



Tax Topics

www.rev.state.la.us.

"The mission of the Louisiana Department of Revenue is to serve the citizens of Louisiana by administering efficiently the state's tax and regulatory statutes in a manner that will generate the highest degree of public confidence in our integrity and fairness."
Brett Crawford, Secretary

Tax-free sales are illegal

\$ Retail dealers are reminded that it is a violation of Revised Statute 47:304 of the sales tax law to advertise that they will absorb the tax or will in any way relieve a purchaser of payment of the sales tax.

This practice is prohibited, even if the dealer calculates the correct tax on the sale, absorbs the additional financial burden of state and local sales taxes, and remits the taxes to the applicable authorities. The statute provides that a dealer or seller is required to state and

- collect the tax separately from the price
- paid by the purchaser. Each sales ticket, invoice, or cash register receipt must
- separately calculate and display the state and local sales tax.

- Specific penalties for failing to comply with the sales tax law include payment of the tax, fines, and/or imprisonment.

- Questions concerning dealers' tax collection and reporting requirements should be directed to the Sales Tax Division at (225) 925-7356.

Notice of Acquiescence in Sales Tax Case Dealing with Installation Charges

The Department has acquiesced in the *Department of Revenue v. Baton Rouge SMSA Limited Partnership d/b/a BellSouth Mobility*, 19th JDC, Docket No. 423,577, Division D. This case dealt with the taxability of installation charges for sales and use tax purposes.

The Department has traditionally held that the separately stated installation charges made by a vendor for installing tangible personal property onto another article of tangible personal property would be subject to the state sales/use tax. It was reasoned that the installation of an item of tangible personal property onto another item of tangible personal property could be characterized as a fabrication of a new and different item, and thus would be taxable.

- Recently, the Department brought suit for the collection of taxes from a vendor of cellular telephones who had not taxed the separately stated installation charges made for installing the telephones in motor vehicles. Since both the vehicles and telephones met the definition of tangible personal property, the Department viewed the installation of the telephones as a fabrication and under its existing policy, sought to levy sales tax on these charges. On June 18, 1998, a decision was rendered in favor of the taxpayer, holding that the installation charges were not fabrications and not subject to sales tax. The trial judge's decision was based on the fact that the statutes do not define either "fabrication" or "installation." According to La.C.C. Article 11, "The words of a law

Natural gas severance tax rate changed

Under the authority of Revised Statute 47:633(9)(d)(i), the Department of Natural Resources has determined the "gas base rate adjustment" for the twelve-month period ending March 31, 1999, to be 1.1153. Accordingly, the Department of Revenue has determined that effective July 1, 1999, the severance tax rate on natural gas and related products described in R. S. 47:633(9)(a) is to be **7.8 cents per thousand cubic feet** measured at a base pressure of 15.025 pounds per square inch absolute and at the temperature base of sixty degrees Fahrenheit. The reduced rates provided for in Revised Statute 47:633(9)(b) and (c) remain the same.

Reporting forms will be distributed as soon as they are available. Questions should be directed to the Severance Tax Division at (225) 925-7500.

must be given their generally prevailing meaning." In the judge's opinion, the generally prevailing meaning of "fabrication" does not include the types of transactions that were at issue.

As of June 18, 1998, the Department adopted as policy the court's decision in *Baton Rouge SMSA*. Separately stated installation charges are excluded from the definition of "sales price," in accord with Revised Statute 47:301(13). Labor charges for the fabrication of and repairs

Louisiana sales taxability of hotel room rentals to governments and government employees



Revised Statute 47:301(8)(c) excludes the state of Louisiana and most political subdivisions of the state from definition of the term “person” for purposes of liability for payment of the state sales and use tax. States are prohibited by federal law and applicable jurisprudence from levying a tax directly on the government of the United States. A hotel room will be considered as having been engaged directly by an agency of the federal, Louisiana, or local government if all of the following conditions are met:

- A. The hotel services are engaged directly by and in the name of the government agency.
- B. The government agency is directly liable to the hotel at the time the room is engaged for payment of the agreed purchase price.
- C. The government agency directly pays the hotel with a government agency remittance. Payment with a credit card issued only in the name of the government agency, and billed by the card issuer directly to the government agency, will be considered a government agency remittance. Payment by a

credit card that bears the name of the government employee holder of the card will not be considered a government agency remittance for purpose of availability of the sales tax exemption, even if the card also bears the name of the card holder’s government employer.

