

§4301. Uniform State and Local Sales Tax Definitions

A. General. Words and phrases shall be read with their context and the specific section of law to which they are applicable. They shall be construed according to the common usage of the language. Technical words and phrases, and such others as may have acquired a peculiar meaning in the field of taxation shall be construed according to such peculiar meaning. The word *shall* is mandatory and the word *may* is permissive. Unless otherwise clearly indicated, words used in singular include the plural and words used in the plural include the singular.

B. Words, terms and phrases defined in R.S. 47:301(1) through R.S. 47:301(27), inclusive, have the meaning ascribed to them therein and as further provided in §4301.C.

C. All examples included in the text of these rules and regulations are for illustration only and in no case should they be construed to impose a limitation.

Business—

a. Business covers any activity reasonably expected to result in gain, benefit or advantages, either directly or indirectly; the fact that operations resulted in a loss or did not provide the expected benefits or advantages would not eliminate an activity from the business classification. It is intended that some degree of continuity, regularity or permanency be involved so that the doing of any single act pertaining or related to a particular business would not be considered engaging in or carrying on that business; a series of such acts would be so considered.

b. Continuous employment, occupation, or profession engaged in for livelihood which occupies the majority of time and attention, or activity in which time and capital are invested on future outcome are within the meaning of *business* just as barter or exchange of things, rights or services for value are within the meaning of *business*. It is not necessary for any activity to constitute the sole occupation to remain within the intended definition.

c. The term *business* does not include isolated and occasional sales by persons who do not hold themselves out as engaged in business. This exclusion clearly applies to sales made by the owners of property who had acquired the property for use or consumption, and is not engaged in selling similar property on a repeated or continuing basis.

d. Whether an activity constitutes the carrying on of a business demands an analysis of the continuing nature of the activity, and may change with respect to any particular person. By way of example,

trustees or receivers conducting a continuing retail merchandising activity, even though solely by court order, would be construed to be in the merchandising business, while the sale conducted by the same trustees or receivers in order to liquidate the business pursuant to a later court order would not be construed to be carrying on a business. Further, the occasional sale of used equipment made by a person engaged in the equipment rental business would not be construed to constitute the business of selling equipment, but if the same lessor of equipment frequently, routinely or continuously offered used equipment for sale, then he would be construed to be engaged in that business.

Collector—

a. In reference to *state sales or use tax*:

i. *Collector*—the secretary and the secretary's duly authorized assistants. Any duly authorized representative of the collector, when acting under his authority and direction, has the same powers and responsibilities as the collector, but only to the extent so delegated.

ii. *Secretary*—the Secretary of the Department of Revenue of the state of Louisiana.

b. In reference to *local sales or use tax*:

i. *Collector*—the director, tax administrator, commission, or collector of revenue for the jurisdiction and includes the collector's duly authorized assistants. Any duly authorized representative of the collector, when acting under his authority and direction, has the same powers and responsibilities as the collector, but only to the extent so delegated.

ii. Article VII, Section 3 of the Constitution of Louisiana and R.S. 47:337.14 provide that sales and use taxes levied by a political subdivision shall be collected by a centralized parish wide collector or commission.

c. The authority to make assessments, impose or waive penalties, enter into agreements legally binding upon the taxing authority relative to extensions of time, for filing, running of prescriptive periods, installment payments of tax liability, and the filing and release of assessments and liens has been delegated extremely sparingly. Most employees of the taxing authority do not have authority to perform these functions on behalf of the collector. Questions involving any of those legal actions should be addressed directly to the collector, who has sole power to delegate his authority in those areas.

d. No action taken by any employee shall be binding upon the collector unless specific authority

has been delegated to the employee for the type of action taken.

Cost Price—

a. *Cost price* is defined by R.S. 47:301(3) to mean the lesser of:

i. the reasonable market value of the tangible personal property at the time it becomes susceptible to the use tax; or

ii. the actual cost of the article subject to the use tax liability;

iii. the lesser of the two values applies, regardless of the manner by which the property was acquired, whether by purchase, by manufacture, or otherwise, and regardless of whether acquired within the taxing jurisdiction or outside the taxing jurisdiction.

b. The statutory requirement for a comparison between reasonable market value and actual cost necessarily demands that both elements being compared be on a comparable basis.

c. For purposes of the comparison, the reasonable market value of tangible personal property is the amount a willing seller would receive from a willing buyer in an arms length exchange of similar property at or near the location of the property being valued. The amount which would be realized from a forced sale is not acceptable as the market value for this purpose.

d. In arriving at actual cost of tangible personal property for the purpose of the required comparison, all labor and overhead costs which are billed to the purchaser of the property, except for separately stated installation charges, are included. In the case of property manufactured; fabricated and/or altered to perform a specific function prior to the tax incident, every item of cost must be included. Thus, material, labor, overhead, and any other cost of any nature whatsoever must be included. However; labor, overhead, and other costs which represent services rendered to the property by the owner or his employees are not to be included. *Employees*, are defined to mean personnel who are on the property owner's payroll on a permanent basis, and not for the sole purpose of completing the immediate tasks of rendering their services to the property in question, and for which all payroll taxes are withheld and remitted by the property owner. The only transportation charges which are to be included in the cost are the transportation charges which can be identified as part of the acquisition cost of materials, and only in cases wherein the transportation was either performed or arranged by the vendor of the materials.

e. Although the point of tax incidence is at the location of use, the transportation charges for transporting the property from the owner's location of storage to the point of tax incidence is not included in the cost.

f. In the case of property withdrawn from stock by a manufacturer holding similar property for resale, no element of profit will be added to cost in calculating the amount to be used in comparison with market value.

g. Since installation is not included as a taxable service, the cost of installing tangible personal property should not be included in cost price if such cost were separately billed or accounted for at the time of installation so as to afford positive identification. In the absence of separate billing or accounting for installation costs, they will be included in arriving at actual cost. R.S. 47:301(3)(c) specifically provides that the separately stated charge made by oil field board road dealers for the initial furnishing and installation of board roads shall not be included in the cost price of the rental or sale.

h. Under R.S. 47:301(3)(i), machinery and equipment is excluded from cost price if the property is used to manufacture tangible personal property for sale to another or is used directly in the production, processing, and storing of food, fiber, or timber for sale; is used predominantly and directly in the manufacturing process or in the actual manufacturing for agricultural purposes; and is eligible for depreciation for federal income tax purposes. The exclusion is subject to a phase-in between July 1, 2004, and June 30, 2010. The exclusion applies only to manufacturing businesses that have been assigned, by the Louisiana Department of Labor, North American Industrial Classification System (NAICS) codes within the agricultural, forestry, fishing, and hunting Sector 11 or the manufacturing Sectors 31 through 33 as they existed in 2002. Businesses that are not registered with the Louisiana Department of Labor or that have not been assigned these NAICS codes are not eligible to claim this exclusion. The exclusion applies to state sales or use tax and local sales or use tax if the political subdivision has adopted this exclusion by ordinance.

i.(a). *Manufacturing*—putting raw materials through a series of steps that brings about a change in their composition or physical nature in order to make a new and different item of tangible personal property that will be sold to another. The manufacturing process begins when a raw material is introduced into the first machine or item of equipment that begins the change of the composition or physical nature of the raw materials into another product. The manufacturing process ends when the final product for

sale has been placed into the packaging that will normally be delivered to the final consumer.

