

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

Definition of Tangible Personal Property
(LAC 61:I.4301.C.*Tangible Personal Property*)

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, proposes to amend LAC 61:I.4301 relative to the definition of *tangible personal property* for sales tax purposes.

These proposed amendments provide guidance regarding the definition of *tangible personal property* in R.S. 47:301(16) and describe items included in and excluded from that definition.

**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. – C. ...

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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. Prepaid telephone cards and authorization numbers (for state sales or use tax purposes) and work products consisting of the creation, modification, updating, or licensing of canned computer software are specifically defined as *tangible personal property* by law.

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. immovable property defined by the Louisiana Civil Code, which includes:

- (a). tracts of land (La. Civil Code Article 462);
- (b). component parts of a tract of land when they belong to the owner of the land (La. Civil Code Article 463);
- (c). buildings and standing timber even when owned by someone other than the owner of the land (La. Civil Code Article 464);
- (d). things, such as building materials, incorporated into a tract of land or incorporated into a building or other construction that belongs to the owner of the land and is an integral part of the immovable (La. Civil Code Article 465);
- (e). things permanently affixed to a building or other construction so that they cannot be removed without substantially damaging them or the immovable to which they are attached (La. Civil Code Article 466), and,
- (f). except when being repaired as defined by R.S. 47:301(14)(g), machinery, appliances, and, equipment that have been declared immovable by the owner in the parish conveyance records (La. Civil Code Article 467).

e. For sales tax purposes, buildings are structures that are permanently affixed to the ground, not necessarily intended for habitation, and include, but are not limited to, office buildings, homes, apartments, and stores.

f. Constructions, other than buildings, permanently attached to the land are movables when they belong to someone other than the owner of the land. Examples of this include, but are not limited to, towers, signs, and fences.

g. 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.

h. 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 taxes 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 13½ 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 40½ 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 eight 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.

i. 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.

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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:_____.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Friday, November 22, 2002. A public hearing will be held on Monday, November 25, 2002, at 2:00 p.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant