

NOTICE OF INTENT

Department of Revenue Policy Services Division

Sales and Use Tax—For-Hire Carriers (LAC 61:I.4353)

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, proposes to amend LAC 61:I.4353 relative to the apportionment method provided to for-hire carriers under R.S. 47:306.1 for reporting sales and use taxes.

These proposed amendments provide guidance regarding the application of the for-hire apportionment method allowed by R.S. 47:306.1. Specifically, they describe the proper procedure for calculating the mileage factor to be used in the apportionment ratio and the types of purchases that qualify for this method.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4353. Collection from Interstate and Foreign Transportation Dealers

A. Revised Statute 47:306.1 allows interstate for-hire carriers to register as dealers and pay the taxes imposed by R.S. 47:302(A) on an apportionment basis. Since the intent of the statute is apparent, this option also applies to the tax imposed by R.S. 47:321(A), R.S. 47:331(A), and Section 2(A) of the Louisiana Tourism Promotion District Ordinance.

1. Interstate for-hire carriers may use this apportionment method for purchases and importations of tangible personal property used directly in interstate or foreign commerce activity.

2. Tangible personal property that is not used directly in interstate or foreign commerce activity, such as truck, bus, or airport terminal equipment or office equipment and supplies may not be apportioned. Sales or use tax must be paid on these purchases or importations in the manner prescribed by R.S. 47:306.

3. An interstate for-hire carrier engaged in activities other than transporting passengers or property for-hire in interstate or foreign commerce cannot apply this apportionment method to the purchases and importations of tangible personal property for those activities. Sales or use tax must be

paid on these purchases or importations in the manner prescribed by R.S. 47:306.

B. Carriers that do not elect to report and pay Louisiana sales and use taxes under the optional formula provided by R.S. 47:306.1 must pay Louisiana sales tax on all purchases made within the state of Louisiana and report and pay use tax on all tangible personal property imported into Louisiana when it becomes part of the mass of the taxpayer's property located within this state in the manner prescribed by R.S. 47:306.

C. Interstate for-hire carriers that elect to report and pay Louisiana sales and use taxes under the optional formula provided by R.S. 47:306.1 must conform to the provisions of LAC 61:I.4353.D-J.

D. For purposes of this regulation, the following definitions apply.

Apportionment Basis for Sales and Use Tax Purchases—the gross importations and gross purchases, however no transaction shall be included more than once, less those gross purchases or gross importations that are exempt or excluded from sales and use tax in Louisiana by a provision of law other than R.S. 47:306.1.

Gross Importations—all tangible personal property on which no Louisiana sales or use tax has been paid that is imported into Louisiana subsequent to the effective date of this regulation and used directly in interstate or foreign commerce activity.

Gross Purchases—all tangible personal property purchased within and beyond this state that is used directly in interstate or foreign commerce activity.

Interstate For-Hire Carrier—a person engaged in the transportation of goods or passengers in interstate or foreign commerce for compensation. Persons that transport goods or passengers in intrastate commerce in addition to transporting goods or passengers in interstate commerce are interstate for-hire carriers for the purposes of this regulation. This designation does not apply to any other activity engaged in by an interstate for-hire carrier.

Louisiana Mileage—all miles traveled by a for-hire carrier within the State of Louisiana while transporting goods or passengers for compensation in intrastate, interstate, or foreign commerce.

Louisiana Taxable Base—the apportionment basis for sales and use tax purchases multiplied by the ratio of Louisiana mileage to total mileage. The miles traveled in Louisiana for purpose of this calculation include all Louisiana miles, regardless of

whether a part of intrastate trips or part of interstate trips.

Tangible Personal Property Used Directly in Interstate or Foreign Commerce Activity—property purchased or acquired by an interstate for-hire carrier that is intended for movement between states of the United States, the United States and foreign nations, or states of the United States and offshore areas beyond the territorial limits of any state. This definition includes, but is not limited to, aircraft, trucks, trailers, rail cars, the fuel (except for fuel that is exempt from sales tax by Article VII, Section 27 of the Constitution of the State of Louisiana), parts, and supplies used in the maintenance and operation of these vehicles, and food items served to passengers during the trip. Property that is not intended for movement between states, such as truck terminal equipment, office equipment or supplies, or airport equipment is not tangible personal property used directly in interstate or foreign commerce activity and does not qualify for apportionment under R.S. 47:306.1. Sales or use tax must be paid on these purchases or importations in accordance with R.S. 47:306.

Total Mileage—all miles traveled by a for-hire carrier within and beyond the State of Louisiana while transporting property for compensation in intrastate, interstate, or foreign commerce.

