

## NOTICE OF INTENT

### Department of Revenue Tax Policy and Planning Division

#### Payment of Sales and Use Taxes by Persons Constructing, Renovating, or Altering Immovable Property (LAC 61:I.4372)

Under the authority of R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Tax Policy and Planning Division, proposes to amend LAC 61:I.4372.

The purpose of these amendments is to provide additional clarification regarding when immovable property contractors are required to collect and remit sales and use tax when constructing, renovating, or altering immovable property. The proposed amendments provide that when sales tax is collected by the immovable property contractor and remitted to the department, there is a legal presumption that the parties intended there to be a sale of tangible personal property. It also establishes requirements to overcome that presumption.

#### Title 61 REVENUE AND TAXATION

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

#### Chapter 43. Sales and Use Tax

#### §4372. Payment of Sales and Use Taxes by Persons Constructing, Renovating, or Altering Immovable Property

A. – B. ...

C. Except as provided in Subsection D of this Section, sales of tangible personal property, including materials, supplies, and equipment, made to contractors, or their contractors, subcontractors, or agents, for use in the construction, alteration, or repair of immovable property are presumed to be sales to consumers or users, not sales for resale, and therefore the contractor is liable for the taxes imposed by this Chapter on their purchases or importations of such tangible personal property. This presumption may be rebutted by a showing of credible evidence, such as a writing signed by the contractor's customer stating that title and/or possession of itemized articles of tangible personal property were transferred to the customer prior to their being made immovable.

D. In the event the contractor, subcontractor, or agent has collected sales tax from its customer to be remitted to the secretary of the Department of Revenue, such collection shall create a presumption that the parties intended title and/or possession of itemized articles of tangible personal property to be transferred to the customer prior to their being made immovable. To overcome this presumption, the customer must present credible evidence that such collection was in error and was contrary to the true intent of the parties. Such credible evidence shall include

a writing signed by the contractor stating that title and/or possession of itemized articles of tangible personal property were transferred to the customer after their being made immovable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 38:1995 (August 2012), amended by the Department of Revenue, Tax Policy and Planning Division, LR 50:

### **Family Impact Statement**

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature. Implementation of this proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of these proposed rules will have no known or foreseeable effect on:

1. The stability of the family.
2. The authority and rights of parents regarding the education and supervision of their children.
3. The functioning of the family.
4. Family earnings and family budget.
5. The behavior and personal responsibility of children.
6. The ability of the family or a local government to perform this function.

### **Poverty Impact Statement**

The proposed Rule will have no known impact on poverty as described in R.S. 49:973.

### **Small Business Analysis**

It is anticipated that the proposed Rule should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting these proposed amendments to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

### **Provider Impact Statement**

The proposed Rule will have no known or foreseeable effect on:

1. The staffing level requirements or qualifications required to provide the same level of service.
2. The total direct and indirect effect on the cost to the provider to provide the same level of service.
3. The overall effect on the ability of the provider to provide the same level of service.

### **Public Comments**

Interested persons may submit written data, views, arguments, or comments regarding this proposed rule to Brandea Averett, Director, Tax Policy and Planning Division by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. Written comments will be accepted until 4:30 p.m., February 26, 2024.

### **Public Hearing**

A public hearing will be held on February 27, 2024 at 9:00 a.m. in the River Room, on the 7th Floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802. Should individuals with a disability need an accommodation in order to participate, contact Brandea Averett at the address given above in the Public Comments section, by email at [LDRadarequests@la.gov](mailto:LDRadarequests@la.gov) or at by phone at (225) 219-2784.

Kevin J. Richard, CPA  
Secretary, Department of Revenue

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULE**

**RULE TITLE:** Sales Tax – Immovable Property Contractors

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The purpose of the proposed amendments is to provide additional clarification regarding when immovable property contractors are required to pay and remit sales and use tax when constructing, renovating, or altering immovable property.

Implementation of this proposal will not result in material additional costs or cost savings to the Louisiana Department of Revenue (LDR). Local governments are not affected by this proposal.

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

There is no anticipated direct material effect on state or local revenues as a result of this measure.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)**

The proposed amendment will affect customers of immovable property contractors who believe sales tax was charged in error and seek a refund. The amendments require those customers to present certain documentation to overcome the presumption that the sales tax was properly charged. To the extent this information is not readily available, these taxpayers will have to obtain this additional documentation from their contractor. However, any cost associated with this requirement is expected to be minimal.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition or employment.

Kevin J. Richard, CPA  
Secretary, Department of Revenue

Deborah Vivien  
Legislative Fiscal Office

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Kevin J. Richard, CPA  
Secretary, Department of Revenue

Deborah Vivien  
Legislative Fiscal Office

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

Person Preparing Statement: <u>Ashley Joseph</u>	Dept.: <u>Revenue</u>
Phone: <u>225-219-2259</u>	Office: <u>External Reporting Division</u>
Return Address: <u>617 North Third Street</u>	Rule Title: <u>LAC 61:I.4372</u>
<u>Baton Rouge, LA 70802</u>	Date Rule Takes Effect: <u>April 20, 2024</u>

SUMMARY  
(Use complete sentences)

In accordance with Section 961 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

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\_\_\_\_\_  
Signature of Head or Designee

Kevin J. Richard, Secretary  
\_\_\_\_\_  
Typed Name & Title of Agency Head or Designee

12/13/2023  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
Legislative Fiscal Officer or Designee

12/13/23  
\_\_\_\_\_  
Date of Signature