

mandataries must maintain a schedule of the tangible personal property used in these capital improvements.

(c). Purchases of spare machinery and equipment, such as compressors, pumps, and valves, qualify for the exclusion provided these items satisfy the definition of machinery and equipment provided in R.S. 47:301(3)(i). Spare machinery and equipment, such as bolts, nuts, gaskets, oil, etc., which cannot be depreciated for federal income tax purposes, do not qualify for the exclusion.

*Dealer—*

a. State and local sales or use tax is imposed upon the sales of tangible personal property within a taxing jurisdiction, the use, consumption, distribution and the storage for use or consumption within a taxing jurisdiction of tangible personal property, the lease or rental within a taxing jurisdiction of tangible personal property, and upon the sales of certain services. The tax in each instance is collectible from the dealer.

b. In view of the total reliance of the sales tax statutes upon the dealer for collection of the tax, the law meticulously ascribes to the term *dealer* the broadest possible meaning relevant to the taxes imposed by the taxing jurisdictions. R.S. 47:301(4) clearly holds either party to any transaction, use, consumption, storage, or lease involving tangible personal property and either the performer or recipient of services liable for payment of the tax through the broad statutory definition of *dealer*.

c. R.S. 47:301(4) includes as a *dealer* every person who manufactures or produces tangible personal property for sale at retail, use, consumption, distribution or for storage to be used or consumed in a taxing jurisdiction. Thus, the firm which manufactures or produces a product used or consumed by it in the conduct of its business becomes a dealer for sales and use tax purposes, even though none of that particular product is offered for sale.

d. Any person who imports property into a taxing jurisdiction, or who causes property to be imported into a taxing jurisdiction is a dealer for purposes of the sales and use tax whether the property is to be used, consumed, distributed, or for storage to be used or consumed in the taxing jurisdiction, or is intended for resale.

e. Persons who sell tangible personal property, who hold such property for sale, or who have sold tangible personal property are dealers. Similarly, any person who has used, consumed, distributed or stored tangible personal property for use or consumption in a taxing jurisdiction is defined as a *dealer*, unless it can be proved that sales or use tax has previously been paid to the taxing jurisdiction to the extent required by state and local sales or use tax law on the particular item.

f. Both the lessor (or rentor) and the lessee (or rentee) are defined as *dealers* by the statute, as are both the person who performs services of a nature subject to tax and the person for whom the services are performed. See R.S. 47:301(14) and LAC 61:I.4301.C.*Sales of Services* for a list of the services subject to the tax.

g. *Dealer* also includes any person engaging in business in a taxing jurisdiction. See R.S. 47:301(1) and LAC 61:I.4301.C.*Business* for the definition of *business*. *Engaging in business* is further defined to include the maintaining of an office, distribution house, sales house, warehouse or other place of business, either directly, indirectly, or through a subsidiary or through a seller authorizing an agent, salesman or solicitor to operate within a taxing jurisdiction or by permitting a subsidiary to authorize the solicitation activity. Engaging in business also includes making deliveries of tangible personal property into a taxing jurisdiction by any means other than by a common or contract carrier. Qualification to do business within a taxing jurisdiction is not among the considerations of whether a person is engaged in business for this purpose. Neither is it material whether the place of business or personnel are permanent or temporary in nature.

h. Persons who sell tangible personal property to operators of vending machines are dealers.

i. For state sales or use tax purposes, such sales are taxable *sales at retail* as defined under R.S. 47:301(10)(b) and LAC 61:I.4301.C.*Retail Sale or Sale at Retail*. A vending machine operator is also a dealer, however, his sales of tangible personal property through coin-operated vending machines are not retail sales.

ii. For local sales or use tax purposes, such sales are sales for resale. A vending machine operator is a dealer and must report his sales of tangible personal property through coin-operated vending machines as retail sales.

i. R.S. 47:301(4)(i) also includes in the definition of *dealer* any person who makes deliveries of tangible personal property into a taxing jurisdiction in a vehicle which is owned or operated by that person.

*Drugs—*

a. R.S. 47:301(20) applies a broader definition of *drugs* than the term indicates in common usage, for purposes of applying the exemption from state sales or use tax, which is offered under R.S. 47:305(D)(1)(j) and (s). This definition encompasses not only pharmaceutical remedies and chemical compounds, but also medical devices which are prescribed for use in the treatment of any medical disease. Devices which do not properly fall into the already established categories of orthotic or prosthetic devices or patient aids, could qualify for this category of tangible personal property. Examples of these would be pace-makers and heart catheters.

b. Except as otherwise provided, the exemption for drugs and medical devices does not apply to local sales or use tax.

*Gross Sales—*

a. *Gross Sale*—the total of the sales prices for each individual item or article of tangible personal property subject to state or local sales or use tax with no reduction for any purpose, unless specifically provided by statute.

b. The only deductions allowed from the total of the sales prices of all items of tangible personal property subject