement that the seller will pay the tax to the appropriate taxing jurisdiction on behalf of the customer.

D. Sellers that violate the provisions of LAC 61:I.4311.C are subject to fines and imprisonment as provided for in R.S. 47:304(F)(3) and R.S. 47:337.17(F)(3).

E. Certificates of exemption from state or local sales or use tax are obtainable from the appropriate collector by persons making purchases which may be exempt in whole or in part at the time of purchase or upon which the tax may be deferred until some later event which dictates taxability of the transaction. While primary responsibility for collection of the taxes rests upon the seller, the purchaser who furnishes the seller an exemption certificate will be held liable for any taxes subsequently found to be due.

F. In cases where the total amount of state or local sales or use tax collected for a sales tax filing period exceeds the percentage applicable to the particular type of merchandise or service, any such excess must be remitted to the appropriate collector.

G. For provisions relating to the amount of state sales or use tax collected by a dealer which may be withheld by him as compensation for collecting, accounting for, and remitting the tax to the secretary, see R.S. 47:306. The amount of

compensation allowed for reporting local sales or use tax is governed by local ordinance.

H. R.S. 47:304 and R.S. 47:337.17 prohibit the use of tokens in the operation of the sales tax law and provides that the secretary shall prescribe schedules of the amounts to be collected from purchasers, lessees, or consumers with respect to each sale. Such schedules integrate the collection of the state and local sales or use tax, and their use is mandatory with respect to both dealers and political subdivisions that impose a sales or use tax. The mandatory tables required by R.S. 47:304 and R.S 47:337.17 will be prepared by the Department of Revenue at the request of any local taxing authority, to reflect the aggregate state and local sales or use tax rate. Any dealer, as well, may obtain these prepared tax rate schedules from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:304, R.S. 47:337.2, R.S. 47:337.17, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 30:2867 (December 2004), LR 31:1101 (May 2005).

§4351. Returns and Payment of Tax, Penalty for Absorption of Tax

A. General. All persons and dealers who are subject to state or local sales or use tax are required to file a tax return monthly, unless otherwise provided, and to remit the amount of tax due. Forms will be provided by the collector, and failure to receive a form will not relieve the dealer of the necessity to file and remit the tax due. For the purpose of collecting and remitting state and local sales or use tax, the dealer performs as the agent of the taxing authority.

1. After a dealer is properly registered for sales and use tax purposes, a sales tax identification number is assigned and the dealer is required to file monthly sales tax returns. Failure to file returns timely will cause the collector to issue an estimated proposed assessment. For those months when the dealer has no taxable sales or amounts to report, a return must still be filed marked “no sales or taxable amounts” and signed by the dealer. Monthly returns must be filed on or before the twentieth day of the month following the month in which the tax is due.

a. Taxpayers may request approval to file consolidated sales tax returns to report sales made from multiple locations on one consolidated monthly return.

b. The collector may require taxpayers to file separate tax returns if the taxpayer is located within a tax increment financing zone or in any other instance when tax data is required by taxpayer location.

2. The collector, for good cause, may extend, for a period not to exceed 30 days, the time for making any returns required under Chapter 2 of Title 47 of the Louisiana Revised Statutes of 1950, as amended, or the Uniform Local Sales Tax Code. Failure of the dealer to abide by the agreement and file returns and remittances as required will result in an immediate cancellation of the extension agreement by the collector.

3. The tax computed to be due by the dealer is payable at the time the return is due, and failure to do so will cause the secretary to issue a 30-day demand assessment as provided in R.S. 47:1568(B). Failure to file the returns on or before the due date, will subject the dealer to delinquency charges, loss of vendor's compensation and other charges as provided by law. See R.S. 47:1519 for information on electronic funds transfers (EFT).

4. Gross proceeds from rentals or leases shall be reported on the appropriate line of the return, and the tax shall be paid with respect thereto, unless an exemption is specifically authorized and explained on the return. Rental and lease proceeds shall be reported on the twentieth day of the month following the monthly or quarterly reporting period in which the proceeds were actually collected by the dealer, regardless of the period in which the lease or rental occurred.

5. The dealer is compensated for accounting for and remitting the state sales or use tax at the rate established by R.S. 47:306. Local ordinances govern the rate of compensation, if any, for accounting for and remitting local sales or use tax. The amount of compensation is computed by multiplying the rate by the amount of tax due and deducting that amount from the total tax accounted for and payable to the collector, before taking credit for taxes already paid to a wholesaler.

6. Except as provided in R.S. 47:304(F)(1), R.S. 47:337.17(F)(1), and LAC 61:I.4311.C, dealers or sellers must separately list the sales tax from the price paid by the purchaser. Otherwise, the absorption of the tax by any retailer, wholesaler, manufacturer, or other supplier shall be punished in accordance with R.S. 47:304(F)(3) and R.S. 47:337.17(F)(3).

B. Exceptions. Not all dealers are required to file returns on a monthly basis.

1. After registration, all dealers will be required to file monthly tax returns.

2. Quarterly Filing. Solely for state sales or use tax purposes, after the dealer has filed tax returns for a few months and it is determined that their tax liability averages less than $500 per month, the dealer will be notified and required to file returns quarterly.

a. It is not necessary to apply for quarterly filing because once a determination is made by the secretary that quarterly filing is appropriate, the dealer will be notified.

b. Quarterly returns must be filed on or before the twentieth day of the first month of the next succeeding quarter.

c. Any dealer required to file on a quarterly basis, may apply for approval to file and pay taxes on a monthly basis.

i. Requests to file monthly must include justification for the exception.

ii. Monthly filing requests must be approved before the dealer may begin filing monthly.

d. Solely for filing local sales or use tax returns, R.S. 47:337.18(A)(1)(b)(i) requires dealers to file their tax returns quarterly if their tax due averages less than $30 per month.

3. Irregular Filing. Dealers with occasional sales or use tax purchases may apply for approval to file and pay taxes on an irregular filing basis.

a. Sales and use tax returns must be filed on or before the twentieth day of the month following the month in which the taxable transaction occurred.

b. Each line of the tax return must be completed and all nontaxable amounts should be identified.

4. Alternate Filing Periods

a. Dealers must apply for approval to file sales tax returns using an alternate method.

b. Approval will only be granted if the total filings do not exceed 12 filings in a 12-month period.

c. The number of short periods during a year must be greater than or equal to the number of long periods during that same year.

d. At the beginning of each year the dealer must, after obtaining approval for the alternate period filing method, file with the collector a calendar for the year showing the alternative filing periods for that year. Amendments to approved calendars must be submitted for approval prior to the affected periods. The taxpayer's account will be reviewed to determine if the taxpayer has correctly filed returns, according to the calendar submitted at the beginning of the year. If the taxpayer does not follow the approved alternate filing method, the returns for the year under review will be converted to a calendar month basis and the taxpayer's request to use an alternate period filing method for the subsequent year will be denied. Alternate period returns must be filed on or before the twentieth day following the close of the alternate filing period. Failure to file on or before this date will subject the dealer to delinquency charges, loss of vendor's compensation, and other charges as prescribed by law.

C. Advance Sales Tax. R.S. 47:306(B) was amended in 1965, to require all manufacturers, wholesalers, jobbers, suppliers, and brokers of tangible personal property to collect an advance payment of state sales or use tax on sales of all tangible personal property, and such payment is required only as a means of facilitating collection of the sales tax. Previous to this amendment, such sales of tangible personal property were considered exempt for taxation since under the statute, wholesale sales were not taxable. Accordingly, these new dealers were required to register with the secretary in order to collect and remit advance state sales or use tax from the sale of all tangible personal property made to retail dealers who resell the property to final users and consumers. The advance payment of the state sales or use tax is required upon all sales of tangible personal property to other dealers unless, specifically exempted by statute, or Form LGST-9 is obtained and kept on file by the dealer making the sale. Exemption certificate LGST-9 will only be recognized if the dealer making the purchase of tangible personal property states that the purchases are for resale or further processing by wholesale dealers and manufacturers. Those businesses purchasing property for resale that qualify as "wholesale dealers" can be exempted from the payment of the advance state sales or use tax.

1. A Wholesale Dealer is defined as one where 50 percent or more of his sales do not constitute retail sales as defined in the sales tax law. Sales made in interstate commerce (sales where property is delivered by the seller outside the state) do not constitute retail sales. R.S. 47:306 also provides exemptions for dealers in motor vehicles subject to license and title; lumber dealers; farm implement dealers; and mobile, motorized, self-propelled, earth moving and construction equipment dealers. Sales made to industrial users and/or to contractors are also added towards the 50 percent criteria for qualification as a wholesale dealer.

2. Manufacturers, wholesalers, jobbers, suppliers, and brokers of tangible personal property are required under this Section to report all sales made within the period of a calendar month or approved alternative filing period, and to remit the advance retail dealers' sales tax on their returns filed with the department. The department is not concerned with credit terms extended by manufacturers, wholesalers, jobbers, suppliers and brokers to their customers. The question of when the wholesaler should collect the advance sales tax is dependent upon the policy of the seller.

3. All dealers who have paid advance sales tax to a manufacturer, wholesaler, jobber, or supplier shall deduct from the total tax collected by them upon the retail sale of the commodity, the amount of advance sales tax paid, provided tax paid invoices evidencing the payments are retained by the dealer claiming the refund or credit. If the advance tax so paid during any reporting period amounts to more than the tax collected by him for that period, the excess so paid shall be reported on the return as a credit. Each such credit return shall be accounted for independently by the Department of Revenue and Taxation, and a refund shall be issued to the dealer for each such credit return. In no case may the credit be applied against the taxes due for any other period, unless the credit is applied under the direction of the secretary.

4. Manufacturers, wholesalers, jobbers, and suppliers collecting advance sales taxes are entitled to vendor's compensation at the rate established by R.S. 47:306. The amount of compensation is computed as a percentage of the taxes so collected and remitted to the secretary, provided the return and payment are timely filed.

5. Parishes, municipalities, school boards, and other local governing bodies, except hereinafter set forth, which levy a sales tax are hereby prohibited from requiring manufacturers, wholesalers, jobbers, or suppliers to collect such taxes in advance from dealers to whom they sell.

