

**Statement of Acquiescence No. 15-001**  
**August 13, 2015**  
**Sales Taxes**

*Louisiana Chemical Association v. State of Louisiana, et al.,*  
*19th Judicial District Court Docket No. 640501, Section 24*

**Purpose:** The purpose of this Statement of Acquiescence is to announce that the Department of Revenue will acquiesce in a final, non-appealable judgment rendered by a court of competent jurisdiction in the matter of Louisiana Chemical Association v. State of Louisiana, et al., 19th Judicial District Court Docket No. 640501, Section 24 (hereafter “Lawsuit”) regarding the constitutionality of House Concurrent Resolution No. 8 of the 2015 Regular Session of the Legislature. The Louisiana Chemical Association has filed suit against the State of Louisiana alleging that the passage of House Concurrent Resolution No. 8 is unconstitutional by asserting that the legislation passed was not in conformity with constitutional procedural requirements. Although the Department of Revenue disagrees that the passage of the legislation at issue is unconstitutional, this Statement of Acquiescence is being issued in the event that there is a final, non-appealable judgment holding that HCR No. 8 is unconstitutional.

**Analysis/Discussion:**

House Concurrent Resolution No. 8 (hereinafter “HCR No. 8”) of the 2015 Regular Session of the Legislature suspended the exemptions from the tax levied pursuant to R.S. 47:331 for sales of steam, water, electric power or energy, and natural gas, including but not limited to the exemptions found in R.S. 47:305(D)(1)(b), (c), (d), and (g), and any other exemptions provided in those portions of Chapter 2 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, which provide for exemptions for business utilities from state sales tax. The effective date of the suspension of these exemptions was July 1, 2015. The business utilities exemptions suspended by HCR No. 8 are as follows:

I. Utilities listed under La R.S. 47:305(D)(1)(b),(c), (d), and (g) as follows:

(b) Steam.

(c) Water (not including mineral water or carbonated water or any water put in bottles, jugs or containers, all of which are not exempted).

(d) Electric power or electric energy and any material or energy sources used to fuel the generation of electric power for resale or used by an industrial manufacturing plant for self-consumption or cogeneration.

(g) Natural gas.

A Statement of Acquiescence or Nonacquiescence (SA/SNA) is issued under the authority of LAC 61:III.101(C). It is a written statement to provide guidance to the public and to Department of Revenue employees. An SA/SNA is a written statement issued to announce the Department’s acceptance or rejection of specific unfavorable court or administrative decisions. If a decision covers several disputed issues, an SA/SNA may apply to just one issue, or more, as specified. An SA/SNA is not binding on the public, but is binding on the Department unless superseded by a later SA/SNA, declaratory ruling, rule, statute, or court case.

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II. Utilities in La. R.S. 47:305(D)(1)(h) which are all energy sources when used for boiler fuel, except refinery gas.

III. Utilities in La. R.S. 47:305.51 which are those utilities used by Steelworks and Blast Furnaces.

In response to the passage of HCR No. 8, the Louisiana Chemical Association (hereafter “LCA”) has filed a declaratory judgment action alleging various procedural constitutional arguments regarding the passage of HCR No. 8. The LCA has attempted to file suit on behalf of alleged industrial, chemical and petrochemical manufacturers with facilities and operations within Louisiana.

**Conclusion:**

Pending the outcome of the Lawsuit, taxpayers may pay the sales taxes, as they become due and then file an administrative claim for refund under La. R.S. 47:1621 utilizing the Louisiana Department of Revenue Claim for Refund of Overpayment Form (R-20127). If a final, non-appealable judgment is issued by a court of competent jurisdiction declaring HCR No. 8 to be unconstitutional, then LDR will acquiesce that the sales tax payments made pursuant to HCR No. 8 are overpayments within the meaning of La. R.S. 47:1621 regardless of whether the taxpayer initiated its own lawsuit or paid under protest. All claims for refund must be filed in accordance with the prescriptive period imposed by La. R.S. 47:1623.

**Tim Barfield**

**Secretary**

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