

RULE

Department of Revenue Policy Services Division

Uniform State and Local Sales Tax Definitions (LAC 61:I.4301)

Under the authority of R.S. 47:301 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.4301 to provide for uniform state and local sales tax definitions in accordance with the provisions of Act 73 of the 2003 Regular Legislative Session.

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

Title 61

REVENUE AND TAXATION

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

Chapter 43. Sales and Use Tax

§4301. Definitions

A. ...

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. ...

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. - d. ...

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.

Cost Price—

a.i. - ii. ...

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. - c. ...

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. - f. ...

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.

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 *state and local sales or use tax* law on the particular item.

f. ...

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* means 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, both as to use of the facility and relative size. Only those establishments engaged in the business of furnishing sleeping rooms, cottages or cabins primarily to transient guests consisting of six or more guest or sleeping rooms at a single business location meet the statutory definition. If an establishment has less than six sleeping rooms, cottages or cabins at a single business location or if more than one-half of the guests are permanent, regardless of the number of sleeping rooms, cottages or cabins, the establishment is not a *hotel* for purposes of *state and local sales or use tax*.

b. - c. ...

* * *

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. ...

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 state and local sales or use tax law.

b. - c.ii. ...

(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. - f.iv. ...

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. ...

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.

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. ...

* * *

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. ...

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 provisions 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. - ii. ...

e. ...

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. - h.iv.(b). ...

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. ...

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.i. - iv. ...

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. - h.v. ...

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. ...

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).