Neither R.S. 47:301(8), nor the immunity of the federal government from state taxation, authorizes or requires that an exemption from state sales taxation be granted on purchases by government employees. The Department requires that the appropriate rate of state sales or use tax must be paid on purchases of hotel room services, vehicle parking, and other taxable transactions made in a government agency’s name by employees, officials, and representatives of the government agency. However, when an employee of the United States government or of the state of Louisiana, or its political subdivisions, can show, through the documentation outlined below, that his/her actions in engaging a hotel room are on direct orders from his government employer, and that the expenses that are incurred in engaging the room, are accounted to and reimbursed by his employer, the Department will consider the sale of the lodging services to the employee to be the legal equivalent of a sale to his/her government employer, regardless of the form of payment to the hotel.

Required documentation must include both Items 1 and 2 below, or Item 3:

- 1. Written government travel orders, presented on recognizable government letterhead or forms, signed by an authorized representative of the employer other than the employee engaging the hotel services, directing the employee on travel status to engage a room on specific days at a specific hotel or at a hotel within the employee’s defined travel area; **and**,
- 2. an exemption certificate signed by the employee **or** his employer attesting to the fact that the employee’s actual expenses for the lodging are

accounted to his employer and reimbursed to the employee by the employer in the actual amount incurred. The employee can use the exemption certificate form published by the Department for this purpose, or can present the form that federal agencies have prepared for use nationwide, provided that the signed form contains the statement that the employee’s expenses are reimbursed by the government employer in the actual amount incurred. This form can be obtained from the Department’s website www.rev.state.la.us, the Sales Tax Division, or from any regional office.

-OR-

- 3. When the written government travel orders specified in Item 1 are not available, the employee engaging the hotel room can document his/her eligibility for the governmental exemption by presenting an exemption certificate signed by the employee **and** his government employer attesting to the fact that the employee’s actual expenses for the lodging are accounted to his employer and reimbursed to the employee by the employer in the actual amount incurred. The employee can use the exemption certificate form published by the Department for this purpose, or can present the form that federal agencies have prepared for use nationwide, provided that the form is signed by both the employee and another representative of the employer, and the signed form contains the statement that the employee’s expenses are reimbursed by the government employer in the actual amount incurred.

In order for a hotel to allow the sales tax exemption under the above procedures, the employee must present the above documentation at the time the hotel room is occupied. The hotel must retain copies of the documentation as support for the deductions to be taken on its sales tax returns. Failure of the employee to present

Acquiescence (continued)

to tangible personal property will continue to be taxable as provided for under R. S. 47:301(12) and R. S. 47:301(14)(g), respectively.

Refunds of taxes paid on installation charges will be made only if the payments were made under protest and held in escrow, in accordance with R. S. 47:1576. Taxes remitted to the department prior to June 18, 1998, which were not made under protest and/or for which no recovery suit was filed, will not be refunded.

For additional information concerning taxable and nontaxable labor charges associated with the sale of tangible personal property, please contact the Sales Tax Division at (225) 925-7356.

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Office of Alcohol and Tobacco Control

Amendment clarifies how and under what circumstances a supplier or wholesaler may move, reset, or stock high alcoholic content beverages.

% The Department of Revenue, Office of Alcohol and Tobacco Control, has amended LAC 55:VII.319, which governs stocking, pricing, and rotating of alcoholic beverages. The Title of §319 was also changed to limit the Section's application to alcoholic beverages of more than six percent alcohol by volume and to remove the reference to Regulation X. The purpose of the amendment is to clarify how and under what circumstances a supplier or wholesaler may move, reset, or stock high alcoholic content beverages.

This rule as well as the Department's other administrative rules can be found at the Office of the State Register's web site at <http://www.state.la.us/osr/>.

Title 55
PUBLIC SAFETY
Part VII. Alcohol and Tobacco
Control

Subpart I. Beer and Liquor
Regulations
Chapter 3. Liquor Credit Regulations
§319. High Alcoholic Content Beverages—Stocking, Pricing, and Rotating
A. Persons holding valid Louisiana wholesale alcoholic beverage permits, their agents, servants or employees, manufacturers' agents, importers and brokers may price, stock and rotate merchandise at retail premises only to the following extent.
1. Dealers in beverages of more than six percent alcohol by volume and in wine coolers containing more than six percent alcohol by volume and pre-mixed beverages of any alcoholic content may build and stock displays of their product on the premises of retail dealers. Displays can in no way be part of the dealer's regular shelving. They may restock displays for a maximum

period of one month after the initial display has been installed. They may not price the displays. They are prohibited from pricing and stocking shelves on the premises of retail dealers and from affixing security tags. Industry members are granted authority to maintain the quality of their product on retail shelves, provided, that products purchased from other industry members are not altered or disturbed. The act of picking up alcoholic beverages in excess of six percent alcohol by volume for credit or exchange from a retail dealer by a wholesale dealer is considered a consignment sale and is therefore specifically prohibited.