6. The parish, municipal, school board or other local governing bodies of the parish in which the state capitol is located, Caddo Parish or any other parish having a population in excess of 200,000 are authorized to require manufacturers, wholesalers, jobbers, and suppliers to collect the taxes levied by them in advance from dealers to whom they sell provided the dealers and wholesalers, manufacturers, jobbers, and suppliers are domiciled in said parish. Such advance

collections shall be subject to the same laws, rules, and regulations as are applicable to advance collections of state sales taxes; provided, however, that the taxes so collected shall be remitted to the parish, municipal, school board, or other local governing authority imposing the tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:306, R.S. 47:337.2, R.S. 47:337.18, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 22:852 (September 1996), amended by the Department of Revenue, Sales Tax Division, LR 23:1530 (November 1997), amended by the Department of Revenue, Policy Services Division, LR 30:2868 (December 2004), LR 31:1101 (My 2005), LR 32:111 (January 2006), LR 33:1877 (September 2007).

§4353. Collection from Interstate and Foreign Transportation Dealers

A. R.S. 47:306.1 specifically provides for an option by persons engaged in interstate or foreign commerce transporting passengers or property for hire to register as dealers and pay the taxes imposed by R. S. 47:302(A) on the basis of the formula hereinafter provided; however, since the intent is apparent, the option equally applies to the tax imposed by R.S. 47:321(A) and R.S. 47:331(A). All persons engaged in the business of transporting passengers or property for hire in interstate or foreign commerce can avail themselves of this option; however, only such purchases and importations, as hereinafter defined, used in the furtherance of the interstate or foreign commerce activity will come under this option. Specifically, a person engaged in activities and operations of another nature cannot apply the option to such purchases and importations, as hereinafter defined, and must pay the tax in the manner prescribed in R.S. 47:302(A), R.S. 47:321(A), and R.S. 47:331(A).

B. Carriers which do not elect to report and pay Louisiana sales and use taxes under the optional formula provided by R.S. 47:306.1 shall report and pay the Louisiana sales tax on all purchases made within the state of Louisiana, and shall report and pay the use tax on all tangible personal property imported into the state of Louisiana and becoming a part of the mass of the taxpayer's property located within the state.

C. Carriers which elect to report and pay Louisiana sales and use taxes under the optional formula provided by R.S. 47:306.1 shall be governed by the provisions set forth below.

D. For purposes of this regulation, gross purchases and importations means all tangible personal property purchased by the taxpayer, within or without the state of Louisiana, and all property imported into Louisiana subsequent to the effective date of this regulation, on which no Louisiana sales or use tax has been paid.

E. Carriers desiring to avail themselves of the provisions of this optional formula, which have not previously registered with the secretary for such purposes, shall apply to the secretary for an interstate or foreign carrier dealer's number, and submit satisfactory proof to the secretary that they are engaged in the transporting of passengers or property for hire in interstate or foreign commerce. Proof that they are subject to appropriate federal regulatory agencies, such as the ICC, CAA, etc., shall normally be sufficient. The secretary shall then issue a registration number which may be used for the purpose of making purchases or importations into this state without payment of sales or use taxes at the time of purchase or importation.

F. Carriers currently registered with the secretary as an interstate or foreign carrier may continue to operate under the interstate or foreign carrier dealer's number which has been issued to them; however, carriers electing to report under this optional formula must expressly signify their election, in writing, at the time of filing their first sales tax return following the effective date of this regulation. All carriers who do not expressly so elect to report under the optional formula shall be presumed conclusively to have elected not to report under the formula.

G. An election either to report under the optional formula or not to report under the optional formula may not be withdrawn without written consent of the secretary for good cause shown.

H. Sellers of tangible personal property may recognize the claim of a buyer that the property concerned is to be used in the transporting of passengers or property for hire in interstate or foreign commerce only if the buyer is properly registered hereunder, and only if the buyer submits a blanket certificate, Form LGST 12, signed by and bearing the name, address and registration number of the buyer, to the effect that he is using the property purchased in the business of transporting persons or property or services purchased in the business of transporting persons or property for hire in foreign or interstate commerce and that he will pay the taxes owed directly to the secretary under the provisions of R.S. 47:306.1. Blank certificates may be obtained from the secretary. Sellers will be responsible for the collection of tax on all sales made to persons who have not secured the proper registration number. A dealer who fails to secure or keep for the secretary examination certificates signed by the buyer will be liable for and must pay the tax himself.

I. On or before the twentieth day of each month, the carrier shall transmit to the secretary on forms furnished by the secretary, returns showing the gross purchases and importations. The taxable base shall be determined by applying the mileage ratio (miles traveled in Louisiana divided by total miles traveled) to the gross amount referred to above. The prevailing tax rate shall be applied to the taxable base to determine the amount of tax due.

J. R.S. 47:306.1 applies only to the tax imposed on sales and use of tangible personal property, as set forth in R.S. 47:302(A), R.S. 47:321(A), and R.S. 47:331(A). The tax imposed on the lease or rental of tangible personal property [R.S. 47:302(B), R.S. 47:321(B), and R.S. 47:331(B)] and the tax on sales of services [R.S. 47:302(C), R.S. 47:321(C), and R.S. 47:331(C)] may not be paid and reported under the optional method provided by R. S. 47:306.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:306.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987).

§4355. Collector's Authority to Determine the Tax in Certain Cases

A. R.S. 47:307 and 47:337.28 impose a direct burden and responsibility upon the collector to determine that the taxable amount reported by any taxpayer is correct and further empowers the collector to assess and collect any tax, penalties or interest which might be due based on correct figures. In the case of a dealer who makes a report that is grossly incorrect, false or fraudulent, the collector is directed by the statute to make an estimate of the retail sales of the dealer, his gross proceeds from rentals or leases of tangible personal property, the cost of any articles of tangible personal property imported by the dealer for use or consumption or distribution or storage to be used or consumed in the taxing jurisdiction, and the gross amount paid for taxable services. Upon having made the estimate, the collector is further directed to assess all taxes, penalties and interest and the amount assessed is considered to be prima facie correct with the burden on the dealer to prove to the contrary.

B.1. Solely for state sales or use tax purposes, whenever the secretary has determined that the amount reported by a dealer is incorrect and is required to make an estimate or an assessment in accordance with the provisions of R.S. 47:307, if an examination of any books, records, or documents or an audit thereof is necessary in order to make such assessment, then the secretary shall add to the assessment of the tax, the cost of the examination together with penalties accruing on the cost. The cost and penalties assessed will be collected in the same manner in which the tax is collected.

2. Solely for local sales or use tax purposes, whenever the collector has determined that the amount reported by a dealer is incorrect and must make an estimate or assessment in accordance with the provisions of. R.S. 47:337.28(D) or R.S. 47:337.75, if an examination of any books, records, or documents or an audit thereof is necessary in order to make such assessment, then the collector may add to the assessment of the tax, the cost of the examination together with penalties accruing on the cost. The cost and penalties assessed will be collected in the same manner in which the tax is collected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:307, R.S. 47:337.28, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:88 (January 2005).

§4357. Termination or Transfer of a Business

A. A special rule is provided for the filing of returns and payment of any taxes due in the case of any dealer who sells his business or his stock of goods or who quits a business. Under continuing operating conditions, a dealer is required to file his return and pay the amount due by the twentieth day following the close of the taxable period covered by the return. However, if a dealer discontinues business, he is required to file a final return and to make payment within 15 days after the date of selling or quitting business instead of the 20 days allowed a continuing business.

B. In order to insure that all taxes are paid by a discontinuing business, R.S. 47:308 and 47:337.21 require that the successor, successors, or assigns, if there are any, must withhold a sufficient portion of the purchase price to cover any taxes, penalties and interest due and unpaid at the time of the purchase. These funds must be withheld by the purchaser until the former owner can produce a receipt from the collector showing that the taxes have been paid or a certificate from the collector stating that there are no taxes, interest, or penalties due. If the purchaser of the business or of the stocks of goods fails to withhold sufficient funds with which to pay any taxes, penalties, or interest found to be due, he shall be held personally liable for the payment of the amount due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:308, R.S. 47:337.2, R.S. 47:337.21, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:100 (January 2005).

§4359. Dealers Required to Keep Records

A. As provided in R.S. 47:309 and R.S. 47:337.29, every person required to collect or remit the tax imposed under R.S. 47:302, 321, 331, and local ordinances shall keep a permanent record of all transactions in sufficient detail to be of value in determining the correct tax liability. The records to be kept shall include all sales invoices, purchase orders, merchandise records, inventory records, credit memoranda, debit memoranda, bills of lading, shipping records, and all other records pertaining to any and all purchases, sales, or use of tangible personal property whether or not the person believes them to be subject to state or local sales or use tax. Full detail must be kept of all property leased or rented from or to others and all services performed for or by others. They must also keep all summaries' recapitulations, totals, journal entries, ledger accounts, accounts receivable records, accounts payable records, statements, tax returns, and other documents listing, summarizing, or pertaining to such sales, purchases, inventories, shipments, or other transactions dealing with tangible personal property.

B. Where such records are voluminous, they must be kept in chronological order or in some other systematic order compatible with the taxpayer's regular bookkeeping system which will enable the collector to verify the accuracy of information contained in tax returns.

C.1. Records kept on punched cards, magnetic tape, magnetic (floppy) diskettes or other mechanical or electronic record keeping equipment are permissible provided the taxpayer makes available all necessary codes, program specifications, and equipment to enable the collector to audit such records, or provides the collector with written transcripts of these parts of the records which the collector wishes to examine.

2. If it is mutually agreed, the dealer may furnish the collector with data in a machine readable form, such as on

floppy disk or magnetic tape, in addition to the source documents necessary to verify the data in order to facilitate the examination.

D. The books and records must contain complete information pertaining to both taxable and nontaxable items which are the subject of the taxes imposed and must be retained until the taxes to which they relate have prescribed according to R.S. 47:1579 and R.S. 47.337.67. If a notice of assessment has been issued by the collector, the records for the period covered by the notice must be retained until such time as the issues involved in the assessment have been completely disposed of. Records required by R.S. 47:309 and R.S. 47:337.29 must be available at all times during the regular business hours of the day for inspection by the collector or his duly authorized agents.