(b). *Manufacturing for Agricultural Purposes*—the activities involved in the production, processing, and storing of food, fiber and timber for sale. Manufacturing for agricultural purposes begins when the soil or field is prepared for planting and ends when the harvested product is removed from the farm.

ii.(a). For machinery or equipment used to manufacture tangible personal property for sale, *used predominantly* means that more than 50 percent of the property's use is in the process of causing a change in the composition or physical nature of the raw materials that are to become a final product for sale.

(b). For machinery or equipment used to produce, process, and store food, fiber, or timber for sale, *used predominantly* means the property is used more than 50 percent of the time in the production, processing, and storing of food, fiber, or timber for sale. Equipment that remains idle between growing seasons is considered used for the production, processing, and storing of food, fiber, or timber during that time.

iii.(a). For a manufacturer of tangible personal property for sale, *used directly* describes the manner in which the machinery or equipment used in a plant facility alters the physical characteristics of the product during the manufacturing process. *Used directly* means that the machinery and equipment must have an immediate effect upon those products manufactured for ultimate sale to another person. Machinery and equipment used to manufacture intermediate products for internal use, such as manufacturing tools, internally consumed energy, and processing chemicals do not qualify for the exclusion.

(b). For a manufacturer of food, fiber, or timber for sale, *used directly* describes the manner in which the machinery or equipment is involved in the manufacturing for agricultural purposes. *Used directly* means that the machinery and equipment must have an immediate effect upon the production, processing, or storing of food, fiber, or timber. Examples of machinery and equipment used directly in manufacturing for agricultural purposes include machinery and equipment for planting, cultivating, fertilizing, spraying, harvesting, producing, processing, and storing of food, fiber, or timber for sale. This exclusion includes materials used in the construction of facilities used to store the food, fiber, or timber for sale. Machinery and equipment used directly in manufacturing for agricultural purposes does not include facilities used to store equipment.

iv. *Eligible for Depreciation*—the machinery or equipment is a principal component of the manufacturing process and has a substantially useful life beyond the taxable year, although it does not have to be capitalized and depreciated to qualify for exclusion. Examples of property considered eligible for depreciation are robotic welding machines in a vehicle manufacturing plant; pumps, valves, and compressors in a petrochemical plant; and tractors, trailers, and harvesting equipment on a commercial farm. Examples of items that do not qualify include nuts, bolts, gaskets, lubricants, filters, and fuel.

v. The following also qualify for exclusion as manufacturing machinery and equipment:

(a). computers and software that control, communicate with or control other computer systems that control, or control heating or cooling systems for machinery or equipment that manufactures tangible personal property for sale. Computers and software used for inventory and accounting systems or that control non-qualifying machinery and equipment do not qualify for the exclusion;

(b). machinery and equipment necessary to control pollution at a plant facility where pollution is produced by the manufacturing operation. For purposes of this exclusion, machinery and equipment necessary to control pollution includes equipment that reduces the volume, toxicity, or potential hazards of the waste products generated by the manufacturing operation or transforms the waste product for reuse in the manufacturing operation; and

(c). machinery and equipment used to test or measure raw materials, the property undergoing manufacturing, or the finished product, when such test or measurement is a necessary part of the manufacturing process. This includes machinery and equipment used to test the quality or quantity of the product for sale before, during, or after the manufacturing process.

vi. Persons acting as mandataries (agents) of manufacturers can claim the exclusion on purchases of qualifying machinery and equipment that will ultimately be used by a business assigned an eligible NAICS code by the Department of Labor. The mandatary must obtain the manufacturer's exclusion Form R-1071 and provide it, with a copy of the contract of mandate or the Department's Form R-1072 (Manufacturer's Designation of Mandate), to the seller at the time of purchase.

vii. Repairs to manufacturing machinery and equipment to keep the property in an ordinarily efficient working order generally do not qualify for exclusion under R.S. 47:301(3)(i) because neither the

labor nor the materials used in these repairs are eligible for depreciation for federal income tax purposes. However, the purchase of tangible personal property used in the repair would qualify for the exclusion provided the property is a major component of the manufacturing process and has a substantially useful life beyond the current period.

viii. Charges for labor and materials that are classified as capital improvements under Internal Revenue Service Regulations may be excluded as follows.

(a). Charges for labor are excluded from tax when performed on qualifying manufacturing machinery and equipment that is movable property at the time of the capital improvement. The vendor that provides the labor is allowed to treat the materials used as purchased for resale. All materials that are incorporated into qualifying machinery and equipment during the capital improvement qualify for exclusion from tax.

(b). Materials incorporated into qualifying manufacturing machinery and equipment that is immovable property at the time of the capital improvement are eligible for exclusion as follows.

(i). In instances when a manufacturer purchases materials that will become a component part of qualifying machinery or equipment, the materials are excluded from tax.

(ii). A repair vendor's purchases of materials that will become component parts of qualifying machinery or equipment are excluded from tax if the vendor has been designated as a mandatary of a manufacturer. The vendor must obtain the manufacturer's exclusion Form R-1071 and provide it, with a copy of the contract of mandate or the department's Form R-1072, to the seller at the time of purchase. Manufacturers that supply this form to their 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)(l)(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 to tax are those provided in R.S. 47:301(13), R.S. 47:315, and R.S. 47:337.34.

c. R.S. 47:301(13)(a) permits the total sales price of an article of tangible personal property to be reduced by the part of the selling price represented by an article traded in. The allowed deduction is not to exceed the market value of the item traded in. For this purpose, the market value is the amount a willing seller would receive from a willing buyer in an arms length exchange of similar property at or near the location of the property being traded.

d. R.S. 47:315 and R.S. 47:337.34 allow the total of sales prices of all items of tangible personal property subject to the tax to be reduced by the selling price of any article of property returned to the seller in such manner as to cancel the transaction. Repossessions of property sold on the installment basis because of failure by the purchaser to make agreed installment payments do not constitute a return of merchandise allowable as a deduction from gross sales and the sales price for the subsequent sale of repossessed property is fully taxable and must be included in gross sales.

e.i. For sales of certain property specifically exempted from all or a part of the state sales or use tax, see R.S. 47:301(10) with respect to isolated or occasional sales made by a person not engaged in the business of making such sales, R.S. 47:305 with respect to the sales of livestock, poultry and other farm products by the producer and the sales of agricultural products as a raw material for further processing before the sale at retail to the ultimate consumer, R.S. 47:305(D) and R.S. 47:305.1 through R.S. 47:305.52 for various other exemptions.

ii. For purposes of local sales or use tax, only those exemptions referenced in R.S. 47:337.9, R.S. 47:337.10, and R.S. 47:337.11 of the Uniform Local Sales Tax Code will apply.