2. No wholesale dealer of beverages that are more than six percent alcohol by volume shall handle or move any alco-

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Excise Taxes Division

Provides for enforcement and collection of sparkling or still wines tax

X The Department of Revenue, Excise Taxes Division has adopted LAC 61:I.201, pertaining to direct shipments of sparkling or still wines to consumers within the state by authorized manufacturers or retailers, effective April 1999. Act 71 of the 1998 Regular Session of the Louisiana Legislature enacted R.S. 26:359 that imposes a tax on the direct sale and shipment of wines by common carrier, provides for the enforcement and collection of the tax, requires application and tax payment before shipments can be made, and provides for penalties for unlawful shipments of sparkling or still wines to Louisiana consumers under certain circumstances. This rule also provides for the identification and reporting of shipments.

This rule as well as the Department's other administrative rules can be found at the Office of the State Register's web site at <http://www.state.la.us/osr/>.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 2. Alcoholic Beverages
§201. Direct Shipments of Sparkling or Still Wines
Identification of Shipments
1. All shipments made by an authorized manufacturer or retailer of sparkling or still wines that are shipped directly to any consumer in Louisiana shall be identified as follows:
a. the words "Alcoholic Beverage-Direct Shipment" shall be marked and clearly visible on both the front and back of the package in lettering measuring at least one quarter inch in height, and
b. the words "Unlawful to Sell or Deliver to Anyone under 21 Years of Age" must be clearly visible on the front of

the package, in lettering measuring at least one quarter inch in height.

2. The manufacturer's or retailer's Louisiana registration or permit number assigned by the Excise Taxes Division shall be clearly displayed on the front of the package.

3. All shipments shall have affixed to the exterior packaging a notification to the person making the delivery that a signature of the recipient is required prior to delivery. The notice should be at least 3" by 3" and contain words similar to the following:

ATTENTION
Courier
SIGNATURE REQUIRED
Deliver to **RECIPIENT** address only. No indirect delivery. Disregard any Signature Release. Recipient **MUST** be at least 21 years old, and not show signs of intoxication.

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Corporation Income and Franchise Taxes Division

Provides for administration of the employer tax credits for donating certain materials, equipment, or instructors to certain training programs or schools.

C The Department of Revenue, Corporation Income and Franchise Taxes Division, in consultation with the Department of Labor, has adopted LAC 61:I.1901 effective May 1999 to provide for administration of the employer tax credits for donating certain materials, equipment, or instructors to certain training programs or schools.

Act 30 of the 1998 Regular Session of the Louisiana Legislature enacted R.S. 47:6012 to provide for employer tax credits for donations of materials, equipment, or instructors to certain public training programs, vocational-technical schools, apprenticeship programs, or community colleges to assist in the development of training programs designed to meet industry needs.

This rule as well as the Department's other administrative rules can be found at the Office of the State Register's web site at <http://www.state.la.us/osr/>.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the
Secretary of Revenue
Chapter 19. Miscellaneous Tax Exemptions

§1901. Employer Tax Credits for Donations of Materials, Equipment, or Instructors to Certain Training Programs or Schools

A. Definitions

Department—the Department of Revenue.

Employer—an entity authorized to do business in the State of Louisiana that employs one or more individuals performing services on its behalf.

Instructor—an individual qualified, as determined by the training institution, to provide educational or instructional services designed to furnish technical knowledge to persons enrolled in a

training program when the instructor's time or salary are donated by an employer.

- a. The donation of an instructor's time is when the instructor, while on the payroll of the donating employer, is allowed to spend a portion or all of a work day providing instructional services either on the premises of the training institution or on the employer's premises, when approved by the training institution as part of the training curriculum.
- b. The donation of an instructor's salary is when the funds for the salary of an instructor, who is an employee and on the payroll of the training institution, are provided by the donating employer.

Latest Technology Available in Materials and Equipment—machinery and equipment that:

- a. has never been used except for normal testing by the manufacturer to ensure that the machinery or equipment is of proper quality and in good working order;
- b. has been used by the retailer or wholesaler solely for the purpose of demonstrating the product to customers for sale;
- c. is of the type currently manufactured for sale to customers; or
- d. has been used by the donating employer for three years or less and was still used in production immediately prior to donation.

Training Institution—a public training provider, secondary or postsecondary vocational technical school, apprenticeship program registered with the Louisiana Department of Labor, or community college. The term does not include institutions or other entities organized for profit.