E. Any person who fails to keep records required by R.S. 47:309 or R.S. 47:337.29 or who refuses to make the records available for inspection by the collector or who keeps records which are insufficient for use by the collector in determining the correct tax liability makes himself liable for a fine of up to $500 for each reporting period or imprisonment for up to 60 days, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:309, R.S. 47:337.2, R.S. 47:337.29, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended LR 15:274 (April 1989), amended by the Department of Revenue, Policy Services Division, LR 31:90 (January 2005).

§4361. Wholesalers and Jobbers Required to Keep Records

A. As provided by R.S. 47:310 and R.S. 47:337.30, wholesalers and jobbers are clearly within the definition of dealers set forth in R.S. 47:301(4) and as dealers, are required to maintain complete and accurate records pertaining to all sales of tangible personal property made within a taxing jurisdiction whether such sales are for cash or on terms of credit or whether they are taxable or exempt.

B. For a complete description of records which must be kept by all dealers, see R.S. 47:309, R.S. 47:337.29, and LAC 61:I.4359.

C. In the case of wholesalers and jobbers, R.S. 47:310(B) and R.S. 47:337.30(B) provide that whoever violates this requirement shall be fined not less than $50 nor more than $200 or imprisoned for not less than 10 days nor more than 30 days, or both, for the first offense. For the second or each subsequent offense, the penalties double.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:310, R.S. 47:337.2, R.S. 47:337.30, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:101 (January 2005).

§4363. Collector's Authority to Examine Records of Transportation Companies

A. The collector as defined in R.S. 47:301(2), is further expanded to include additional duly authorized representatives for purposes of R.S. 47:311 and R.S. 47:337.31. Such representatives will have identification cards stating that they are authorized representatives of the collector with the power and authority as provided in Chapters 18 and 2D, Title 47, Louisiana Revised Statutes.

B. Under these Sections, specific authorization is granted to the collector to examine all pertinent books, records, and other documents of all transportation companies, agencies, or firms operating in the taxing jurisdiction in order to gather information necessary to determine what dealers are importing or are otherwise shipping articles of tangible personal property subject to state and local sales or use tax. The collector or his assigned agents are expected to notify the transportation companies at a reasonable time in advance and to conduct the investigation during reasonable hours and with a minimum of difficulty to the transportation companies. The transportation companies, in turn, are expected to cooperate with the agents, furnishing all records required as well as reasonable working surroundings and conditions.

C. Failure to permit such an investigation will force the collector to proceed by rule against the company, in term time or in vacation, in any court of competent jurisdiction in the parish where such refusals occurred to show cause why the collector should not be permitted to examine books, records or other documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:311, R.S. 47:337.2, R.S. 47:337.31, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:89 (January 2005).

§4365. Failure to Pay Tax on Imported Tangible Personal Property; Grounds for Attachment

A. The failure to pay any tax, interest, penalties or cost when due as provided in state and local sales or use tax laws and the regulations pertaining thereto automatically causes the tax, interest, penalties or costs to become immediately delinquent. Any tangible personal property, of which the sale at retail or the use, consumption, distribution and/or storage which gave rise to the incident of tax is subject to attachment irrespective of whether the delinquent taxpayer is in possession of the property or not, and irrespective of whether he is a resident of the state of Louisiana. The failure to pay the tax when due constitutes grounds for attachment as provided by R.S. 47:312 and R.S. 47:337.32. The procedure prescribed by law for attachment proceedings is to be followed except no bond is required of the taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:312, R.S. 47:337.2, R.S. 47:337.32, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:92 (January 2005).

§4367. Failure to Pay Tax; Rule to Cease Business

A. The failure to pay any tax when due as provided in state and local sales or use tax laws and regulations pertaining thereto shall cause said tax, interest, penalty and cost to become immediately delinquent. The collector has the authority to use summary process in any court of competent jurisdiction to require the dealer owing the tax to show cause why he should not be ordered to cease from further pursuit of his business. The rule to show cause shall be set for hearing at least two but not more than 10 days, exclusive of holidays, after it is filed. It may be tried out of turn, in chambers with preference and priority over all other proceedings. There is a prima facie presumption that all tangible personal property imported or held in the taxing jurisdiction by any dealer is subject to a sales or use tax. If the rule is absolute, said dealer shall be prohibited from further pursuit of his business until such time as the delinquent tax, interest, penalties and costs have been paid. Any violation shall be considered contempt of court and punished according to law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:314, R.S. 47:337.2, R.S. 47:337.33, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:92 (January 2005).

§4369. Sales Returned to Dealer; Credit or Refund of Tax

A. R.S. 47:315(A) and 47:337.34(A) provide special rules for the handling of taxes which have been charged to the account of a purchaser, consumer, or user in cases where the property sold has been returned to the dealer or where a refund is made of the charges for services upon which a tax was based. In either case, if the tax has been collected or charged to the account of the purchaser or consumer or user and has not yet been remitted to the collector, and a refund or credit is made to the purchaser or consumer, the dealer may delete the sale and the tax due in submitting his return for the current tax period. If the merchandise is returned to the dealer or if a refund is made to the customer for any charges for services after the tax collected or charged to the customer's account has been remitted to the collector, the dealer may file an amended sales tax return for the period in which the tax so refunded was originally remitted. The blank return form must be obtained from the appropriate taxing authority to ensure that it bears the correct taxpayer identification and account information and the proper marking of an “amended” return. The dealer must complete the amended return by reporting sales and deductions after making the proper adjustments to reflect the rescinded sale or sales. The credit balance which will result from the computation of total tax, penalty, and interest will be refunded to the dealer in the same manner as a credit return which is timely filed in accordance with §4351.

B. R.S. 47:315(B) and R.S. 47:337.34(B) provide a dealer with a method for claiming refunds for the recovery of taxes which have been remitted to the collector, but are later written off as uncollectible accounts from credit customers. Dealers submitting refund claims should be aware of the following restrictions specifically provided in or authorized by R.S. 47:315(B) and 47:337.34(B).

1. The state sales or use tax is refundable on debts incurred after January 1, 1976, that ultimately become worthless. The tax will not be refunded on worthless debts incurred prior to January 1, 1976. The local sales or use tax is refundable on debts incurred after September 3, 1989, which ultimately become worthless. The tax will not be refunded on worthless debts incurred prior to September 3, 1989.

2. Before the collector can issue a sales tax refund on a bad debt, the debt must actually have been deducted on a federal income tax return in accordance with Section 166 of the United States Internal Revenue Code. Since the issuance of refunds is tied to charge-offs on the annual federal return, the collector will process one refund per year for each dealer.

3. If after a debt is charged off as worthless and a sales tax refund issued, all or some portion of the debt is collected, the gross amount collected shall be reported as a new sale for the period when the recovery is made.

4. The local credit or refund shall be granted whenever the Louisiana Department of Revenue has found the dealer to be entitled to reimbursement in accordance with R.S. 47:337.34(B)(1).

5. The sales tax is refundable only on those bad debts that are the result of credit or deferred payment sales of tangible personal property and sales of services financed by the dealer making the sale. No refund is authorized on bad debts arising from leases or rentals, even though tax may have been charged on such transactions, or on sales financed by lending institutions or independent credit card plans, unless the lender has full recourse against the seller for any unpaid amounts. The sales tax is refundable on bad debts which arise because of the issuance of worthless checks only to the extent the check was in payment of taxable tangible personal property.

6. No refund will be issued in the case where a dealer has repossessed saleable merchandise and cancelled the customer's credit obligation.

7. Dealers may recover sales tax remitted on bad debts solely through the issuance of refunds by the collector. Dealers must continue to file sales tax returns reporting their total sales of merchandise during each taxable period, regardless of whether customer obligations have been collected. Deductions for bad debt losses may not be taken on sales tax returns.

C. Refund claims submitted to the collector must be accompanied by schedules detailing the names of debtors whose obligations were charged off, the uncollectible amounts, the amount of debt written off which was incurred prior to January 1, 1976, for state sales or use tax purposes or September 3, 1989, for local sales or use tax purposes, nontaxable portion of debt written off, and tax claimed.

1. Refunds will not be issued based solely upon increases in bad debt reserve amounts. Dealers who maintain

such reserve accounts must base their claims on the individual bad debts charged against the reserve.

2. Taxpayers who charge off more that 200 taxable accounts annually, and for whom the furnishing of detailed information required above would be unreasonably burdensome, may apply for permission to submit the required data in some other form.

3. All refund claims filed with the collector are subject to office or field examination and verification, so dealers must maintain auditable records to support their claims. The records must be able to substantiate that the sales tax was charged and remitted to the collector on the original sales and that the dealers made reasonable efforts to collect the debt amounts. Dealers must have good evidence that debts charged off are worthless and will remain so in the future. The debt must actually be charged off as worthless on a federal income tax return before a refund of state sales or use tax will be processed by the Department of Revenue. The credit or refund for local sales or use tax shall be granted whenever the Louisiana Department of Revenue has found the dealer to be entitled to reimbursement in accordance with R.S. 47:337.34(B)(1). In the absence of the required records, a dealer will not be entitled to refund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:315, R.S. 47:337.2, R.S 47:337.34, and R.S 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:97 (January 2005).

§4371. Sales Tax Refund for Tangible Personal Property Destroyed in a Natural Disaster

A. Under certain circumstances, a refund is allowed for state sales or use tax paid on tangible personal property that has been destroyed in a natural disaster. The conditions and requirements are as follows.

1. The property destroyed must be classified as tangible personal property at the time of destruction rather than being classified as real or immovable property. For purposes of determination of the classification of such property, reference and guidance shall be to the rules of the Louisiana Civil Code. In Louisiana, property is classified as either movable or immovable rather than as personal or real. Under Louisiana law a corporeal movable is equivalent to tangible personal property at common law, and an immovable is equivalent to real property. Generally speaking a house or a building and all central heating or cooling systems, lighting fixtures, lavatories, etc., that are actually connected with or attached to the house or building by the owner are immovable by their nature. Such items as clothing, drugs, food, recreation equipment, appliances not permanently attached to a house or building where the removal thereof would not damage the movable or immovable, etc., would be classified as tangible personal property or movable property, and the sales tax paid on these items would be eligible to be refunded. Automobiles, trucks, motorcycles, boats, boat trailers, and other vehicles will not be considered tangible personal property used in or about a person's home, apartment, or homestead. The sales tax paid on these items is not eligible to be refunded under this statute.

