

Rule
Department of Revenue
Policy Services Division

Under the authority of R.S. 47:301 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.4301 relative to the definition of *Sales Price* for sales tax purposes.

These amendments provide guidance concerning the definition of *sales price* in R.S. 47:301(13). They contain descriptions of items included and excluded from that definition. Some items included in the price of a transaction and subject to sale tax are material, labor and overhead costs. Some items excluded from the taxable base are costs for shipping the product to the customer and federal retailers' excise tax that must be collected from the customer.

These amendments also provide guidance on items specifically excluded from the taxable sales price by R.S. 47:301(13). Charges excluded by definition are trade-ins, interest charges, service charges, cash discounts, installation charges, etc. Exclusions are also provided for manufacturer buy downs, the first \$50,000 paid for farm equipment used in poultry production, and funeral directing services. An explanation is also provided on the alternative valuation method of refinery gas and other petroleum products.

Title 61
DEPARTMENT OF REVENUE
Part I. Taxes Collected and Administered
By the Secretary of Revenue
Chapter 43. Sales and Use Tax

§4301. Definitions

A.-C. ...

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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 six 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,

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.

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.

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AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301.

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 28:1703 (October 2001).

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