

**Revenue Ruling
No. 07-005
September 19, 2007**

**Sales and Use Tax
Sales Taxability of Transactions for the Furnishing of Scaffolding**

The purpose of this Revenue Ruling is to discuss the taxable status of transactions for the furnishing of scaffolding.

Facts

Scaffolding is a temporary platform, often fabricated from sectional pieces, that is to be used by workers while constructing, painting, or repairing a structure. Very often the owners of scaffolding are enlisted to deliver and set up the scaffolding, so as to assure that that the scaffolding is erected and used in accord with the safety regulations of the Occupational Health and Safety Administration (OSHA) of the United States Department of Labor. In such cases, there are usually, but not always, separate charges for delivery, erection, tear-down, and any moving of the scaffolding, in addition to the periodic charges for the retention and use of the scaffolding. Sometimes, for another separate charge, personnel of the owners of the scaffolding remain on job sites while scaffolding is in use to assure that the scaffolding is used safely and to provide advice in the use, weight limits, and other capabilities of the scaffolding.

Issue

Is the state sales tax due on charges for the furnishing of the scaffolding? Is sales tax due on the separate charges for delivery, erection, moving, and tear-down, and advice in the use of the scaffolding? Does the presence of scaffolding owners' personnel on job sites affect the status of the transactions as leases and rentals? If the furnishing of scaffolding and the associated services of delivery, erection, tear-down and advisory personnel are provided for a single non-itemized charge, is that single, non-itemized charge subject to sales tax?

Analysis and Ruling

The sales/use tax law levies the sales tax on transactions for the lease or rental of tangible personal property.¹ 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." Scaffolding is

¹ 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".

designed to be used temporarily at multiple locations and is “tangible personal property” under this definition.

Transactions for the furnishing of the possession or use of scaffolding, without the transfer of title, will be taxed as leases or rentals. Scaffolding is a type of property that, when set in place, does not require operation by human presence. The customer’s possession and use of the scaffolding is the essence of the transaction, and is certainly not an inconsequential element of a service transaction.

Additional optional services sometimes provided in connection with the furnishing of scaffolding include delivery, erection, moving, tear-down, and providing advice in the use of scaffolding.

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 leased or rented property, including scaffolding.

The daily or other periodic rate for the furnishing of scaffolding is taxable as a lease or rental of tangible personal property. Other additional charges for the set-up, and tear-down of the scaffolding, and for the on-site presence of owner personnel who advise lessees in the use of the scaffolding, will not be within the sales taxable base, provided that the purchaser has the option to purchase or decline those services, the periodic lease or rental rates for the scaffolding are not affected by the customer’s decision to purchase or decline the additional services, and the amounts charged for the additional services are separately stated. If these additional services are included within a single charge for the furnishing of the scaffolding, or if the purchaser does not have the option of purchasing or declining these additional services, the entire charge to the customer will be considered a taxable lease or rental.

The scaffolding 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 personnel of scaffolding providers are sometimes present on the sites where lessees of scaffolding use the scaffolding, 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 scaffolding 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 scaffolding, as provided by La. Rev. Stat. Ann. § 47:301(10)(a)(iii). All dealers, however, will be required to collect the sales or use

tax on leases and rentals of scaffolding 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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