2. Such property destroyed must be a part of and used in or about a person's home, apartment or homestead, on which Louisiana sales tax has been paid by the owner of the property destroyed in an area subsequently determined by the president of the United States to warrant assistance by the federal government. Therefore, it is necessary that individuals suffer the loss, since R.S. 47:315.1 does not apply to partnerships or corporations. Further, it does not apply to business losses, even by individuals, since the law limits the losses to property that is part of and used in or about a person's home, apartment or homestead. Also, the area where the natural disaster occurred must be designated as an area warranting assistance by the federal government in order to qualify under this Section.

3. The claimant suffering the loss of the tangible personal property must be the owner of such property that purchased and paid the Louisiana sales tax on such property. Any refund claim filed shall be made in accordance with the rules and regulations prescribed by the secretary. Accordingly, any refund claim shall be filed on or before the end of the third calendar year following the year in which the property was destroyed, and the refund claim shall be limited to the tax paid on such tangible personal property destroyed for which no reimbursement was received by insurance or otherwise.

4. A refund claim packet can be obtained from the secretary, and when the claimant properly executes the required forms and prepares a sworn statement attesting to the facts, a refund will be processed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:315.1. and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:99 (January 2005), LR 32:262 (February 2006).

§4372. Payment of Sales and Use Taxes by Persons Constructing, Renovating, or Altering Immovable Property

A. General. The purpose of this Section is to help clarify which party to the transaction is liable for the payment of sales and use taxes on the purchase, use, consumption, distribution, or storage for use or consumption of tangible personal property in this state when such property is used in the construction, alteration, or repair of an immovable property, and such tangible personal property is transferred from the contractor to its customer in an immovable state.

B. Definition. For the purposes of this Section, the term *contractor* means any dealer, as defined in this Chapter, who contracts or undertakes to construct, manage, or supervise the construction, alteration, or repair of any immovable property, such as buildings, houses, roads, levees, pipelines, oil and gas wells (downhole), and industrial facilities. It also includes subcontractors. The term *contractor* shall not include a dealer who fabricates or constructs property that is sold to another person as tangible personal property, provided that the fabricator or constructor of the tangible personal property

does not affix that tangible personal property to the buyer's immovable property.

C. Sales of tangible personal property, including materials, supplies, and equipment, made to contractors, or their contractors, subcontractors, or agents, for use in the construction, alteration, or repair of immovable property are presumed to be sales to consumers or users, not sales for resale, and therefore the contractor is liable for the taxes imposed by this Chapter on their purchases or importations of such tangible personal property. This presumption may be rebutted by a showing of credible evidence, such as a writing signed by the contractor's customer stating that title and/or possession of itemized articles of tangible personal property were transferred to the customer prior to their being made immovable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 38:1995 (August 2012).

§4373. Nonresident Contractors

A. General. This Section provides the procedures that must be followed by nonresident contractors who do business in this state as required by R.S. 47:9 and R.S. 47:306(D). This Section also provides the procedures that must be followed by state and local agencies charged with the responsibility for granting permits and/or licenses for the lawful commencement of construction contracts in this state as required by R.S. 47:337.18(C). This Section also provides the necessary definitions.

B. Definitions. For the purposes of this Section, the following terms are defined.

Contractor—any dealer, as defined in this Chapter, who enters into contracts for the construction, renovation, or repair of immovable properties, such as buildings, houses, roads, levees, pipelines, and industrial facilities. It also includes subcontractors who enter into similar agreements with a general or prime contractor. The term *contractor* shall not include businesses that fabricate or construct property that is sold to another person as tangible personal property, even though the property may be subsequently incorporated into the construction of an immovable. The term *contractor* shall include any project owner who obtains any permit, license, or certificate necessary for the lawful commencement of any construction contract.

Nonresident Contractor—any contractor who does not meet any of the following criteria for resident status.

a. For an individual proprietorship, resident status requires having maintained permanent domicile in Louisiana for at least one year prior to bidding on work.

b. For a corporation, resident status requires having operated a permanent business facility in Louisiana for at least one year prior to bidding on work; or having at least 50 percent of its outstanding and issued common stock owned by individuals who have maintained their domicile in Louisiana for at least one year prior to bidding on work.

c. For partnerships and other legal entities, resident status requires at least 50 percent ownership by individuals or corporations who themselves qualify as residents.

Resident Contractor—all contractors that are not nonresident contractors.

C. Contracts to be Registered with Secretary and Central Collector

1. Prior to obtaining a building permit necessary for the lawful commencement of any contract in Louisiana, a nonresident contractor shall register each contract that exceeds $3,000 in total price or compensation with the secretary of the Department of Revenue and with the central sales and use tax collector for the parish in which the project is located. The secretary shall provide the necessary forms for the contractors to register each contract. The forms will require the nonresident contractor to give a complete description of each project, pertinent tax registration data, and a list of anticipated subcontractors. A fee of $10 per contract shall be paid to the secretary at the time of registration. As required by the secretary, the contractor shall furnish a surety bond for each contract or a blanket surety bond for all contracts. The bond shall be:

a. 2 1/2 percent of the gross contract amount or $1,000, whichever is greater, if income tax withholdings remitted to the department include such payments deducted from non-employee compensation (e.g., independent contractors); or

b. 5 percent of the gross contract amount or $1,000, whichever is greater, if income tax is not withheld from non-employee compensation paid by the non-resident contractor.

2. Upon satisfactory completion of the registration and surety bond requirements, the secretary shall issue the contractor a certificate of compliance with which to obtain any building permits necessary for lawful commencement.

3. Nonresident subcontractors will be held to the same requirements of registration, payment of a $10 fee, and furnishing a surety bond, even though they may not need to secure any permits.

D. Payments to be Withheld from Subcontractors. R.S. 47:9(B)(3) makes each contractor subject to this provision responsible for all of its subcontractors' compliance with all state and local tax laws. A contractor shall inform each of its subcontractors of their tax registration, contract registration, and surety bond requirements, and shall withhold a sufficient amount from payments made under their contracts to ensure compliance. Upon discovering any unpaid tax liability by a subcontractor, the secretary will first attempt to collect the unpaid taxes from the subcontractor or his surety. However, if the secretary's efforts are unsuccessful, the contractor and his surety have ultimate responsibility for the payment of any subcontractor's unpaid tax liabilities.

E. Contract Completion; Cancellation of Surety Bond. Within 30 days after completion of each contract, the contractor shall submit to the secretary a completion report summarizing the costs incurred; the taxes paid to other states,

to the state of Louisiana, and to local taxing authorities; and other such information that may be required by the secretary. After reviewing the report and verifying the tax payment amounts reported, the secretary shall refer the summary to the central sales and use tax collector for the parish in which the project is located to determine whether there are any unpaid local tax liabilities. If no unpaid state or local tax liabilities are discovered, the contractor's surety bond may be canceled for that contract. The surety bond will be held by the Department of Revenue and Taxation and used, if necessary, in the future if sales taxes are later found to be due on that contract.

F. Compliance by Permitting Agencies; Withheld Funds Authorized

1. R.S. 47:9(B)(4) and R.S. 47:306(D)(2)(a) place specific responsibilities with state or local agencies that issue permits, licenses, or certificates necessary for the lawful commencement of any construction contract. State agencies, including but not limited to the office of the state fire marshal, and agencies of local governing authorities, including but not limited to parish and municipal building inspectors, shall not issue any building permit, license, or certificate until the applicant has submitted documentation verifying that the contract has been properly registered and the required surety bond has been posted. Proper documentation to be obtained from the Secretary of the Department of Revenue and Taxation is as follows.

a. Resident contractors must obtain a certificate of resident status.

b. Nonresident contractors must obtain a certificate of compliance.

c. Individuals seeking a permit for work to be performed on their residence must submit an affidavit as documentation of residency.

2. The secretary is authorized by R.S. 47:337.19(B) to evaluate and monitor parish and municipal permitting agencies to ensure compliance with these provisions.

a. When the secretary discovers that a parish or municipal permitting office has issued a permit to a *nonresident contractor* without verifying compliance with the provisions of this regulation, he shall notify that permitting office, the parish collector, and the governing authority of the parish of the violation by registered mail.

b. The affected parties will be allowed 60 days to respond to the department's notification. If the affected parties contact the department after receiving notification, the department will work with them to reconcile the situation. If the situation is resolved, no further action will be taken.

c. If an agreement cannot be reached or if the department does not receive a response after 60 days, the secretary will notify the state treasurer of the violation by registered mail. A copy of this notification will be sent to the permitting office, the parish collector, and the governing authority of the parish.

d. The state treasurer, within 90 days of notification, shall request a hearing on the suspected violation with the House Committee on Ways and Means. The date, time, and location of this meeting will be furnished by the state treasurer to the permitting office, the parish collector, the governing authority of the parish, and the secretary of the Department of Revenue by registered mail. Following the hearing, the state treasurer shall take action as directed by the committee, including the withholding of state funds as authorized by R.S. 47:337.19(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9, R.S. 47:306, R.S. 47:337.2, R.S. 47:337.18, R.S. 47:337.19, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 21:185 (February 1995), amended by the Department of Revenue, Policy Services Division, LR:31:95 (January 2005), LR 32:262 (February 2006).

Chapter 44. Sales and Use Tax Exemptions

§4401. Various Exemptions from 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. Any sale of livestock, poultry, or other farm products made directly from the farm and directly by the producer regardless of the purpose to which it will be put when sold is exempt from these taxes. The producer is also exempt from use tax on any farm products consumed by him or his family. This exemption extends to livestock and livestock products, to poultry and poultry products, to farm, range or agricultural products so long as they are produced by the farmer and used by him and members of his family.

1. In addition to the exemption from sales tax for sales made directly from the farm, R.S. 47:305(A) further provides a sales tax exemption for three types of off-the-farm-premises sales:

a. livestock sold at a public sale which is sponsored by a breeder's association or a registry association is exempt from state sales or use tax;

b. livestock sold at a commercial livestock auction market which holds regularly scheduled auction sales, not limited to any certain producer or producers is exempt from state and local sales or use tax;

c. race horses sold through entry in a claiming race, whereby the horse was claimed, at any racing meet held in Louisiana is exempt from state sales or use tax.

