

**Revenue Ruling  
No. 07-007  
October 15, 2007**

**Sales and Use Tax  
Furnishing of Construction Barricades and Associated Lighting Equipment**

The purpose of this Revenue Ruling is to discuss the state sales tax treatment of transactions for the furnishing of temporary barricades, lights, and fencing that are typically used in and around construction and street repair sites.

**Facts**

A contractor is engaged in a project for the repair of underground utility lines. Since the project will require two weeks to complete, and requires excavation of vehicle and pedestrian traffic areas, the work site must be barricaded and lighted. Temporary use of lights and barricades is secured from providers who deliver the barricades and lights to the sites, and place them at the required locations to assure that motorists and pedestrians are alerted to the dangers of the open excavation. The lights are solar or battery powered, are designed to remain illuminated for several days or more without need for servicing. The provider of the lights and barricades agrees to replace or service any lights or barricades that become dysfunctional while they are in service to the contractor. However, the lights are such that they could remain illuminated for the entire duration of the contractor's project, without any visits to the project site or other intervention by the provider. When the project is completed, the owner of the lights and barricades picks up the property from the project site. Separate charges are made for the furnishing of the barricades and lights, and for the delivery and pick up of the property.

**Issue**

Is the state sales tax due on the furnishing of the barricades and lights? If so, are the separate charges for the delivery and pick up of the property within the taxable base?

**Analysis**

La. 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."

Construction barricades, lighting, and fencing are clearly classifiable as "tangible personal property" because they are movable and are perceptible to the senses. The transaction for the use of the property 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 maintenance of the barricades, lighting, and fencing are included in the taxable base. In *McNamara v. Patterson Services, Inc.*, 382 So. 2d 971(La. App. 1 Cir. 1980) 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.” Applying the judicial decision cited above, any separately stated charges for the delivery and pick up of the leased or rented property are excluded from the taxable base, provided that transportation charges are clearly distinguishable from and are not inclusive of any operating expenses, maintenance costs, or charges for the set up for the leased or rented property to enable the property to perform its intended function.

### **Conclusion**

Transactions for the furnishing for consideration of the temporary use of construction barricades, lighting, and fencing are taxable as leases and rentals. The taxable base will include the charges for the lease or rental, as well as any charges for bulb replacement or other maintenance of the property while the property is in service to the contractor, regardless of whether or not those charges are separately stated.

The barricades, lights, temporary fencing, 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).

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