Value—the donor's actual cost for new machinery or equipment or the appraised worth of used materials and equipment and instructional services.

B. Tax Credit

1. A credit shall be allowed against the individual and corporate income tax and the corporate franchise tax for the donation of the latest technology available in materials and equipment and the donation of instructors made to public training providers, secondary and postsecondary vocational-technical schools, apprenticeship programs registered with the Louisiana Department of Labor, or community colleges within the state.
2. The tax credit shall be an amount equal to one-half the value of the donated materials, equipment, or services rendered by the instructor at the time of donation.
 - a. When used materials or equipment or instructional services are donated, the institution accepting the donation shall obtain an appraisal to establish the value of the materials, equipment, or instructional services, which is to be provided to the donating employer.
 - b. When new materials or equipment are donated, the donating employer shall submit an invoice showing the actual price paid, which shall be considered the value of the donated property.
3. A donation shall not qualify for the tax credit unless it is accepted by the training institution.
 - a. The training institution accepting the donation shall furnish to the donating employer certification of the donation that includes the date of the donation and the value of the

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Internet Beer Tax Filing Program to Begin in Late Summer

By the end of the summer, Louisiana beer dealers will have the option of filing the monthly "State and Parish and Municipality Beer Tax Return" (Form R-5621) using the Internet. Using a standard web browser (Netscape or Internet Explorer), dealers will log into the program using a personal identification number and their account number. The program will be thoroughly secured.

Dealers will fill out their tax return on the screen, and the program will perform all mathematical calculations. Directions and built-in help features will assist in completing the return. The following month, pertinent information will carry forward to make filing even easier. Dealers registered for electronic funds transfer (EFT) will be able to make their payments automatically, the money not being taken from their account until the due date, regardless of how early they file. Dealers not paying by EFT will be able to print a payment coupon to send in with their check. For each return filed, dealers will be given an encrypted "cyber receipt" as their proof of filing. The program will also accept amended returns.

The Department plans to add other taxes into the Internet filing program, although a final implementation schedule has not been completed. Beer dealers have already received registration packets for this new system. For further information, contact the Excise Taxes Division at (225) 925-7652.

Employer tax credits (continued)

- donated materials, equipment, or instructional services.
- b. The donating employer shall attach this certification to the income or franchise tax return filed with the department for the year in which the credit is claimed.
- 4. The tax credit shall be a credit against the applicable tax or taxes for the tax period that the donation was made and when combined with all other applicable tax credits, shall not exceed 20 percent of the employer's tax liability for any taxable year. The tax credits may only be taken by the donating employer entity and may not be passed through to partners or shareholders when the donating entity is a partnership, Subchapter S corporation, or Limited Liability Company.
- C. Maintenance or Service Agreement. If requested by the training institution receiving the donation, any employer donating material or equipment may agree to provide a minimum of three months maintenance or service to the institution in order to receive the tax credit. This agreement shall cover the cost of any maintenance required on the donated materials or equipment for the term of the agreement.
- D. Orientation Agreement. Any employer donating materials or equipment to an eligible training institution shall agree to provide the training institution with materials or equipment operating instructions at no cost to the institution at a location specified in the agreement. Orientation instruction shall take place within two weeks after installation of the donated materials and equipment.
- E. Eligible Donations. The tax credit shall be applicable to donations made after July 1, 1998 and before January 1, 2001.

Taxability of diving services

Diving services generally do not fall within the list of specified services defined as taxable "sales of services" by R.S. 47:301(14). The charges made by a diving business for performing routine examinations, training, salvage, or exploratory services underwater are not subject to sales taxation.

However, if the service performed involves the repair or restoration of a vessel or any underwater equipment that can be categorized as tangible personal property, it is taxable as a repair service. The definition of "repair" has been judicially expanded to include not only the replacement of worn out parts, but also the restoration of property to the condition in which it originally existed. (See *McNamara v. Stauffer Chemical Co.*, App. 1 Cir.1987, 506 So.2d 1252, writ denied 512 So.2d 454,455.). If a diving company charges to remove an entanglement of cable, wire, or other debris from the submerged portion of a ship or vessel, it is considered a repair service and sales tax must be collected on the entire invoice amount.

Only repairs performed on tangible personal property are taxable. A repair to a wharf, pier, or any other immovable property is not taxable.

Additional information concerning the taxability of diving services may be obtained from the Sales Tax Division Taxpayer Assistance Section at (225) 925-7356. A complete description of the service to be performed is needed by the auditor in order to properly assess the tax consequences.