Hotel—

a. The term *hotel* has been defined under R.S. 47:301(6) to be somewhat more restrictive than normally construed relative to the size of the establishment. Those establishments engaged in the business of furnishing sleeping rooms, cottages or cabins to transient guests that consist of six such accommodations at a single business location meet the statutory definition. If an establishment has fewer than

six sleeping rooms, cottages or cabins at a single business location for transient guests, the establishment is not a hotel for purposes of state and local sales or use tax. The statutory definition of *hotel* excludes facilities with fewer than the specified number of accommodations from collection of state and local sales or use tax.

b.i. In determining whether an establishment furnishes hotel services to transient guests, it is determined that a guest who transacts for the services of a hotel, regardless of the length of time that the hotel services are used, is considered a transient guest and the transaction is subject to sales tax. Where a hotel provides permanent residences to permanent occupants, the transaction is not subject to state and local sales or use tax. For the transaction to be considered a rental as a permanent residence to permanent occupants, the physical properties of the space must provide the basic elements of a home, including full-sized and integrated kitchen appliances and facilities. Additionally, the occupant must use the facilities of the hotel as a home with the intent to permanently remain. When all conditions of the above two standards are met, the occupant may be considered non-transient for the purposes of the state and local sales or use tax. A lease with a hotel for a period of not less than one year will be considered as evidence in support of permanent residency status, when the area rented contained the required physical properties of the hotel accommodations at the beginning of the lease. Proof that hotel rental contained the requisite physical properties of the hotel accommodations within a unit continuously rented by one person or family for a period greater than one year will be considered as evidence in support of permanent residency status. The department may require additional evidentiary support of claims of non-transient status.

ii. For the purposes of state and local sales and use tax collections under R.S. 47:301 et seq., a guest of a hotel is a natural person.

Lease or Rental—

a. General. The lease or rental of tangible personal property for a consideration in Louisiana is a transaction that is subject to the sales or use tax. The term *lease or rental* means the grant to another of the right to use and possess tangible personal property for a period of time and for a consideration without the transfer of title to the property. In a lease transaction, the lessee obtains possession or use of the tangible personal property, so that the lessee has enjoyment of the property during a certain time period. Re-leases or sub-leases and re-rentals or sub-rentals are also considered as leases or rentals.

b. Statutory Exclusions. Some arrangements or agreements for the use of tangible personal property are specifically excluded in R.S. 47:301(7) (b) through (h) from the definition of *lease or rental*. The types of arrangements or agreements that are not defined as leases or rentals are:

i. the lease or rental for re-lease or re-rental of property to be used in connection with the operating, drilling, completion, or reworking of oil, gas, sulfur, or other mineral wells. The lease or rental for re-lease or re-rental of casing tools, pipe, drill pipe, tubing, compressors, tanks, pumps, power units, and other drilling or related equipment qualifies for exclusion if the property is to be used for one of the specified purposes. The re-lease or re-rental to the ultimate user is not exempt;

ii. the lease or rental of property to be used in the performance of contracts with the United States Navy for the construction or overhaul of U.S. Naval vessels;

iii. the lease or rental of airplanes or airplane equipment by commuter airlines domiciled in Louisiana;

iv. the lease or rental of items that are reasonably necessary for the operation of free hospitals in Louisiana;

v. the lease or rental of certain limited items of educational materials for classroom instruction by approved private and parochial elementary and secondary schools;

vi. the lease or rental by Boys State of Louisiana, Inc., and Girls State of Louisiana, Inc., of materials for use by those organizations in their educational and public service programs for youth; and

vii. the lease or rental of motor vehicles by motor vehicle dealers and manufacturers for use in furnishing to customers in the performance of dealers' or manufacturers' warranty obligations or when the applicable warranty has lapsed and the leased or rented motor vehicle is provided at no charge;

viii. the lease or rental of machinery and equipment used predominantly and directly in the process of manufacturing tangible personal property for sale or used directly in the production, processing, and storing of food, fiber, or timber for sale. The meanings of *manufacturing*, *used predominantly*, and *used directly* provided in LAC 61:I.4301.C.*Cost Price* apply. This exclusion applies to state sales or use tax and local sales or use taxes if the political subdivision has adopted this exclusion by ordinance.

c. Transactions involving both the providing of tangible personal property and the performance of a service.

i. A lease or rental does not include providing tangible personal property with an operator who provides some additional service for a fixed or indeterminate period of time when the essence of the transaction is the performance of a service. The essence of the transaction is to provide a service when obtaining the tangible personal property is not an end in and of itself but rather furnishes the mechanism through which a service is provided.

ii. In order to determine the essence of a transaction involving both the performance of a service and the providing of tangible personal property, the facts and circumstances of each transaction must be examined. The following factors suggest, but are not necessarily conclusive, that the essence of the transaction is for the performance of a service:

(a). in order for the tangible personal property to perform as designed, the owner's operator maintains control over the property. This level of control by the owner's operator involves more than maintaining, inspecting, or setting-up the property;

(b). the contract between the owner of the property and the person receiving the services and property provides for the performance of a specific job that requires services for a certain number of hours or until completion of a specific job;

(c). the performance of the job using the tangible personal property is conducted in a manner determined by the owner of the property;

(d). the owner of the tangible personal property is responsible for choosing the particular piece of property to be used in the transaction; or

(e). the owner of the tangible personal property has a standard business practice of not allowing customers to rent the property separately from the services provided.

d. Revenue Sharing Arrangements. Agreements, joint ventures, arrangements, or partnerships between exhibitors (movie theater operators) and film distributors place significant restrictions on the use of the movies and on the proceeds from the use of the movies. These agreements are more in the nature of revenue sharing agreements and would not qualify as leases or rentals because of the restrictions placed on the party using the tangible personal property. An example of this arrangement would be an agreement between an exhibitor and a film distributor that not only stipulates that the proceeds from the showing of the film are to

be shared, but also specifies the amount to be charged to the movie patron, the number of and/or the time of showings, or the types or sizes of the facilities where the film is shown.

Local Sales or Use Tax—a sales or use tax imposed by a political subdivision whose boundaries are not coterminous with those of the state under the constitution or laws of the state authorizing the imposition of a sales and use tax.

Person—

a. The term *person* 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, 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 or 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 Taxpayer Services 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.

Political Subdivision—as provided in Article VI, Section 44(2) of the Constitution of Louisiana, a *political subdivision* means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions.

Purchaser—

a. *Purchaser* is defined to include not only persons who acquire tangible personal property in a transaction subject to state and local sales or use tax, but also any person who acquires or receives the privilege of using any tangible personal property, as in the case of property rented from others, or any person who receives services of a nature subject to tax.

b. The term is construed to complement *dealer* as defined in R.S. 47:301(4) and the collector may proceed against either for any tax due.

Retail Sale or Sale at Retail—

a. The major tax levied by state and local sales or use tax is imposed upon retail sales or sales at retail which contemplates the taxing of any transaction by which title to tangible personal property is transferred for a consideration, whether paid in cash or

otherwise, to a person for any purpose other than for resale.

b. While specific exclusions are provided in R.S. 47:301(10) with respect to sales of materials for further processing into articles for resale and with respect to casual, isolated, or occasional sales, and exemptions are provided for sales of particular items or classes of property by R.S. 47:305 and R.S. 47:305.1 through R.S. 47:305.52, the intent of the law is to classify every sale made to the final user or consumer for any imaginable purpose, other than for resale, as a retail sale or a sale at retail. For purposes of R.S. 47:301(10), whether a transaction is exempt from taxation by statute, jurisprudence, or by constitution has no bearing on classification of the transaction.

c. Sales made by and to vending machine operators are subject to tax as follows.

i. For purposes of state sales or use tax, sales of tangible personal property to operators of coin-operated vending machines are sales at retail. Thus, dealers who resell tangible personal property through coin-operated vending machines are treated as consumers of the articles of property they purchase for resale by vending machine and are liable for sales or use tax on their acquisition cost of the articles. The resale of the property through vending machines is not a retail sale and is not subject to state sales or use tax.

ii. For purposes of local sales or use tax, the sale of property through vending machines is a retail sale subject to sales tax.

d. Sales of materials for further processing into articles of tangible personal property for subsequent sale at retail do not constitute retail sales. This exemption does not cover materials which are used in any process by which tangible personal property is produced, but only those materials which themselves are further processed into tangible personal property. Whether materials are further processed or simply used in the processing activity will depend entirely upon an analysis of the end product. Although any particular materials may be fully used, consumed, absorbed, dissipated or otherwise completely disappear during processing, if it does not become a recognizable and identifiable component which is of some benefit to the end product, it is not exempt under this provision. The fact that a material remained as a recognizable component of an end product by accident because the cost of removal from the end product was prohibitive or for any other reason, if it does not benefit the property by its presence, it was not material for further processing and the sale is not exempt under this provision.

e. It is not the intention of state and local sales or use tax law to impose a tax on an isolated or occasional sale, frequently termed a *casual sale*, except with respect to the sale of motor vehicles, which are specifically covered by R.S. 47:303(B) and R.S. 47:337.15(B)(2). The primary consideration in determining whether a sale meets exemption requirements is whether the seller is in the business, or holds himself to be in the business, of selling merchandise or tangible personal property of similar nature, and not solely upon the frequency of the transactions. As examples, a firm engaged in the retail grocery business who sold a cash register originally acquired for their own use is not engaged in the business of selling cash registers, and the sale would be exempt; an office machine firm who sold carpeting acquired for their own use is not in the business of selling carpets, and the sale would be exempt; the periodic sale of articles by auction to recover storage, repair or labor liens unpaid by the owner of the property are exempt, provided the person forcing the sale does not hold himself out to be in the business of selling such merchandise. If the person causing the sale of property by auction takes title to the property prior to sale, it will be presumed that he has become engaged in the business and the sales will be taxable.

f. For state and local sales or use tax purposes, R.S. 47:301(10)(o) excludes the sale or purchase of equipment used in fire fighting by bona fide volunteer fire departments from the definition of *retail sale or sale at retail*. This applies to all equipment and special apparel necessary for fighting fires including communications systems, rubber suits, boots, helmets, axes, ladders, buckets, and the furnishings of a firehouse necessary for its operation such as sleeping and cooking facilities. Items purchased solely for the entertainment or recreation of volunteer firemen and meals or services furnished to a firehouse do not qualify for exclusion.

Retailer—

a. The term *retailer* as used in state and local sales or use tax law not only covers persons engaged in the *business* (as defined in R.S. 47:301(1) and LAC 61:I.4301.C.*Business*) of making retail sales or sales at retail (as defined in R.S. 47:301(10) and LAC 61:I.4301.C.*Retail Sale or Sale at Retail*), but also includes any person engaged in the business of transferring title to tangible personal property for a consideration to others for their use or consumption, or for distribution or for storage to be used or consumed within a taxing jurisdiction.

b. The term does not include persons who make isolated or occasional sales and who do not hold themselves out to be in the business of selling the

particular kind or type of property involved in a casual sale.

Sale—

a. R.S. 47:301(12) defines a *sale* as receiving or giving consideration in return for:

i. transferring title or ownership of tangible personal property;

ii. transferring possession of tangible personal property when the seller retains legal title to the property as security to ensure full payment of the selling price;

iii. fabricating tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work; and

iv. furnishing, preparing or serving tangible personal property that is consumed on the premises of the seller.

b. Fabricating or fabrication, for sales tax purposes, means to make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

c. A sale includes, but is not limited to, transactions where:

i. tangible personal property is transferred on a conditional basis (i.e., the customer has the option of returning the property and obtaining a refund of the sales price); and

ii. payment is made in a form other than money, as in a barter agreement, an exchange of property, or a promissory note.

d. When tangible personal property, like food, is served on the vendor's premises, the vendor is required to charge sales tax for:

i. the total price of preparing and serving the food even if these charges are billed separately; and

ii. tips and gratuities, if the vendor fails to separately list these charges on the bill, or if any portion of these amounts (except reimbursement for credit card processing fees) is retained by the vendor. Sales tax is not charged on tips and gratuities if they are separately stated and the total amounts collected are distributed to the employees that prepare and serve the food.

e. When tangible personal property, like food, is served at the customer's premises, sales tax is not charged for preparing and serving the food, provided these charges are separately stated from the *sale* of the food.

Sales of Services—

a. State and local sales or use tax law basically treats the furnishing of services and permission to use certain kinds of property the same as the sale of merchandise, and the law classifies those items as sales of services. Only those services specifically itemized under the provisions of R.S. 47:301(14)(a)-(g), are subject to state and local sales or use tax law. Telecommunications services defined in R.S. 47:301(14)(i) are subject only to state sales or use tax law.

b. The entire amount charged to a customer for any of the taxable items listed in R.S. 47:301(14)(a)-(g) is taxable if billed in a lump sum. Although the law provides many exemptions, unless they are specifically identified and segregated in billings to customers, the entire charge will be subject to the tax. Whether the consideration paid for sales of services is in the form of cash or otherwise is immaterial.

c. R.S. 47:301(14)(a) includes the furnishing of sleeping rooms, cottages, or cabins by hotels as sales of services. *Hotels* have been defined in R.S. 47:301(6) and the regulation issued under LAC 61:I.4301.C.*Hotel*. If an establishment meets the definition of a *hotel* under these laws, all charges for the furnishing of rooms in that establishment, other than to permanent full-time occupants, constitute sales of services.

d. Under the provisions of R.S. 47:301(14)(b) charges for admissions to places of amusement, entertainment, recreation, or athletic events, except those sponsored by schools, colleges, or universities, are classified as sales of services and as such are taxable. Note that only those events which are sponsored by schools, colleges, and universities are exempt. The same admissions charged by charitable, religious, social and other organizations are taxable, unless specifically exempted under some other provision.

i. Fees or other consideration and dues paid for the privilege of obtaining access to clubs are similarly classified as sales of services under this particular section of the law. Such dues, fees, or other consideration are taxable even though some personal services may be rendered by the owner of the club after access thereto has been obtained. Dues, fees, or other consideration paid for the privilege of having access to places of amusement, entertainment, athletic, or recreational facilities are also included in the definition of sales of service.

ii. The cost of stock or certificates of membership required to be purchased prior to

becoming a member of a club is not included in sales of services if the club member has the prerogative of disposing of the stock or certificate of membership when he ceases to utilize the club or facilities. If a member is required to surrender his stock or certificate of membership upon leaving a club, then the purchase price is considered nothing more than a fee for his participation and is classified as sales of services.

e. R.S. 47:301(14)(c) includes the furnishing of storage or parking privileges by auto hotels or parking lots as taxable sales of services. Parking lots are held to include facilities for the parking of transient trailers. For purposes of this determination, trailers will be presumed to be transient unless the parking space is engaged for a period in excess of 30 consecutive days at any one time and provided the trailers have not been removed from their wheels and placed on permanent foundation. Some hotels advertise free parking facilities for their guests and it is presumed that the room rate charged the guests is sufficiently high to cover the cost of parking, in which event the charge would be taxed under the provisions of R.S. 47:301(14)(a). This charge is taxable under R.S. 47:301(14)(a) if included in the room rate or under R.S. 47:301(14)(c) if billed separately.

