

RULE

Department of Revenue Policy Services Division

Sales and Use Tax Definition of Person (LAC 61:I.4301)

Under the authority of R.S. 47:301 and R.S. 47:1511 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 relative to the definition of person for sales tax purposes.

These amendments provide guidance concerning the exclusion from the definition of person for all or some of the purchases made by the entities listed in R.S. 47:301(8). These entities include governmental agencies, the Society of the Little Sisters of the Poor, independent institutions of higher education, and churches and synagogues. While the first two entities are excluded from the definition of person for all of their purchases, independent institutions of higher education and churches and synagogues have a limited exclusion from the definition of person. Independent institutions of higher education are excluded from the definition for their purchases directly related to the educational mission of the institution while churches and synagogues are excluded from the definition only for their purchases of bibles, songbooks, and religious instruction literature.

In some instances, the entities specified in R.S. 47:301(8) making the types of purchases that qualify them for the exclusion from the definition of person may act through an agent or employee in making the purchase. Two common situations when this occurs are purchases made by government contractors and the renting of hotel rooms to government employees. The amendments to this rule list the circumstances under which purchases by immovable property contractors and the renting of hotel rooms by employees are equivalent to direct acquisitions by the entity excluded from the definition of person.

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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Person•

- a. The term person as used in this Chapter includes:
 - i. natural persons; and
 - 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 this Chapter.
- b. A natural or artificial person's classification as exempt under any other tax statute has no effect on that person's status under the sales tax law. For example, a religious, charitable, educational, scientific, civic, social or fraternal organization, including hospitals and similar institutions, may be statutorily exempted from other taxes but remain classified as persons for sales tax purposes.
- c. R.S. 47:301(8) provides exclusions from the definition of person for purchases made by certain entities. Although these entities are not responsible for paying

sales and use taxes on some or all of their purchases, they must collect and remit sales tax on their taxable sales transactions.

i. The two entities granted exclusions from paying state and local sales and use tax on all of their purchases are:

(a). the state of Louisiana, its parishes, its municipalities, its special districts, its political subdivisions, and any other agencies, boards, commissions, or instrumentalities of the state or its political subdivisions;

(b). the Society of the Little Sisters of the Poor. Before claiming exemptions, the Society must obtain a certificate of authorization from the Sales Tax Division of the Department of Revenue.

ii. The two entities granted exclusions from paying sales and use tax on some of their purchases are:

(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 and 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 Sales Tax Division of the Department of Revenue.

d. The exclusion from the definition of person is granted only for purchases made by these entities on their own behalf. Representatives of these entities making purchases for the entity may also be excluded from the definition of person when their purchases are deemed the equivalent of an acquisition by the entity itself. The most common examples of representatives purchasing on behalf of these entities are:

i. mandataries (agents) purchasing materials or leasing or renting equipment for immovable property construction contracts; and

ii. employees purchasing lodging services while traveling on official business of the entity.

e. The following elements establish an immovable property contractor's purchases as the legal equivalent of a R.S. 47:301(8) entity's purchases so as to exclude the transactions from sales and use tax. Additionally, due to the federal government's immunity from state taxation under The Supremacy Clause, U.S. Const. Art. VI, §2, federal contractors satisfying the following criteria are also entitled to the exclusion from the definition of person. The following criteria assume that the R.S. 47:301(8) entity is an immovable property contractor with an agency agreement with a government department or agency.

i. The government department or agency must acquire title to the property at the time of purchase. Except as otherwise provided in the contract between the parties, the risk of loss must be with the governmental entity.

ii. There must be a signed agreement authorizing the contractor to act as purchasing agent for the entity. The department's form, Designation of Construction Contractor as Agent of a Governmental Entity, may be used for this purpose, or a custom agreement may be substituted if it includes all terms and conditions listed in the form prepared by the department. The form is available at any department office and through the department's web site at: www.rev.state.la.us. Copies of the signed agreement must be made available to tax authorities and vendors upon request. Purchases by the designated agent will be recognized as those of the government entity if all parties to the contract strictly follow the terms of the agreement.

f. The following elements establish when the renting of a hotel room to an employee of a R.S. 47:301(8) entity is legally equivalent to the entity's purchase of the service. Additionally, due to the federal government's immunity from state taxation under The Supremacy Clause, U.S. Const. Art. VI, §2, federal employees are also entitled to the exclusion from the definition of person when renting hotel rooms in the state. Since most purchases of lodging services for persons excluded by R.S. 47:301(8) are made by government employees, the following criteria are drafted from the perspective of those entities:

i. Renting a hotel room to an employee of the United States government, the state of Louisiana, or a political subdivision of the state of Louisiana who is traveling on official business is considered a sale of a service to the government employer regardless of the form of payment to the hotel, provided the lodging services are obtained by the employee at the direction of the employer and accounted to and reimbursed by the government agency.

ii. The exclusion must be documented in one of the following ways:

(a). with a copy of the employee's written travel orders certifying that the government employer will reimburse the actual lodging expenses incurred. The travel orders must be on government letterhead or forms and signed by an authorized representative of the government entity other than the employee engaging the hotel services. The orders must state that the employee is authorized to secure a room for a specific time period at a specific hotel or at a hotel within a defined travel area;

(b). if written travel orders are unavailable or if the travel orders are incomplete or insufficient to satisfy all of the requirements in §4301.C.Person.f.ii.(a), an exemption certificate signed by the employee and the authorized agent of the governmental agency other than the employee will certify the transaction's exempt status. The hotel can accept the department's certificate entitled Certificate of Governmental Exemption from the Payment of Hotel Lodging Taxes or one used by federal agencies, provided the form states that the employee's expenses are reimbursed by the employer in the actual amount incurred.

iii. Hotels must retain this documentation to support a sales tax deduction for room rentals to government employees on official business. Failure to do so will cause the deduction to be disallowed unless the hotel can provide competent independent evidence to certify the exemption's validity. The exemption will also be disallowed if it is determined that the documentation was obtained fraudulently or that the hotel knew the documentation was invalid when the employee presented it.

iv. This exclusion is not allowed on hotel room charges incurred by other nations, other states and their political subdivisions, or their employees.

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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 28:1703 (October 2001), amended by the Department of Revenue, Policy Services Division, LR 28:348 (February 2002).

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