2. Exemptions afforded other persons in connection with agricultural commodities are limited depending upon the purpose for which they are sold. The only exemption in the law for any farm products sold directly to the consumer as a finished product, other than food sold under circumstances described in R.S. 47:305(D), is for sales made by 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. The exemption applies to the tax imposed on the sale, storage, use, transfer or any other utilization or handling of those products except when they are sold as a finished product to the final consumer. The law further provides that in no case shall there be more than one tax applied with respect to agricultural commodities.

3. R.S. 47:305(A)(4) provides an exemption for feed and feed additives for animals which are held primarily for commercial, business, or agricultural uses. It also establishes certain criteria which characterize these three categories of use for purposes of this Subsection.

a. *Commercial Use*—the purchasing, producing, or maintaining of animals for resale. Examples of such use are: cattle, poultry, and hog farms which produce animals for market, pet animal breeders, and thoroughbred farms. Breeding stock, although not normally held for sale, is included in the category of commercial use.

b. *Business Use*—the keeping and maintaining of animals to perform specific functions and services in conjunction with a business. Examples of this category are dogs used in providing security services and horses used in a rental business or carnival rides.

c. *Agricultural Use*—broadly defined to include the maintaining of work animals for producing: crops or animals for market, food for human consumption, or animal hides or other animal products for market. Examples of these agricultural uses would include draft horses used to pull cargo, quarter horses used to work cattle, dogs used to herd sheep, and dairy cattle used for milk production. Breeding stock which is held for the propagation of these animals is also included in the definition.

d. Specifically excluded from the exemption in R.S. 47:305(A)(4) is feed for animals held primarily for other purposes, even though they might be used in one or more exempt categories of use at times. For example, a registered breed pet which is occasionally bred for the purpose of selling the offspring is not considered held for commercial use.

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 a 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.

1. In addition to the exemption for electric power or energy in R.S. 47:305(D)(l)(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.

2. Other fuels and specific applications of energy sources are exempted from the tax. R.S. 47:305(D)(l)(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. Water (but not including mineral water or carbonated water) is also exempt provided it is not placed in a container such as a jug, bottle, or carton.

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. Alcoholic beverages, malt beverages and beer; tobacco products; distilled water, water in bottles, carbonated water, ice and "dry ice" are not considered to be food. Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts are also not considered to be food.

Dietary Supplements—any product, other than tobacco, intended to supplement the diet that:

i. contains one or more of the following dietary ingredients:

(a). a vitamin;

(b). a mineral;

(c). an herb or other botanical;

(d). an amino acid;

(e). a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(f). a concentrate, metabolite, constituent, extract, or combination of any ingredients described in Subclauses (a)-(e) above; and

ii. is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

iii. is required to be labeled as a dietary supplement, which is identifiable by the fact that the product contains a "Supplemental Facts" box on the label.

3. Food for home consumption as used in R.S. 47:305(D)(1)(n) does not include prepared food.

Prepared Food—

i. food sold in a heated state or heated by the seller;

ii. two or more food ingredients mixed or combined by the seller for sale as a single item, which does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and food containing these raw animal foods requiring cooking by the consumer in order to prevent food borne illnesses; or

iii. food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

4. Notwithstanding language to the contrary in Paragraph F.3, bakery products, dairy products, soft drinks, fresh fruits and vegetables, and package foods requiring further preparation by the purchaser are considered food for home consumption unless sold by an establishment listed in R.S. 47:305(D)(3). However, soft drinks that are sold with a cup, glass or straw are not considered food for home consumption.

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. Facilities for the consumption of food on the premises as discussed in R.S. 47:305(D)(3) include not only inside facilities, but also outside facilities, including parking facilities.

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.a. 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.

b.i. R.S. 47:305D(4)(b) provides a limited exemption from local sales and/or use taxes on the procurement of prescription chemotherapy drugs administered to the patient for treatment of cancer and also includes prescription drugs related to chemotherapy treatment administered in connection with the treatment of cancer patients.

ii. In order for these prescription drugs to be eligible for exemption, they must be procured by a physician who specializes in the diagnosis and treatment of cancers and administered by the physician, nurse, or other health care professional in the physician's office where patients are not kept as bed patients for twenty-four hours or more. It is the intent of this limited exemption to apply only to medications that have been prescribed by and administered in the physician's office at the time medical services are delivered. The issuance of a prescription for personal use of similar drugs away from the physician's office will be fully taxable at the local level. This exemption shall not apply to medical supplies or equipment used to administer any treatment to patients.

iii. Chemotherapy drugs are those drugs that kill or inhibit the growth of cancerous cells or tumors and have been approved by the Food and Drug Administration for use in the

treatment of cancers. Chemotherapy drugs may be used individually or in combination to achieve optimum results. Language dealing with "related chemotherapy prescription drugs" (emphasis added) may present difficulties in interpretation and therefore, this regulation is being adopted to establish certain guidelines to govern this limited exemption. The treatment of diagnosed cancer with prescribed drugs and chemotherapy relates to professional medical services delivered to the patient in a physician's office where patients are not regularly kept as bed patients for periods beyond 24 hours. These prescribed drugs must be administered by the physician, his/her nurse, or other health care professional orally or intravenously during the treatment. These exempt prescribed drugs would include medications prescribed to treat the side effects of chemotherapy, such as nausea and blood-related side effects. Such prescription drugs must be medically necessary, prescribed as part of an established protocol and appropriate in light of clinical standards of medical practice. Procurement of these and similar drugs by hospitals, hospital clinics, and other facilities that do not qualify as the physician's office shall not be exempt from local taxation under this exemption. Purchases of these and similar drugs that are prescribed for treatment in medical conditions other than cancer would also not be exempt under this statute from local taxation. Local taxing authorities have developed a specific Local Exemption Certificate which is to be acquired and employed by those persons who are found to be eligible for this exemption. Each local tax administrator or collector is authorized to issue a local exemption certificate that has been approved by the Board of Directors of the Louisiana Association of Tax Administrators (LATA) upon application found suitable by said collector.

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 pieces of property which have been clearly labeled for trans-shipment outside the taxing jurisdiction at the time of its manufacture or importation into the taxing jurisdiction would meet the exemption requirements even though it may be stored for an indefinite period of time. Any disposition of the property for a purpose contrary to that originally intended would immediately subject the property to the tax.

J. R.S. 47:305(F) exempts materials and the use of film, video or audio tapes, records, and any other means of exhibition or broadcast, supplied by licensors to radio and television broadcasters from the taxes imposed by state and local sales or use tax laws. The exemption applies to amounts paid for the right to exhibit or broadcast copyrighted material and to the use of other materials supplied by licensors but does not apply to film, tapes, or records purchased outright by the broadcaster and retained in his private library. The exemption from the sales and use tax is further extended to apply to licensors or distributors of such material. This exemption, however, does not apply to the lease tax which might be due by licensors or distributors in cases where they lease the material from the owner or producer thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305, R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 29:1520 (August 2003), LR 30:2864 (December 2004), LR 36:1029 (May 2010), LR 36:1566 (July 2010).

§4402. Exemptions from Lease or Rental Tax, Helicopters

A. This Section (R.S. 47:302.1) provides for special treatment of the state and local sales taxes on rental transactions involving helicopters used directly in the

exploration for, or the extraction or production of, oil, gas, and other minerals, or helicopters used in providing services to other businesses which are engaged in such activities. It provides that any helicopter which is to be used primarily for the aforementioned uses may be acquired through a lease transaction, and the entire transaction will be treated as a sale. The transaction may be entitled a rental, lease, lease purchase, sale and lease-back, or any other similar term. In any case, the lessor or rentor shall not incur a sales or use tax liability on the acquisition of the helicopter for lease, nor on the withdrawal of a helicopter from resale inventory to be placed in rental service, when the lessee is engaged in the exploration or production of oil, gas, or other minerals, or related service industries. Unlike rental transactions involving other tangible personal property, the lease contracts involving such helicopters will not be required to contain language which guarantees any rights of title to the lessee, nor will it need any obligations to maintain the lease for its full term.

B. The sales taxes due on such transactions shall be payable in equal monthly installments over the entire term of the lease, rather than at the inception of the lease agreement, as with rental transactions involving other tangible personal property. In addition, unlike conventional lease transactions, the tax is due and payable by the dealer/lessor for the period the receipts are invoiced to the buyer/lessee, and not for the period in which active collection is made.

C. For state and local sales or use tax purposes, these transactions shall be taxed as sales and not as leases. Thus, the location of intended use of the helicopters will not determine taxability as it would in a rental transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:302.1, R.S. 47:337.2, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:91 (January 2005).

§4403. Ships and Ships' Supplies

A. To qualify for exemption under R.S. 47:305.1(A), materials, machinery, and equipment that become component parts of ships, vessels, or barges of 50 tons load displacement and over, built in Louisiana, must be added during construction or reconstruction. Materials, machinery, and equipment that replace worn components are not exempt under R.S. 47:305.1(A).

B. Reconstructions qualify for exemption under R.S. 47:305.1(A) if they:

1. modify the craft's function, such as conversion of a deck barge to a crane barge; or

2. restore the craft to seaworthiness following its destruction by sinking, collision, or fire.

C.1. For the purposes of the exemption provided in R.S. 47:305.1(B), vendors may assume that ships' supplies and materials delivered to the dock will be loaded upon the vessel for use or consumption in the maintenance of the vessel.

2. The exemption provided in R.S. 47:305.1(B) for repair services performed upon ships and vessels operating exclusively in foreign or interstate coastwise commerce also applies to component parts removed from those ships, vessels, or barges and repaired elsewhere.

D. For the purposes of the exemption granted under R.S. 47:305.1, the following definitions apply.

Commerce—the transporting of goods or persons by ship, vessel, or barge exclusively to carry on a trade or business.

Load Displacement—the weight of the volume of water displaced by a ship, vessel, or barge when loaded to its maximum capacity.

Owner or *Operator*—any person who has title to, possession of, or control over the operation of any ship, vessel, or barge defined in R.S. 47:305.1.