f. R.S. 47:301(14)(d) provides that the furnishing of printing or overprinting, lithograph and multilith, blue printing, photostating, or other similar services of reproducing written or graphic matter, shall be included under sales of services. Generally, the activities of persons engaged in this type of business fall within two basic categories. The first is the production of tangible personal property, whereby raw materials are converted into items such as circulars, books, envelopes, folders, posters and other types of merchandise which are sold directly to their customer. These transactions fall within the definition of *sales* at R.S. 47:301(12) and are taxable as sales of tangible personal property. The materials used by the printer in the production of the end product are covered by the exemption provided in R.S. 47:301(10), and are exempt to the printer at the time of purchase by him. In addition, R.S. 47:305.44 and R.S. 47:337.9(D)(20) provide an exemption for raw materials and certain consumables which are consumed by a printer. The second basic business activity engaged in by printers which subject them to the provisions of the sales tax law is the furnishing of services. This classification covers printing done on materials furnished by the printer's customers which are returned to the customer upon completion of the printer's service. In cases where plates, mats, photographs, or other similar items are used in the performance of either a pure service as intended by R.S. 47:301(14)(d) or whether in the production of tangible personal property, if those

materials are delivered to the printer's customer and a charge therefore is made, this transaction constitutes a sale of tangible personal property and is taxable. In cases where the materials are delivered to the customer and no charge is made, it is presumed that the charge for services or the charge for other printed matter delivered to the customer is sufficiently high to include the billing for those materials.

g. *Revised Statute 47:301(14)(e)* defines laundry, cleaning, pressing, and dyeing services; including the cleaning and renovation of clothing, furs, furniture, carpets, and rugs; as taxable services.

i. Sales of services under R.S. 47:301(14)(e) includes cleaning, pressing, and dyeing objects made primarily of materials like fabric, fur, leather, or cloth by cleaners, laundries, washaterias, and other cleaning establishments. Examples of taxable services include cleaning the following items:

- (a). clothing;
- (b). furniture;
- (c). carpets;
- (d). linens;
- (e). pillows; and
- (f). draperies.

ii. Cleaning objects made primarily of metal, wood, plastic, glass, or other nonfabric material are not subject to tax under R.S. 47:301(14)(e). Examples of services that are not taxable include cleaning the following items:

- (a). automobiles;
- (b). barges;
- (c). pipes;
- (d). tanks; and
- (e). jewelry.

iii. Cleaning services performed to restore tangible personal property to a proper working condition, as when cleaning the inner workings of a watch or the fuel injectors in an engine, are considered repairs under R.S. 47:301(14)(g) and subject to tax.

iv. Taxable cleaning services under R.S. 47:301(14)(e) do not include transactions when customers personally operate cleaning equipment for a fee. An example of this would be patrons' use of commercial coin-operated washing machines at a laundromat. However, taxable leases or rentals exist when customers acquire possession or use of the cleaning equipment in accordance with R.S. 47:301(7). An example of this would be the rental of a carpet shampooer for use at home.

v. *Revised Statute 47:301(14)(e)* also defines the furnishing of storage space for clothing, furs, and rugs as *sales of services*. All charges pertaining to the furnishing of storage space for these items are included in the taxable amount regardless of whether the operator is engaged solely in furnishing storage space or the activity is incidental to another *business*.

h. R.S. 47:301(14)(f) defines the furnishing of cold storage space and preparing tangible personal property for cold storage as services subject to sales and use tax.

i. *Cold Storage Space*—a space that is artificially frozen or refrigerated to prevent the stored items from perishing or deteriorating.

ii. *Furnishing of Cold Storage Space*—transactions in which cold storage space is provided to customers for a consideration when the owner or operator of the cold storage space designates specific areas or volumes of space for the customers' use. The customers are required to compensate for the space allotted regardless of the degree of use of the space.

iii. Transactions that are not considered the furnishing of cold storage space for sales tax purposes include:

(a). storage space in air-conditioned warehouses or mini-storage units that are cooled to a normal room temperature level; and

(b). storage space in facilities where the possession of customers' property is transferred to the owner or operator of a cold storage space for retention and safekeeping as in a bailment or deposit transaction.

iv. *Preparing Tangible Personal Property for Cold Storage*—all activities necessary to prepare the product to be stored for cold storage. This includes but is not limited to packaging, wrapping, containerizing, cleaning or washing.

(a). Preparing tangible personal property for cold storage is included in sales of services only if it is incidental to the operation of cold storage facilities.

(b). Separately stated charges for handling the property to be placed in or removed from the facility are not subject to the sales tax. If handling charges are included in the price for the furnishing of cold storage space or preparing tangible personal property for cold storage, tax is due on the entire amount.

i. R.S. 47:301(14)(g)(i) includes as sales of services the furnishing of repairs to tangible personal property. By clear illustration in the statute, both repair and routine servicing of all kinds of tangible personal property are included as taxable services. For state sales or use tax purposes only, repairs performed within Louisiana on tangible personal property are taxable sales of services except for repaired property which is returned to a customer located in another state by common carrier or by the repair dealer's vehicle. The charge for repairs to property returned to a customer's location in the offshore area are taxable regardless of the mode of transportation. Repair services performed outside the state of Louisiana to property which is normally or permanently located here except for its removal for repair, would not be taxable for state sales or use tax purposes. However, if property is shipped outside the state for repairs, any additions made thereto may subject the property to the use tax imposed by R.S. 47:302(A)(2) upon its return to the state. If personnel normally attached to a repair installation within the state go outside the state, for instance, to a location offshore which is clearly outside the limits of the state of Louisiana to perform repairs, those repairs are not taxable.

i. Prepaid repairs such as maintenance contracts and other similar transactions are included in sales of services, if the tangible personal property to which they apply is located in Louisiana and the agreement calls for any necessary repairs to be performed at the location of the property.

ii. R.S. 47:301(14)(g)(ii) provides that tangible personal property, for purposes of sales of services, shall include machinery, appliances, and equipment which have been declared immovable under the provisions of Article 467 of the Louisiana Civil Code. It also includes things incorporate into land, buildings, or other construction, which have been separated from the land, buildings, or other construction. Similarly, the component parts of buildings and other construction, as defined by Article 466 of the *Louisiana Civil Code*, are movable property when they are separated from the building or other construction, and repairs thereto are includable in taxable sales of services.

Sales Price—

a. R.S. 47:301(13)(a) defines *sales price* as the total amount, including cash, credit, property, or services, that is received or paid for the sale of tangible personal property. Any part of the sales price that is related to costs incurred by the vendor to bring the product to market or make the product available to customers becomes part of the tax base and is subject

to sales tax even if a separate charge is made on the invoice.

i. Costs included in the sales price are:

- (a). materials used;
- (b). resale inventory;

(c). freight or shipping costs from the supplier to the vendor, or from the vendor to the customer where the transportation by the vendor is an essential or necessary element of the agreement of sale, as would normally be true in transactions for the sale and delivery of ready-mixed concrete or similar products:

(i). these transportation expenses are incurred by a seller in acquiring tangible personal property for sale or in transporting tangible personal property to the place of sale and form part of the seller's overhead; and

(ii). cannot be excluded from the taxable sales price even when separately stated to the purchaser;

- (d). utilities;
- (e). insurance;
- (f). financing for business operations;
- (g). labor;
- (h). overhead;
- (i). service costs:

(i). handling charges are considered service costs; and

(ii). are distinguishable from charges for transportation under the definition of sales price and related court decisions;

(j). costs incurred by a vendor that are charged for the procurement, or purchasing, of tangible personal property on behalf of the customer; and

(k). excise taxes imposed on the producer, processor, manufacturer or importer, as these taxes become a part of the dealer's cost.

ii. The following are examples of charges not considered part of the sales price because they are not related to costs incurred by the vendor to bring the product to market:

(a). freight, shipping, or delivery charges from the vendor or the vendor's agent directly to the customer after the sale has taken place when the following two conditions are met:

(i). the seller of the tangible personal property separately states the charges for the actual delivery or transportation of the sold property from the place of the sale to the destination designated by the purchaser;

(ii). on the invoices for the sale and transportation of tangible personal property, the place of the sale of the property, and the fact that the transportation is rendered subsequent to the sale and purchase and for the buyer's account, must be clearly determinable;

(b). federal retailers' excise tax that must be collected from the consumer or user:

(i). if these taxes are billed to the user or customer separately, they should be excluded from the tax base;

(ii). however, if the retailers' excise tax is not billed separately, the total selling price, including the excise tax, is taxable.

iii. R.S. 47:301(13)(a) specifically excludes the following charges from the definition of *sales price* provided they are separately stated:

(a). the market value of an item traded in on the sale, as specified in R.S. 47:301(13)(a):

(i). the trade-in item must be one the vendor would normally accept in the course of business and must be similar to the item being purchased. An example of this is trading in a motorcycle on the purchase of a pickup truck;

(ii). exchanging an item that is not similar to the item being purchased will be treated as a barter or exchange agreement as described in R.S. 47:301(12). An example of this would be the owner of a clothing store providing suits to the owner of an appliance store in return for a dishwasher. In this instance, each selling party must report the transaction on his sales tax return;

(iii). the transfer of ownership of the trade-in must occur simultaneously with the sales transaction;

(iv). the trade-in value must be established prior to the sale;

(b). interest charges not exceeding the legal interest rate to finance the sale;

(c). service charges for financing, up to 6 percent of the amount financed;

(d). cash discounts allowed by the vendor if the customer takes advantage of the discount;

(e). labor to install the tangible personal property;

(f). charges by a seller for installing property that he has sold:

(i). installing includes the charge by the seller of movable property for setting up that property on or the attachment of that property to other movable or immovable property that is already owned or possessed by the purchaser;

(ii). examples of the types of installation charges that are excludable from sales price under this provision are the charges for setting up an appliance in a home or business, or the first-time attachment of a new mobile telephone, new radio, or new speakers to a customer-owned vehicle that previously was without such property;

(iii). exclusion is not intended, however, for the charges for removal and replacement of worn or malfunctioning components of movables, such as the removal and replacement of tires and batteries in vehicles. These types of services constitute repairs to movables that are defined in R.S. 47:301(14)(g) as taxable "sales of services";

(g). charges to set up the property on the taxpayer's premises;

(h). charges for remodeling or repairing the property sold if:

(i). these services are provided prior to the sale;

(ii). the vendor sends the property to another dealer or service provider for remodeling or repair and pays sales taxes on these taxable services; and

(iii). the services are separately itemized and identified in the billing to the customer;

(iv). if the remodeling or repairing is performed by the vendor either:

[a]. prior to the sale; or

[b]. after the sale but before the customer takes possession of the item;

[c]. then these would be costs of the vendor incurred to bring the product to market or make a product available to customers and would become part of the tax base;

(v). any services performed after the property is in the possession of the customer are taxable under R.S. 47:301(14).

iv. In all instances where an expense is required to be separately stated, the effect of

combining the charge with another taxable item included in the sales price will subject the entire amount to sales tax.

v. R.S. 47:301(13)(b) provides an exclusion from sales price for the amounts of cash discounts and rebates that manufacturers and vendors of new vehicles offer to purchasers of vehicles.

(a). The exclusion will apply both to the discounts and rebates that are based on vehicle make and model, as well as to the discounts and rebates that are based on customer usage of manufacturer-issued credit cards.

(b). In order for this exclusion to apply, the customer must assign the discount or rebate to the selling dealer of the vehicle, so that the discount or rebate results directly in a reduction of the price to be paid for the vehicle.

(c). In cases where a customer accepts a rebate or discount in cash, and does not assign the amount to the selling dealer as a deduction from the listed retail price of the vehicle, the exclusion from sales price will not apply.

vi. R.S. 47:301(13)(c) excludes from taxable sales price the first \$50,000 paid for new farm equipment used in poultry production.

(a). This exclusion applies only to the price of property that is identifiable at the time of sale as being for use in poultry production.

(b). The exemption is available only to commercial producers who sell poultry or the products of poultry in commercial quantities.

(c). The portion of the sales price of any item of commercial farm equipment in excess of \$50,000 will be included in the taxable sales price.

vii. R.S. 47:301(13)(e) excludes the value of payments made directly to retail dealers by manufacturers seeking a reduction in the price retail dealers charge for the manufacturers' products. These payments, often called buy downs, are applied by the retail dealer to the selling prices of the manufacturer's products. Retail dealers must collect the tax on the discounted sales price after applying the manufacturers' payments.

viii. In cases where all or a part of the purchase price of tangible personal property is paid to the selling dealer by the presentation of a coupon, the determination of the taxable sales price will depend on the type of coupon that is presented.

(a). Manufacturer's coupons that the selling dealer accepts from the customer and can be

redeemed through a manufacturer or coupon agent are not allowed as a reduction of the sales price. Because the retailer's total compensation includes the amount paid by the customer after presenting the coupon and the amount reimbursed by the manufacturer for the coupon's face value, the tax is based on the actual selling price of the item before the discount for the coupon.

(b). The retailer's own coupons, which the selling dealer is unable to redeem through another party, provides a cash discount that can be excluded from the sales price. The sales tax on a sale involving this type of coupon will be computed on the price paid after an allowance for the selling dealer's coupon discount.

ix. R.S. 47:301(13)(f) provides that sales price excludes any consideration received, given, or paid for the performance of funeral directing services. The term *funeral directing services* is defined and further discussed at R.S. 47:301(10)(s):

(a). no exclusion from taxation is allowed on the sale, lease, or rental, of tangible personal property by funeral directors to customers; or

(b) on the purchase, lease, use, consumption, distribution, or storage for use of tangible personal property by funeral directors in connection with their performance of professional services.

x. R.S. 47:301(13)(k) excludes machinery and equipment used predominantly and directly in the process of manufacturing tangible personal property for sale or used directly in the production, processing, and storing of food, fiber, or timber for sale from the sales price. For purposes of sales price, the interpretations provided under LAC 61:I.4301.C.*Cost Price* will apply. This exclusion applies to state sales tax and local sales taxes if the political subdivision has adopted this exclusion by ordinance. To determine sales price subject to tax, this exclusion is deducted from the total amount charged to the customer after allowances for trade-ins and before any exemptions provided elsewhere in the law.

b. R.S. 47:301(13)(d) provides that, in the case of the sale by a manufacturer of refinery gas or other petroleum byproducts that are to be used by the purchasers as other than feedstock, the taxable sales price shall be the greater of:

i. the actual sales price of the byproducts;
or

ii. the average monthly spot market price per thousand cubic feet of natural gas delivered into

pipelines in Louisiana, as reported by the Natural Gas Clearing House at the time of such sale.

State Sales or Use Tax—a sales or use tax imposed by the state under Chapters 2, 2-A, or 2-B of Subtitle II of Title 47 of the Revised Statutes of 1950, as amended, or by a political subdivision of the state whose boundaries are coterminous with those of the state.

Storage—for state sales or use tax purposes only, since storage for use or consumption of tangible personal property is taxed under the provisions of R.S. 47:302, R.S. 47:321, and R.S. 47:331, the term *storage* is defined herein to exclude storage of property which will later be sold at retail and taxed because of the sale. The term does not require the keeping of property in a warehouse but includes the keeping or retention or stockpiling of property in any manner whether indoors or out. If property has come to rest in this state and will later be used or consumed here, it meets the definition of *storage*.

