

**Revenue Ruling  
No. 06-013  
September 19, 2006**

**Sales and Use Tax  
Furnishing of Portable Toilet Facilities**

The purpose of this revenue ruling is to discuss the state sales tax treatment of transactions for the furnishing of temporary portable toilet facilities.

**Facts**

A company arranges for a portable toilet facility to be located on its property for a period of one week. The owner of the portable toilet delivers it to the customer's desired location. The owner returns to the customer's location on day 3 and on day 5 to remove waste and to sanitize the facility. The owner returns to the customer's location at the end of the week to empty and sanitize the facility and to pick up and return the facility to the owner's location. Charges for delivery, waste removal, sanitation, and transportation back to the owner's location are listed as separate line items on the owner's invoice to the user of the portable toilet facility.

**Issue**

Is the state sales tax due on the furnishing of the portable toilet facilities? If so, are the separate charges for periodic waste removal and sanitation, delivery and pick up of the property within the taxable base?

**Analysis**

La. Rev. Stat. Ann. § 47:302(B), 321(B), 331(B), and the sales tax ordinance of the Louisiana Tourism Promotion District each levy a tax on "the gross proceeds derived from the lease or rental of tangible personal property ... where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to the said business" and upon "the monthly lease or rental price paid by lessee or rentee, or contracted or agreed to be paid by lessee or rentee to the owner of the tangible personal property." La. Rev. Stat. Ann. § 47:301(7)(a) defines the term "lease or rental," in pertinent part, as "the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter, for a consideration, without transfer of the title of such property". La. Rev. Stat. Ann. § 47:301(16)(a) defines the term "tangible personal property," in pertinent part, as "personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses."

The portable toilet is clearly classifiable as "tangible personal property" because it is movable and is perceptible to the senses. The transaction for the use of the facility is a "lease or rental" because the customer pays a consideration for the right to use the property without acquiring the title to the property.

La. Admin. Code tit. 61:I.4303(B)(1)(e) provides that "operating expenses and maintenance costs for keeping leased property in repair cannot be deducted from gross proceeds in arriving at the taxable base." Under this section of the Louisiana Administrative Code, the charges to the customer for waste removal and sanitation of the portable toilets are included in the taxable base.

The department, at this time, is following the judicial decision in *McNamara v. Patterson Services, Inc.*, 382 So. 2d 971(La. App. 1 Cir. 1980) in which the First Circuit Court of Appeal concluded that charges by the lessor for delivery to the customer's location of leased or rented property do not form part of taxable "gross proceeds." At this time the department does not apply sales tax to any separately stated charges for the delivery and pick up of the leased or rented property.

### **Conclusion**

Transactions for the furnishing for consideration of the temporary use of portable toilet facilities are taxable as leases and rentals. The taxable base will include the charges for the lease or rental, as well as any charges for the cleaning and sanitation of the facilities, regardless of whether those charges are or are not separately stated. Any separately stated charges for the delivery and pick up of the property are excludible from the taxable base on the lease or rental of the property. The tax on leases and rentals must be remitted by the 20<sup>th</sup> of the months following the months in which payments for leases and rentals are collected, as provided by La. Rev. Stat. Ann. § 47:306(A)(2)(a).

The portable toilet facilities and other durable tangible personal property that providers acquire for the exclusive purpose of lease or rental as tangible personal property are eligible for tax-free purchase, as provided by La. Rev. Stat. Ann. § 47:301(10)(a)(iii).

### **Ruling Is Prospective**

Because of their on-site visits for waste removal and sanitation of facilities, some in the industry have considered themselves as providers of non-taxable services, rather than as lessors or renters of tangible personal property. For dealers who have not collected the sales tax on these transactions, but who themselves paid the sale or use tax on the portable toilet facilities as property being used in rendering non-taxable services, this ruling will be applied prospectively from the date of issuance. Dealers who elect to apply this ruling prospectively will not be recognized as eligible to have made tax-free purchases or importations of portable toilet facilities, as provided by La. Rev. Stat. Ann. § 47:301(10)(a)(iii). All dealers, however, will be required to collect the sale or use tax on leases and rentals of portable toilet facilities as of the effective date of this ruling, regardless of whether the sales or use tax was paid on particular units of property that are leased or rented after the effective date.

For more information regarding this topic, taxpayers should contact the Taxpayer Services Division at 225.219.7356.

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