Ship, Vessel, or *Barge*—any craft used primarily for transporting persons or property by water, or any craft designed or altered to perform specialized marine-related services, such as dredging, fleeting, geological surveying, cargo transferring, and which possesses all of the following characteristics:

a. performs its services in navigable waters;

b. is capable of being moved by floatation from one location to another in navigable waters; and

c. is registered as a vessel with the United States Coast Guard or is eligible for registration.

Ships Supplies and Materials—all tangible personal property loaded on and used or consumed in the maintenance or operation of a ship, vessel, or barge and its crew.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by Department of Revenue, Policy Services Division, LR 30:1044 (May 2004).

§4404. Seeds Used in Planting of Crops

A. The sale at retail of seeds for use by a commercial farmer in the planting of crops of any kind is exempt from state and local sales or use tax. Crops do not include the planting of a garden to produce food for the personal consumption of the planter and his family. Neither is it intended to cover seed used in the planting of growth for landscape purposes unless the commercial farmer is engaged in the business of harvesting those plants and selling them in the commercial market.

B. It is not necessary that the farm operation result in a net profit or that a given acreage of any particular crop be planted. The only requirement is that the planting be made by a commercial farmer.

C. A commercial farmer must present a valid commercial farmer certification certificate and applicable exemption certificate at the time of the purchase. The seller must keep a record of the presentation of such documentation. If the dealer fails to retain evidence of the valid certification and

exemption certificate then the dealer will be liable for the sales tax on such purchase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.3, R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:99 (January 2005), LR 44:2022 (November 2018).

§4406. Little Theater Tickets

A. The exemption provided by R.S. 47:305.6 excludes from state and local sales or use tax–the sale of admission tickets by little theater organizations. This exemption has been construed to cover the sale of tickets by any nonprofit organization whose sole purpose is the presentation of stage productions by nonprofessional actors and the advancement of amateur acting. The exemption extends to all such organizations whether they are officially known by the name Little Theater or by some other appropriate designation.

B. In order to meet this exemption, the sale of tickets must be made by the organization conducting the presentation. The exemption does not extend to the sale of tickets by promoters who are expected to profit from the endeavor, even though the performance may be staged by personnel associated with a little theater organization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.6, R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:93 (January 2005).

§4407. Tickets to Musical Performances of Nonprofit Musical Organizations

A. R.S. 47:305.7 specifically exempts the sale of admission tickets by Louisiana nonprofit corporations or organizations engaged in the presentation of musical performances, or who are known as symphony organizations, from state and local sales or use tax. The exemption covers only sales of tickets made by corporations or organizations established within Louisiana and does not apply to the sales of tickets within this state which might be made by similar organizations or companies from outside of the state. The exemption does not apply to the sales of tickets by a domestic corporation or organization if the performance will be presented by a symphony group from outside of the state.

B. The exemption provided by this Section does not apply to performances intended to yield a profit to the promoters of the event regardless of the domicile of the performers. Neither does this exemption apply to the sales of tickets by domestic nonprofit corporations or by any other domestic nonprofit organization known as a symphony organization or as a society or organization engaged in the presentation of musical performances if the event being staged is not directly related to the primary purpose of those organizations. As an example, tickets sold by symphony organizations to an athletic event would not qualify for the exemption provided by this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.7, R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:100 (January 2005).

§4408. Pesticides Used for Agricultural Purposes

A. General. R.S. 47:305.8 provides an exemption from state and local sales or use tax for the sale at retail to commercial farmers of pesticides used for agricultural purposes. This exemption includes, but is not limited to, insecticides, herbicides, and fungicides used for agricultural purposes.

B. Definitions

Agricultural Purposes—any purpose directly connected with the operation of any farm, including poultry, fish, and crawfish farms, ranch, orchard or any other operation by which products are grown on the land in sufficient quantity to constitute a commercial operation. The exemption is not intended to cover the sale of pesticides for use in private family vegetable gardens or in protecting ornamental plants used for landscape purposes.

Pesticides—include any preparation useful in the control of insects, plant life, fungus, or any other pests detrimental to agricultural crops, including the control of animal pests that meets the definition of a pesticide in accordance with the Department of Agriculture and Forestry of the state of Louisiana under R.S. 3:3202. Qualifying pesticides must be registered with the U.S. Environmental Protection Agency (EPA) and the Louisiana Department of Agriculture and Forestry or any other appropriate governmental agency and must carry a valid EPA FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act) number issued by the U.S. Environmental Protection Agency or a special label number assigned by the Louisiana Department of Agriculture and Forestry. The exemption also includes any solution mixed with a qualifying pesticide to allow for the proper distribution and application of the pesticide, including but not limited to crop oils, surfactants, adjuvants, emulsions, soaps, and drift agents.

C. Dealer Requirements. A commercial farmer must present a valid commercial farmer certification certificate and applicable exemption certificate at the time of the purchase. The seller must keep a record of the presentation of such documentation. If the dealer fails to retain evidence of the presentation of valid certification and exemption certificate then the dealer will be liable for the sales tax on such purchase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.8, R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:401 (April 1995), amended by the Department of Revenue, Policy Services Division, LR 31:95 (January 2005), LR 44:2023 (November 2018).

§4409. Motion Picture Film Rental

A. R.S. 47:305.9 provides a very limited exemption to the operators of motion picture theaters wherein the amount paid by operators to distributing agencies for the use of film are specifically exempted from state and local sales or use tax. Note that film is the only item covered by the exemption. Distributing agencies and suppliers for motion picture theaters are required to collect taxes on any other supplies or materials furnished to operators. Theaters are required to collect the tax on admissions.

B. Any distributing agent who fails to collect state or local sales or use tax because of the exemption provided in R.S. 47:305.9 must be able to identify the motion picture theater operators to whom films were furnished. Failure of the distribution agency to maintain a complete record of transactions for which no taxes were collected can result in the dealer being held responsible for the tax.

C. In some cases, agreements between film distributors and theater operators may not be leases or rentals. Section 4301 defines *lease or rental* and provides exceptions to the definition of *lease or rental*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.9, R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 22:854 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 31:94 (January 2005).

§4410. Property Purchased for First Use Outside the State

A. R.S. 47:305.10 provides an exemption from state and local sales or use tax for the purchase or importation of tangible personal property in Louisiana for first use beyond the territorial taxing jurisdiction of this state. This Section provides an exemption for purchases and importations in two categories of first use: first use in another state; and first use in the offshore area beyond the borders of Louisiana or any other state.

B. Purchases or importations of tangible personal property for first use in another state for which an exemption is claimed under the provisions of R.S. 47:305.10 may be accomplished by the use of an exemption certificate LGST 9-D, entitled "Foreign Purchasers," which is available from the Department of Revenue. The transaction must meet the following requirements before the exemption will be allowed:

1. the purchaser is properly registered for sales and use tax in the state of use and regularly reports and remits the taxes due in such state; and

2. the state in which first use occurs grants on a reciprocal basis a similar exemption on purchases within that state for first use in Louisiana; and

3. either §4410.B.3.a or b must be met in addition to requirements §4410.B.1 and 2:

a. the purchaser obtains a written authorization from the Secretary of the Department of Revenue to make the tax-exempt purchase; or

b. the property being purchased is a craft which would ordinarily be subject to registration by the state of Louisiana as a motor boat, but is not in fact registered for use in Louisiana.

C. Foreign nations and the territorial waters of foreign nations are not considered to be another state for purposes of this Section.

D. Tangible personal property imported for use outside the state of Louisiana may still be imported tax-free under R.S. 47:305(E) if the requirements specified in §4401 are met. Under that provision, specific pieces of property which have been clearly labeled for trans-shipment outside the state of Louisiana at the time of their importation into the state are exempt without the necessity for meeting the above guidelines.

E. Purchases or importations of tangible personal property for use in the offshore area of Louisiana or that of any other state, for which an exemption is claimed under R.S. 47:305.10, may be accomplished by use of either one of two exemption certificates available from the Department of Revenue, LGST 9-D or LGST 9-O/S, depending on the following conditions:

1. if the exact location (area name, block number, lease number) of first use of the property is known at the time of purchase, the purchaser must claim exemption to the vendor by properly completing an exemption certificate LGST 9-D;

2. if the exact location of first use of the property is not known at the time of purchase, and the purchaser has been assigned an "offshore registration number" by the Secretary of Revenue, then the purchaser may claim the exemption by completing an exemption certificate LGST 9-O/S and presenting it to the vendor. All accounting records of importations and purchases made through the use of this certificate will be maintained in such a manner so as to accurately account for tax-free and tax-paid inventories until they are withdrawn for use. Physical segregation of tax-free inventory is not required. In the case of fungible goods, such as diesel fuel, where usage occurs continuously in travel in and out of the offshore area, exemption certificate LGST 9 O/S may be used to make tax-free purchases of such goods in their entirety. At the end of each reporting period, the purchaser will determine that portion of the fungible goods which was actually consumed within any taxing jurisdiction and make the necessary accrual entries to record the proper tax due;

3. the LGST 9-O/S certificate may only be used by purchasers who have been granted the "offshore registration number," and unauthorized use of the certificate is forbidden. An "offshore registration number" will be evidenced by the word "offshore" appearing above the account number on the purchaser's registration certificate, and the purchaser will be required to enter this complete registration number on the LGST 9-O/S when making tax-free purchases for first use

offshore. Vendors should exercise tenable judgment in accepting the LGST 9-O/S exemption certificate in lieu of the sales tax. Vendors should also ensure that all required information appears on the face of the certificate;

4. an offshore registration number will be issued only to dealers who have demonstrated to the Secretary of Revenue that the nature of their business is such that consumption of tangible personal property occurs in the offshore area beyond the territorial limits of Louisiana, or that of other states or foreign nations. It must also be shown to the satisfaction of the secretary that the records maintained by the purchaser are adequate to facilitate an examination and that they document the location of first use of all tangible personal property purchased tax-free under the provisions of this Section. In the case of fungible goods, such as diesel fuel, which are purchased tax-free, the purchaser must retain, and make available for examination, all purchase invoices, vessel logs, fuel usage records, fuel transfer records, and all other pertinent information which will determine the portion which has been consumed in and/or delivered to, offshore locations, and the portion which has been consumed in, and/or delivered to, locations within the taxing jurisdiction of any state or foreign nation. Timely returns must be filed, along with the proper remittance, to report the taxes due on all withdrawals from nontax-paid inventory for taxable uses. The following shall be taxable uses:

a. withdrawal from nontax-paid inventory for first use within the territorial limits of Louisiana or that of any other state. The use tax cost basis shall be original acquisition cost;

b. withdrawal from nontax-paid inventory for first use in a foreign nation or its territorial waters. The use tax cost basis shall be the original acquisition cost;

c. withdrawal from nontax-paid inventory for sale, exchange, trade, or barter under any circumstances. The sale will be regarded as a casual sale under the provisions of R.S. 47:301(10), and a use tax will be due at the time of such withdrawal on one of the following bases:

i. in the case of property never previously used, the use tax basis will be original acquisition cost;

ii. in the case of property which has previously been used in the offshore area and subsequently returned to storage in the offshore inventory, the use tax basis will be the lesser of original acquisition cost or reasonable market value at the time of the withdrawal;

d. the subsequent return of property, following its first use in the offshore area, to a location within the territorial limits of Louisiana for a taxable use at that location. Such a use would subject the property to a use tax based on the lesser of acquisition cost or reasonable market value at the time of its return to the location of use within Louisiana. The return of property into the state for the purpose of repairing, modifying, further fabrication, or for return to the offshore inventory will not be regarded as taxable uses. Property returning from offshore locations for repairs retains its exempt status for use tax purposes, but the repair charges are taxable in accordance with R.S. 47:301(14)(g);

e. the use of that portion of fungible goods that is determined to have been consumed within the territorial limits of Louisiana or that of any other state or any foreign nation.

F. R.S. 47:305.10 makes it clear that the aforementioned records shall be maintained by the purchaser or importer, and shall be made available for examination. It also provides that the offshore registration number issued under the provisions of this Section may be revoked by the secretary at any time, if the purchaser misuses the exemption to make tax-exempt purchases of property for first use in the state, or if he fails to maintain adequate records, or fails to report and remit any tax which becomes due under this Section. In case of such a revocation, all tangible personal property which is stored in an offshore inventory site will immediately become taxable, unless the purchaser is able to identify the exact location (area name, block number, lease number) of first use of the property. Thereafter, and until the offshore registration status is reinstated, tax-free purchases may be made only in instances when the exact location of first use is known at the time of purchase, and a certificate form LGST 9-D is presented to the vendor. The offshore registration number may be reinstated at the discretion of the Secretary of Revenue, upon being provided with sufficient proof that the conditions and requirements of this Section will be adhered to by the purchaser. The burden for supplying proof of eligibility shall rest with the purchaser/importer at all times, whether the request is for initial registration or for reinstatement of a revoked registration.

G. This Section provides an exemption from the sales and use tax on tangible personal property purchased in or imported into a taxing jurisdiction under the circumstances described. All other purchases and importations of property shall be subject to state and local sales or use tax at the time of such purchase or importation, unless otherwise exempted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.10, R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:108 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:96 (January 2005).

§4411. Contracts Prior to and within 90 Days of Tax Levy

A. R.S. 47:305.11 relieves a party to a construction contract from the burden of added sales or use tax imposed by either the state of Louisiana, any parish, municipality, or other political subdivision thereof on the sales of materials or services involved in either lump-sum or unit price contracts after the contractor has made himself liable for performance and completion of a contract which did not provide for new or additional taxes. The exemption from new taxes applies only to lump-sum or unit price contracts and does not apply to contracts entered into on a cost plus or fixed fee basis. It is also required that the contracts must have been entered into prior to the effective date of the statute or ordinance levying the new tax. The exemption does apply to sales and services

involved in a contract reduced to writing within 90 days after the effective date of a statute levying a new tax, but only if the contractor had a contractual obligation entered into prior to the effective date. The 90-day period is intended to cover a situation where a contractor has computed and bid a contract on the basis of existing taxes prior to the effective date of the new tax but where awarding of the contact and formal signing thereof did not take place prior to the effective date, but within 90 days after the effective date of the new tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.11.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987).

§4413. Admissions to Entertainment Furnished by Certain Domestic Nonprofit Corporations

A. R.S. 47:305.13 grants a limited exemption to organizations created under the laws of the state of Louisiana as nonprofit, charitable, educational, or religious organizations from state and local sales or use tax on the sale of admissions to entertainment events. Such sales of admissions are exempt only when the entire proceeds, with the exception of necessary expenses connected with the event, are used for the purpose for which the organization was formed. The requirement that the entire proceeds from the sales of tickets, except for necessary expenses, must be used for the purpose for which the organization was formed eliminates from exempt status any event where payment has been made to a promoter or promotional firm for engaging the services of persons not directly connected with the sponsoring organization.

B. Only sales of admissions made by recognized domestic nonprofit, charitable, educational, or religious organizations are exempt under this Section. In order to meet the nonprofit requirement, an organization or corporation must have no provision for making of dividends or payments of any profits to any organizers or stockholders and none of the income may inure to the benefit of any private shareholder or individual. In order to qualify as a charitable organization, it must freely and voluntarily minister to the physical needs of those unable to help themselves, or promote the welfare of mankind at large, or of a community, or of some class from a part of a community, or be one which would not deny assistance to persons unable to pay even though it may charge for assistance to those who are able to pay. An educational institution is construed to mean a school, seminary, college, or other institution having an instructional staff and a curriculum designed to cultivate the mental, moral, religious, or physical facilities of those whom it seeks to educate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.13, R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:88 (January 2005).

§4414. Cable Television Installation and Repair

A. R.S. 47:305.16 provides an exemption for sales and use taxes imposed by the state or by any political subdivision thereof on necessary fees incurred in connection with the installation and service of cable television. Such exemption shall not apply to purchases made by any cable television system, but shall apply only to funds collected from the subscriber for regular service, installation and repairs.

B. Contractors and sub-contractors engaged in the business of installing and servicing the cable television system, whether on a lump-sum or a cost-plus basis, are deemed to be purchasers and consumers of the materials used by them. Vendors of such materials are required to collect the sales tax thereon and to remit same to the appropriate taxing authority.

C. Charges for repairs to television sets or other tangible personal property that is not considered a part of the cable television system are taxable as sales of services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.16.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987).

§4416. Purchases of Mardi Gras Specialty Items

A. R.S. 47:305.40 grants an exemption solely from state sales or use tax on purchases of specialty items for use in connection with Mardi Gras activities. The exemption is available to:

1. carnival organizations domiciled within Louisiana that plan to sponsor either a Mardi Gras ball or parade during the next Mardi Gras season; and

2. nonprofit organizations domiciled within Louisiana that plan to participate in a parade sponsored by a carnival organization.

B. Each such eligible organization shall annually request and obtain from the Department of Revenue and Taxation a Certificate of Exemption that may be presented to vendors of specialty items in lieu of the tax at the time of purchase. The request may be either in the form of a letter or on forms supplied by the Department of Revenue and Taxation, and shall contain the following information:

1. name and address of the organization;

2. type of organization, either:

a. carnival organization sponsoring a parade or ball during next Mardi Gras season; or

b. nonprofit organization participating in a carnival organization parade during next Mardi Gras season;

3. event or events to be sponsored or participated in for which tax-free purchases are being made;

4. type of specialty items to be purchased tax-free under the authority of the exemption certificate;

5. name of the officer authorized to make purchases on behalf of the organization;

6. name and signature of the officer of the organization making the request.

C. Subsection 4416.B defines *specialty items* for purposes of the exemption as those items which are specially designed for the carnival or nonprofit organization and bear the organization's name or insignia. Examples of such items are doubloons, necklaces, beads, throws, cups, and coasters. Other types of specialty items may also qualify for the exemption if they are purchased for use in a Mardi Gras activity, bear the name or insignia of the organization, and are either for free distribution to the public or for use in conjunction with a Mardi Gras ball, such as flags, posters, invitations, programs, decorations, napkins, and tablecloths.

D. The resale of specialty items by the purchasing organization to its members shall be regarded as exempt sales under the provisions of this Section, but only when those items are used exclusively in conjunction with a Mardi Gras parade or ball. The sale of novelty items such as shirts and hats, on a continuing basis, which are not used exclusively in conjunction with a Mardi Gras parade or ball, shall be regarded as taxable sales under the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.40 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:93 (January 2005).

§4417. Exclusions and Exemptions; Purchases Made with United States Department of Agriculture Food Stamp Coupons and Purchases Made under the Women, Infants, and Children's Program

A. This Section specifically exempts from the sales and use tax imposed by this Chapter, and any such tax imposed by any parish, board, or municipality, purchases of the following items:

1. eligible food items, as defined by the United States Department of Agriculture (USDA) regulations for the Food Stamp Program, when such food items are purchased with United States Department of Agriculture Food Stamp Coupons;

2. eligible food items authorized for purchase under the Women, Infants, and Children's (WIC) Program as administered by the Louisiana Department of Health and Human Resources, when such items are purchased with WIC Program Vouchers.

B. Definitions

Eligible Food Items for Purchases Made with Food Stamps—as defined in the regulations of the Food Stamp Program of the United States Department of Agriculture.

Eligible Food Items or Purchases Made with WIC Vouchers—the specific items authorized to be purchased with the WIC voucher used as the medium of exchange.

United States Department of Agriculture Food Stamp Coupons (*Food Stamps*)—coupons issued by the USDA Food Stamp Program.

WIC Program Vouchers (*WIC Vouchers*)—payment vouchers issued by the Women, Infants, and Children's (WIC) Program.

C. Limitations

1. The exemption for food items purchased with food stamps is limited to those items defined as eligible foods in the regulations of the USDA Food Stamp Program. As the definition of eligible foods changes, the food items eligible for this exemption will automatically qualify or become disqualified.

2. The exemption for eligible food items purchased with WIC vouchers is limited to those items specifically stated on the voucher which is used as the medium of exchange.

3. The exemptions for purchases utilizing food stamps and WIC vouchers are further limited to the amount of food stamps and WIC vouchers used in the transaction. Eligible food items purchased with mediums of exchange other than food stamps or WIC vouchers, such as cash, will be subject to applicable state and local sales and use taxes.