Tangible Personal Property—

a. R.S. 47:301(16)(a) defines *tangible personal property* as personal property that can be seen, weighed, measured, felt, touched, or is perceptible to the senses. The Louisiana Supreme Court has ruled that tangible personal property is equivalent to corporeal movable property as defined in Article 471 of the *Louisiana Civil Code*. The *Louisiana Civil Code* describes corporeal movable property as things that physically exist and normally move or can be moved from one place to another. Examples of tangible personal property include but are not limited to:

- i. durable goods such as appliances, vehicles, and furniture;
- ii. consumable goods such as food, cleaning supplies, and medicines;
- iii. utilities such as electricity, water, and natural gas; and
- iv. digital or electronic products such as “canned” computer software, electronic files, and “on demand” audio and video downloads.

b. The following items are specifically defined as *tangible personal property* by law:

- i. for state sales or use tax purposes only, prepaid telephone cards and authorization numbers; and
- ii. for state and local sales or use tax purposes, work products consisting of the creation, modification, updating, or licensing of canned computer software.

c. Repairs of machinery, appliances, and equipment that have been declared immovable under Article 467 of the *Louisiana Civil Code* and things that have been separated from land, buildings, or other constructions permanently attached to the ground or their component parts as defined by Article 466 of the *Louisiana Civil Code* are treated as taxable repairs of tangible personal property under R.S. 47:301(14)(g).

i. Things are considered separated from an immovable when they are detached and repaired at a location off the customer's immediate property where the immovable is located or at the repair vendor's facility, even if that facility is on property owned, leased, or occupied by the customer. If the thing is detached from the immovable and repaired on the customer's immediate property, it is not considered separated from the immovable and the repair would not be subject to tax.

ii. The customer's immediate property is the tract of land that is owned, leased, or occupied by the customer where the immovable is located.

iii. Tracts of land owned, leased, or occupied by the customer that are separated only by a public road or right-of-way from the land where the immovable is located are also considered the customer's immediate property.

d. Tangible personal property does not include:

i. incorporeal property such as patents, copyrights, rights of inheritance, servitudes, and other legal rights or obligations;

ii. work products presented in a tangible form that have worth because of the technical or professional skills of the seller. Work products are considered non-taxable technical or professional services if the tangible personal property delivered to the client is insignificant in comparison to the services performed and there is a distinction between the value of the intangible content of the service and the tangible medium on which it is transferred. These do not include items that have intrinsic value, like works of art, photographs, or videos. Also, documents that are prepared or reproduced without modification are considered tangible personal property. Examples of sales of technical or professional services that are transmitted to the customer in the form of tangible personal property include but are not limited to:

- (a). audience, opinion, or marketing surveys;
- (b). research or study group reports;
- (c). *business* plans; and

- (d). investment analysis statements;
- iii. property defined as immovable by the Louisiana Civil Code.
- e. Items specifically excluded from the definition of *tangible personal property* include:
 - i. stocks, bonds, notes, or other obligations or securities;
 - ii. gold, silver, or numismatic coins of any value;
 - iii. platinum, gold, or silver bullion having a total value of \$1,000 or more;
 - iv. proprietary geophysical survey information or geophysical data analysis furnished under a restrictive use agreement even if transferred in the form of tangible personal property;
 - v. parts and services used in the repairs of motor vehicles if all of the following conditions are met:
 - (a). the repair is performed by a dealer licensed by the Louisiana Motor Vehicle Commission or the Louisiana Used Motor Vehicle and Parts Commission;
 - (b). the repair is performed subsequent to the lapse of an original warranty that was included in the taxable price of the vehicle by the manufacturer or the seller;
 - (c). the repair is performed at no charge to the owner; and
 - (d). the repair charge is not paid by an extended warranty plan that was purchased separately;
 - vi. pharmaceuticals administered to livestock used for agricultural purposes as defined by the Louisiana Department of Agriculture and Forestry under LAC 7:XXIII.103; and
 - vii. work products of persons licensed under Title 37 of the Louisiana Revised Statutes such as legal documents prepared by an attorney, financial statements prepared by an accountant, and drawings and plans prepared by an architect or engineer for a specific customer. However, if these items are reproduced without modification, they are considered tangible personal property and subject to sales or use tax.
- f. Manufactured or mobile homes purchased in or delivered from another state to Louisiana after June 30, 2001, are excluded from the definition of *tangible personal property* for state sales or use taxes. Manufactured or mobile homes purchased in or delivered from another state to Louisiana after

December 31, 2002, are excluded from the definition of *tangible personal property* for local sales or use taxes when the buyer certifies the manufactured or mobile home will be used as a residence.

- i. For state sales taxes, the entire price paid for used manufactured or mobile homes and 54 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax.

- ii. For local sales taxes when the buyer certifies the manufactured or mobile home will be used as a residence:

- (a). after December 31, 2002, and before January 1, 2004—25 percent of the price paid for used manufactured or mobile homes and 13 1/2 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax;

- (b). after December 31, 2003, and before January 1, 2005—50 percent of the price paid for used manufactured or mobile homes and 27 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax;

- (c). after December 31, 2004, and before January 1, 2006—75 percent of the price paid for used manufactured or mobile homes and 40 1/2 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax; and

- (d). after December 31, 2005—the entire price paid for used manufactured or mobile homes and 54 percent of the price paid for new manufactured or mobile homes are excluded from the definition of *tangible personal property* and not subject to tax.

- iii. Manufactured or mobile homes are structures that are transportable in one or more sections, built on a permanent chassis, designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and include plumbing, heating, air-conditioning, and electrical systems. The units must be either 8 body feet or more in width or 40 body feet or more in length in the traveling mode, or at least 320 square feet when erected on site. These size requirements may be disregarded if the manufacturer voluntarily certifies to the distributor or *dealer* at the time of delivery that the structure conforms to all applicable federal construction and safety standards for manufactured homes.

iv. Manufactured or mobile homes do not include modular homes that are not built on a chassis, self-propelled recreational vehicles, or travel trailers.

g. The sale or purchase of custom computer software on or after July 1, 2002, and before July 1, 2005, is partially excluded, and on or after July 1, 2005, completely excluded, from the definition of *tangible personal property* under R.S. 47:301(16)(h). This exclusion applies to state sales tax, the sales tax of political subdivisions whose boundaries are coterminous with the state, and the sales tax of political subdivisions whose boundaries are not coterminous with the state that exempt custom computer software by ordinance as authorized by R.S. 47:305.52. Custom computer software is software that is specifically written for a particular customer or that adapts prewritten or “canned” software to the needs of a particular customer.

i. Before July 1, 2002—purchases of prewritten or canned software that are incorporated into and resold as a component of custom computer software before July 1, 2002, are considered purchases of tangible personal property for resale. Use tax is not due on these purchases and any sales tax paid is eligible for tax credit against the tax collected on the retail sale of the custom software.