East Baton Rouge Parish Sales and Use Tax Seminar

The East Baton Rouge City-Parish Department of Finance will host a seminar on sales and use tax on Friday, August 27 from 10:00 a.m. until noon at the Jones Creek Library, 6222 Jones Creek Road, Baton Rouge.

A representative of the Louisiana Department of Revenue will be in attendance.

To register for the seminar, or if there is a question or topic concerning sales and use tax that you would like to see discussed at the seminar, contact the City-Parish Revenue Division at 225-389-3084 (voice) or 225-389-5369 (fax). The deadline for registration is August 16.

High alcoholic content beverages

(continued)

- holic beverages delivered to the premises of a retail dealer by a competing wholesale dealer, nor shall a wholesaler reset all or any part of the alcoholic beverages situated on the premises of a retail dealer, nor shall a wholesaler engage in the initial setting of products into a new store, unless the retail dealer sends notice, by certified mail to the Commissioner of Alcohol and Tobacco Control, stating the date, time, and location permit number of the contemplated movement, reset, or initial setting of alcoholic beverages. The addition of new products into the alcoholic beverage section shall not constitute a reset under the provisions of §319. Not less than one week prior to the approved date of such activity, the retail dealer shall mail copies both of the notice and Commissioner's written approval, to all wholesale dealers whose products are situated on their premises. The retail dealer shall maintain a list of the names and addresses of the wholesale dealers receiving such notice, and a copy of that list shall be filed with the Commissioner of Alcohol and Tobacco Control.
3. A wholesale dealer whose products are situated on the premises of a retail dealer must be given the opportunity

to participate in any movement or reset of those products, and no retail dealer shall, under any circumstances, exclude a wholesale dealer from such participation. The reset of all or any part of the beverage alcohol situated on the premises of a retail dealer may not occur more than twice during any calendar year. The stocking of cold boxes by a wholesaler in a retail dealer's premises is permitted.

4. The spotting of shelves by a wholesaler in a retail dealer's premises is prohibited. The act of manually entering delivery or invoice information into the retail dealer's computer system at the time of delivery is prohibited.
5. Except as authorized under §319, employees of a wholesaler shall not, in connection with the sale or delivery of alcoholic beverages to a retail dealer, provide any services whatsoever to a retail dealer.
- B. The Commissioner of the Office of Alcohol and Tobacco Control may seek a suspension or revocation of the permit or permits of a violator and may impose such other penalties or administrative remedies as are prescribed by law for violators of the Alcoholic Beverage Control Law.

Hotel room rentals (continued)

- the documentation or to allow copying of the documentation will mean that the charges for the occupancy of the hotel rooms will be taxable.
- Exemptions can be allowed only on rooms engaged directly by agencies of the United States government, the state of Louisiana and its political subdivisions, and by employees of these governments who present the documentation explained above. An exemption is not allowed on hotel room charges incurred by other states, their political subdivisions, or their employees.
- This directive is applicable to the taxes on hotel rooms that are collected by the Department of Revenue, but is not necessarily applicable to the local taxes that are levied and collected by political subdivisions of the state.

IRS plans Problem Solving Day

The IRS has announced its plans to hold a Problem Solving Day, on Thursday, July 22, 1999. Taxpayers who have unresolved problems concerning their federal tax are encouraged to contact the IRS Taxpayer Advocate Office at (504) 558-3001 to schedule appointments for that day.

Sparkling or still wines tax (continued)

Reporting of Shipments

1. For each shipment made by an authorized manufacturer or retailer of sparkling or still wines that is shipped directly to any consumer in the state of Louisiana, the authorized manufacturer or retailer shall maintain the following records until December 31 of the year following the year in which the shipment was made. These records shall be available for inspection by the Department of Revenue upon request:
- a. an invoice detailing the transaction, and
- b. a certification, on a written form as specified by the secretary, by the person receiving the shipment that the recipient is 21 years of age or older.
2. Each certification required by §201.B must be signed and dated at the time of delivery to any consumer in Louisiana.
3. The carrier making the actual delivery of packages of sparkling or still wines shall forward copies of the bills of lading to the Excise Tax Division of the Louisiana Department of Revenue by the 15th day of the month following the month of delivery in the same manner as reports showing the handling of alcoholic beverages as required under R.S. 26:369.

Tax Topics is a quarterly publication of the Louisiana Department of Revenue. Information contained herein is of a general nature; taxpayers requiring information concerning a specific tax matter should contact the appropriate tax office. Subscription information may be obtained from the Research and Technical Services Division at the address below, or by calling (225) 925-6047.

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