D. Purpose and Method

1. Federal regulations require that the exemption for food stamp purchases be administered so as to minimize the sales tax burden on any order of eligible foods. A special problem arises when a patron presents a combination of food stamps and cash in payment of eligible food consisting of food for preparation and consumption in the home (exempt from state sales taxes) and eligible food items such as ice, bottled water, loose candy, and seeds and plants for the production of food which except for this exemption would be taxable. Grocers are currently required to sort each order by separating the eligible food items from the entire order, either physically or through the use of electronic equipment. Since ice, bottled water, etc. are otherwise taxable items, the federal regulations would require a second sort to ensure that the food stamps are applied to those items first.

2. In order to comply with federal regulations that mandate food stamps be allocated first to taxable eligible food items, and to eliminate the need for double-sorting by dealers, purchases of eligible food items paid for with a combination of food stamps and cash will be given the following treatment for state sales tax purposes. Once the food stamps have been applied to the purchase, the remaining portion of eligible items which is to be paid for with cash will be treated as food for home consumption, notwithstanding any restrictions by R.S. 47:305(D). Thus, of the remaining portion of the eligible food items to be paid for with cash, items such as ice, bottled water, and loose candy will be taxed at the same rate as milk or bread. This method does not in any way affect ice, bottled

water, loose candy, and other such items which are purchased by a patron who does not present food stamps in payment.

E. Purchases of items not considered eligible food items by the USDA regulations, such as detergent, will not be affected by this regulation and will remain subject to applicable state and local sales and use taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.46.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:667 (November 1987).

§4418. Nonprofit Organizations; Nature of Exemption; Limitations; Qualifications

A. General. Events sponsored by domestic, civic, educational, historical, charitable, fraternal, or religious organizations, which are nonprofit are exempt from the sales or use tax for these events, on the condition that the proceeds from these events, less applicable expenses, are used for the furtherance of the purpose for which the organization was formed.

1. This exemption applies to sales of tangible personal property, admission charges, outside gate admission charges, and parking fees.

2. The organization must apply for the exemption for each event and the application must be genuine. The application is Form R-1048.

3. If the exemption is approved, the secretary will provide a certificate of exemption for the specific event.

4. If the secretary denies the exemption, the organization may appeal to the Louisiana Board of Tax Appeals.

5. An *event*, as referred to in the statute, means an occurrence of relatively short duration with a scheduled beginning and ending date and/or time.

6. The purchase of items to be sold at these events is not exempt from the advance state or local sales or use tax, where applicable. In order to receive a credit for the tax paid on items to be sold at one of these exempt events, the organization would register with the appropriate taxing authority as an irregular filer and then file a sales tax return taking a credit for the sales tax paid on the purchases for resale.

B. Exceptions. The statute is very specific as to the type of organizations and events that qualify for the exemptions. There are some exceptions that are referred to in the law.

1. If the event is intended to yield a profit to the promoter or to any individual contracted to provide services, or equipment, or both, for the event, the exemption shall not apply.

2. Nonprofit organizations are not exempt from sales or use taxes under this exemption, only from the collection of sales tax at certain events held by these organizations.

3. The statue does not offer an exemption from the sales and use taxes for regular commercial ventures such as, bookstores, restaurants, gift shops, commercial flea markets, and similar ventures that are operated by nonprofit organizations. The exemption applies to events that are not open on an ongoing basis.

4. Any organization which endorses any candidate for political office or is involved in political activities will not be eligible for the exemption.

5. The secretary may, at his discretion, recognize ongoing activities, e.g., concession sales at schools, and allow the organization to file an annual exemption application for such activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.14, R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 22:854 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 31:94 (January 2005).

§4420. Property Used in Interstate Commerce

A. R.S. 47:305.50(A)(1) provides an exemption from state and local sales and use taxes for trucks with a gross weight of 26,000 pounds or more and for trailers, if such trucks and trailers are used at least 80 percent of the time in interstate commerce and are subject to the jurisdiction of the United States Department of Transportation. R.S. 47:305.50 allows certain taxpayers to register such trucks and trailers and contract carrier buses with the Office of Motor Vehicles of the Department of Public Safety and Corrections (OMV) without paying state or local sales or use tax. R.S. 47:305.50 provides an exemption from state and local sales and use taxes for the purchase, use or lease of qualifying trucks and qualifying trailers, both of which have been purchased, used, imported or leased. To qualify for the exemption, the taxpayer's activities must be subject to the jurisdiction of the United States Department of Transportation, and the taxpayer must certify to the OMV that the property will be used at least 80 percent of its actual mileage in interstate commerce. The Department of Revenue and the OMV provide forms on which to make these certifications.

B. Any taxpayer who claims the exemption in provided in R.S. 47:305.50(A)(1) must maintain records of the use of the property in order to document the actual mileage. This exemption is for trucks with a gross weight of 26,000 pounds or more and for trailers, if such trucks and trailers are used 80 percent of the time in interstate commerce and are subject to the jurisdiction of the U.S. Department of Transportation. The determination of whether a truck is used 80 percent of the time in interstate commerce must be based upon the actual mileage of such truck. It is required that a truck cannot have more than 20 percent Louisiana intrastate miles.

1. If the documentation indicates that the property was not used during the one-year period following the date of its purchase for the required 80 percent or more of its actual mileage in interstate commerce, the taxpayer will not qualify for the exemption and state and local sales or use tax will be due on the amount paid for the property at the rate that was

applicable on the date the property was purchased, plus interest from the date the property was purchased to the date of the tax payment. The state sales or use tax must be reported on a sales tax return provided by the Department of Revenue and paid to the Department of Revenue by the twentieth day of the month following the end of the one-year period in which the taxpayer fails to qualify for the exemption. The local sales or use tax must be reported and paid to the proper local taxing authority in accordance with their ordinances and the Uniform Local Sales Tax Code.

a. Calculation of interstate mileage does not include commercial truck transportation that begins at a point of origin in a state other than Louisiana to a destination in the same state. Guidance for the sales and use tax exemption eligibility of trucks used in other states has been set forth in Department of Revenue, Revenue Ruling 05-004. Revenue Ruling 04-05 offers guidance as well, because it sets forth the parameters in which intrastate movement of goods would be considered interstate commerce.

b. Interstate mileage is based on the actual mileage of the truck and must be proven through documentation such as with driver's logs, motor carrier bills of lading, expense bills, and other documentation reflecting the origin and destination points of items transported.

2. If, during any of the following one-year periods, the documentation indicates that the property was not used for the required 80 percent or more of its actual mileage in interstate commerce, the taxpayer will no longer qualify for the exemption. If this occurs, state and local sales or use tax will be due on the lesser of the purchase price or fair market value of the property on the first day of the one-year period that it does not meet the 80 percent test. The tax will be calculated based on the rate in effect on the first day of the one-year period in which the taxpayer no longer qualifies for the exemption, plus interest from the date the tax is due to the date of tax payment. The state sales or use tax must be reported on a sales tax return provided by the Department of Revenue and paid to the Department of Revenue by the twentieth day of the month following the end of the one-year period in which the taxpayer no longer qualifies for the exemption. The local sales or use tax must be reported and paid to the proper local taxing authority in accordance with their ordinances and the Uniform Local Sales Tax Code.

C. If the taxpayer fails to provide proper documentation, it will be presumed that the taxpayer does not qualify for the exemption and state and local sales or use tax will be due in accordance with Subsection B above.

D. R.S. 47:305.50(A)(2) provides an exemption from state and local sales and use taxes on the purchase, use or lease of a qualifying truck. The exemption also applies to the purchase, use or lease of a qualifying trailer, which has been purchased, imported or leased, with or without a qualifying truck, for use with a qualifying truck. The definition of qualifying truck and qualifying trailer are set forth as follows.

1. A Qualifying Truck meets the following requirements:

a. registered as a Class I vehicle, which is one carrying or transporting freight, merchandise or other property, and shall have a registered gross weight of at least 80,000 pounds in accordance with R.S. 47:462. Gross weight is the weight of a vehicle or vehicle combination without the load on all axles, including the steering axle plus the weight of any load thereon as provided by R.S. 47:451;

b. subject to the jurisdiction of the U.S. Department of Transportation;

c. will be or is registered with apportioned plates through the International Registration Plan, or will be issued or is issued a special permit according to provisions of R.S. 32:387(J) from the Department of Transportation and Development. In cases of issuance of a special permit under R.S. 32:387(J), the qualifying truck shall engage in no less than 200 intermodal container moves per year, regardless of whether or not the moves require a special permit. In the year of acquisition, sale, disposal or destruction of the qualifying truck, the number of intermodal container moves per year shall be prorated for the portion of the year the truck was owned, operated, or owned and operated by the taxpayer. R.S. 32:382(J) governs vehicles hauling prepackaged products in international trade originating from or destined to an intermodal facility, which such products are containerized in a manner that they cannot be subdivided.

2. A Qualifying Trailer is one subject to the jurisdiction of the U.S. Department of Transportation.

E. To obtain prior approval to audit or investigate, an auditor shall submit a written justification, which may be submitted via email, to the secretary. This approval is required to:

1. audit or investigate for the purpose of determining the correct amount of the tax exemption;

2. an audit or investigation of a place of business and the books, records, papers, vouchers, accounts and documents of any taxpayer;

3. approval from the secretary is not necessary for political subdivisions to audit, examine, or investigate to determine the correct amount of tax exemption.

F. During a state of emergency declared by the governor, if the declared emergency or related relief efforts undermines the ability of a taxpayer, who is eligible for the exemption and the provisions under R.S. 47:305.50, to comply with this statute, then secretary shall waive the requirements. However, a waiver of the requirements should not affect the secretary's ability to begin or conduct an audit or investigation.

G. The terms “trucks” and “trailers” shall have the meaning ascribed to the terms *truck*, *trailer*, *road tractor*, *semi trailer*, *tandem truck*, *tractor* and *truck-tractor* as defined in R.S. 47:451.

H. The weights referred to in R.S. 47:305.50 are “gross vehicle weight ratings” (GVWR), as determined by vehicle manufacturers. Manufacturers' determinations of GVWR are

usually indicated on plates or decals affixed to vehicles at the time of their manufacture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.50, R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:188 (February 2003), amended LR 31:97 (January 2005), LR 35:1254 (July 2009).

§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.

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.

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.

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 34:1426 (July 2008).