ii. Phase-In Period—the sales tax exclusion for custom computer software will be phased in at the rate of 25 percent per year beginning on July 1, 2002. During the phase-in period, purchases of prewritten or canned software that are incorporated into and resold as a component of custom computer software will be considered a purchase for resale according to the applicable sales tax exclusion percentage in effect at the time of sale. The custom software vendor must pay sales tax on the purchase price of the canned software and may claim tax credit for the percentage that is resold as tangible personal property. If 75 percent of the sales price of the custom computer software is taxable, the vendor is allowed a tax credit for 75 percent of tax paid on the canned software purchase. Conversely, if sales tax was not paid by the custom software vendor on the purchase of canned software that is incorporated into custom software, use tax will be due on the percentage that is not considered to be a purchase for resale. The sales tax exclusion percentage will increase each year during the phase-in period and guidelines on the phase in of this exclusion will be published in a revenue ruling.

iii. July 1, 2005—the purchase of prewritten or canned software that is incorporated into and resold as a component of custom computer software sold on or after July 1, 2005, will be considered the purchase

of tangible personal property for the personal use of the custom software vendor and subject to sales or use tax.

h. The first purchase of digital television conversion equipment by a taxpayer that holds a Federal Communications License issued pursuant to 47 CFR Part 73 is excluded from the definition of *tangible personal property* for state sales tax and local sales tax if the local authority adopts this exemption by ordinance.

i. *Digital Television Conversion Equipment*—items listed in R.S. 47:301(16)(i).

ii. *First Purchase*—the first purchase of each item from the categories of digital television conversion equipment listed in R.S. 47:301(16)(i).

iii. License holders may obtain a credit for sales taxes paid on the first purchase of digital television conversion equipment made after January 1, 1999, and before June 25, 2002, by submitting a request on forms prescribed by the Department of Revenue. Guidelines for claiming the credit will be published in a revenue ruling.

iv. License holders may obtain an exemption certificate from the Department of Revenue and make first purchases of qualifying digital equipment on or after June 25, 2002, without paying state sales tax or local sales tax in those local jurisdictions that elect to provide an exemption for these purchases. Sales tax paid on first purchases of qualifying digital equipment on or after June 25, 2002, may be refunded as tax paid in error.

v. License holders must submit to the Department of Revenue an annual report of the purchases of digital equipment for which exclusion has been claimed that includes all information required by the Department to verify the value of exclusion claimed. Guidelines for submitting this report will be published in a revenue ruling.

Taxing Authority—the state of Louisiana, a statewide political subdivision, and any political subdivisions of the state authorized to levy and collect a sales or use tax by the Constitution or laws of the state of Louisiana. The state of Louisiana and political subdivisions whose boundaries are coterminous with those of the state are state taxing authorities. Political subdivisions whose boundaries are not coterminous with those of the state are local taxing authorities.

Taxing Jurisdiction—the geographic area within which a taxing authority may legally levy and collect a sales or use tax.

Use—

a. *Use* under state and local sales or use tax law is intended to include not only the commonly accepted concept of *use* but also to cover the consumption, the distribution, or the storage, or the exercise of any right of power over tangible personal property. Since tax is imposed on the sale of tangible personal property, *use* has been defined to specifically exclude property sold at retail in the regular course of business.

b. Neither does use apply to materials or property which are combined with other materials to form an article of tangible personal property which will subsequently be sold at retail. In this instance, the tax on those materials will be collected on the retail sale. It is necessary, however, that materials excluded from the definition of use because they were consumed in creating a new piece of tangible personal property be identifiable in new property and not merely expended during the course of the processing. All such expended materials have been used by the processor or manufacturer and are taxable to him at the time of purchase by him.

Use Tax—the tax paid under state and local sales or use tax law for the use, consumption, distribution, or storage for use, distribution, or consumption within a taxing jurisdiction in lieu of sales taxes. This is the tax required to be paid if no sales tax has been paid on tangible personal property which is used, consumed, distributed, or stored for use within the taxing jurisdiction.

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 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002), LR 28:2554, 2556 (December 2002), LR 29:186 (February 2003), LR 30:1306 (June 2004), LR 30:2870 (December 2004), LR 31:697 (March 2005), LR 32:111 (January 2006), LR 32:865 (May 2006).

§4404. Seeds Used in Planting of Crops

A. The sale at retail of seeds for use in the planting of any kind of crops is specifically exempt from state and local sales or use tax. Crops are construed to mean the planting of a sufficient quantity of seed to result in a harvest of recognizable commercial value depending upon the product being planted. It is not intended to cover the planting of a garden to produce food for the

personal consumption of the planter and his family. Neither is it intended to cover seed used in the planting of growth for landscape purposes unless the planter is engaged in the business of harvesting those plants and selling them in the commercial market. As an example, seeds used in planting grasses which will be harvested and sold would constitute seeds used in the planting of crops. Seeds such as alligator grass or millet planted in ponds used for the production of crawfish would also come within this exemption because the planted crop will be consumed or harvested by the crawfish which will be sold commercially by the farm operator. To the contrary, various grass seeds used to plant ponds to provide food and promote the growth of fish contained in the pond primarily for recreational purposes would not come within this exemption. If the pond is converted to the commercial production of fish, any seeds used for the promotion or health of the commercial fish crop would come within the exemption.

B. It is not necessary that the farm operation result in a net profit or that a given acreage of any particular crop be planted. The only requirement is that the planting be of sufficient quantity to be construed as a crop.

C. Any dealer selling seeds at retail for use in the planting of crops must be able to identify the customer to whom the seeds were sold and must know of his own personal knowledge that the purchaser was engaged in an activity which would make the seeds exempt under these provisions or in the alternative, he must have a signed statement from the purchaser to that effect. If the dealer is unable to identify the purchaser and cannot support the fact that the seeds were sold for the planting of crops as intended herein, he will be held liable for the tax on the sales.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.3, R.S. 47:337.2, R.S. 47:337.9, 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, Policy Services Division, LR 31:99 (January 2005).

§4408. Pesticides Used for Agricultural Purposes

A. General. R.S. 47:305.8 provides an exemption from state and local sales or use tax for the sale at retail of pesticides used for agricultural purposes, including particularly, but not limited to, insecticides, herbicides, and fungicides used for agricultural purposes.

B. Definitions

Agricultural Purposes—any purpose directly connected with the operation of any farm, including poultry, fish, and crawfish farms, ranch, orchard or any other operation by which products are grown on the land in sufficient quantity to constitute a commercial operation. The exemption is not intended to cover the sale of pesticides for use in private family vegetable gardens or in protecting ornamental plants used for landscape purposes.

Pesticides—include any preparation useful in the control of insects, plant life, fungus, or any other pests detrimental to agricultural crops, including the control of animal pests that meets the definition of a pesticide in accordance with the Department of Agriculture and Forestry of the state of Louisiana under R.S. 3:3202. Qualifying pesticides must be registered with the U.S. Environmental Protection Agency (EPA) and the Louisiana Department of Agriculture and Forestry or any other appropriate governmental agency and must carry a valid EPA FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act) number issued by the U.S. Environmental Protection Agency or a special label number assigned by the Louisiana Department of Agriculture and Forestry. The exemption also includes any solution mixed with a qualifying pesticide to allow for the proper distribution and application of the pesticide, including but not limited to crop oils, surfactants, adjuvants, emulsions, soaps, and drift agents.

C. Dealer Requirements. The dealer who fails to collect sales tax on the sale of pesticides covered by this Section must be able to show that they were used for legitimate commercial agricultural purposes as defined herein. The dealer must also be able to fully identify any purchaser from whom the tax was not collected. In the absence of this information, the dealer will be liable for the tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.8, R.S. 47:337.2, R.S. 47:337.9, 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 21:401 (April 1995), amended by the Department of Revenue, Policy Services Division, LR 31:95 (January 2005).