E. Interstate for-hire carriers that have not previously registered with the secretary to use this optional formula, may apply to the secretary for an interstate or foreign carrier dealer's number. Applicants must submit satisfactory proof to the secretary that they are engaged in the transporting of passengers or property for-hire in interstate or foreign commerce. Documentation showing that the for-hire carrier is subject to the authority of the United States Department of Transportation will be treated as prima facie proof of qualification. The secretary will issue to the interstate for-hire carrier a registration number that may be used to make purchases or importations in this state of tangible personal property without the payment of sales or use taxes at the time of purchase or importation.

F. Interstate for-hire carriers registered with the secretary to use the formula allowed by R.S. 47:306.1 as of the effective date of this Rule will be presumed to have chosen to continue to remit sales and use taxes under the formula unless they make a specific election and receive consent from the secretary not to report under the formula. Interstate for-hire carriers that are not registered with the secretary to use this optional method as of the effective date of this Rule that wish to do so must expressly signify their

election, in writing, and receive consent from the secretary before they can purchase or import tangible personal property tax-free and apportion the taxes under this formula. All carriers who do not expressly so elect to report under the optional formula shall be presumed conclusively to have elected not to report under the formula.

G. Interstate for-hire carriers must obtain approval from the secretary before reporting and paying taxes under the formula provided by R.S. 47:306.1. A written request must be submitted to the secretary and once approved, the carrier must report under the formula for all subsequent reporting periods. If a carrier wishes to discontinue using the formula method, a written request must be submitted to the secretary for approval.

H. Vendors may sell tangible personal property used directly in interstate or foreign commerce activity to interstate for-hire carriers without charging sales tax if the buyer submits a blanket certificate, Form LGST 12, to the vendor. The form must be signed by the buyer (or an authorized representative) and include the buyer's name, address and registration number. When a buyer provides this form to vendors, he is asserting that the property purchased will be used directly in foreign or interstate commerce activity and he will pay the taxes owed directly to the secretary under the provisions of R.S. 47:306.1. Blank certificates may be obtained from the secretary. Sellers will be responsible for the collection of tax on all sales made to persons who have not secured the proper registration number. Any dealer who fails to obtain or keep for the secretary exemption certificates signed by the buyer will be liable for and must pay the tax himself.

I. On or before the twentieth day of each month, the carrier must file, on forms furnished by the secretary, returns showing the Louisiana taxable base of gross purchases and gross importations. This amount is determined as follows.

1. The apportionment basis for sales and use tax purchases is determined by subtracting purchases or importations of tangible personal property that are not subject to sales and use tax in Louisiana from gross purchases and gross importations.

(Gross purchases and gross importations) –
(Purchases and importations of tangible personal
property that are exempt or excluded from sales and
use tax in Louisiana) = (Apportionment basis for
sales and use tax purchases)

2. The Louisiana taxable base is calculated by multiplying the apportionment basis for sales and use tax purchases by the ratio of Louisiana mileage

divided by total mileage. This amount is reported on Line 2 of the Louisiana General Sales Tax return.

(Apportionment basis for sales and use tax purchases)
 $x \text{ (Louisiana mileage } \div \text{ Total mileage)} = \text{ (Louisiana taxable base)}$

J. Revised Statute 47:306.1 applies only to the tax imposed on the sales and use of tangible personal property as set forth in R.S. 47:301(A), R.S. 47:321(A), R.S. 47:331(A), and Section 2(A) of the Louisiana Tourism Promotion District Ordinance. The tax imposed on the lease or rental of tangible personal property under R.S. 47:302(B), R.S. 47:321(B), R.S. 47:331(B), and Section 2(B) of the Louisiana Tourism Promotion District Ordinance and the tax on sales of services under R.S. 47:302(C), R.S. 47:321(C), R.S. 47:331(C), and Section 2(C) of the Louisiana Tourism Promotion District Ordinance may not be paid and reported under the optional method provided by R.S. 47:306.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:306.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Divisions LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 29:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of this proposed Rule will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of this proposed

Rule will have no effect on the ability of the family or a local government to perform this function.

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., Monday, August 25, 2003. A public hearing will be held on Wednesday, August 27, 2003, at 10 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Sales and Use Tax—For-Hire Carriers

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There would be no implementation costs or savings to state or local authorities for this proposal. This proposed amendment only clarifies the method of apportioning sales and use taxes under R.S. 47:306.1 and will have no impact on the agency's costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no impact on state sales tax revenue as a result of this proposed amendment, which clarifies how for-hire carriers engaged in interstate or foreign commerce must report sales and use taxes under R.S. 47:306.1. Because R.S. 47:306.1 only applies to state sales taxes, the proposed amendment would have no impact on local sales and use tax revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed amendment should have no effect on economic benefits or costs of for-hire carriers engaged in interstate or foreign commerce that elect to report their state sales and use taxes under the method authorized by R.S. 47:306.1.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed amendment should have no effect on competition or employment by "for-hire" carriers engaged in foreign or interstate commerce that report state sales and use taxes under the method allowed in R.S. 47:306.1.

Cynthia Bridges
Secretary
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H. Gordon Monk
Staff Director
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