

NOTICE OF INTENT

Department of Revenue Policy Services Division

Point of Sale for Jurisdiction Where Sales and/or
Use Tax Is Due (LAC 61:I.4313)

The Department of Revenue, Office of the Secretary, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and the authority of R.S. 47:1511, hereby gives notice of its intent to adopt LAC 61:I.4313 relative to the point of sale determining the taxing jurisdiction where sales and/or use tax is due.

Title 61

REVENUE AND TAXATION

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

Chapter 43. Sales and Use Tax

§4313. Point of Sale for Jurisdiction Where Sales Tax Is Due

A. The term *sale* is defined at R.S. 47:301(12). It states, in part, that a sale is any transfer of title or possession or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property, for a consideration. "Use" tax is the equivalent of a sales tax placed on goods purchased outside of a jurisdiction for use within the jurisdiction where the property comes to rest, or otherwise where it comes to be used.

B. Sales taxes are due in the jurisdiction in which the buyer takes physical possession of the property. *Delivery* is defined as the point in time where the obligations of the seller are at an end and the transfer of risk of loss has passed from the seller or its agent and/or carrier to the buyer or the buyer's agent and/or carrier, and possession transfers.

C. There are three points of delivery where sales tax attaches to a transaction. When the buyer or his agent takes physical possession within the seller's jurisdiction, the sale has occurred and sales taxes are due in seller's jurisdiction. When the seller or his agent delivers to the buyer's jurisdiction, possession by the buyer is the point of sale, and sales or use taxes are due at buyer's jurisdiction. When the buyer or his agent takes possession outside of buyer's and seller's jurisdiction, sales or use taxes are due at that location. If the buyer or his agent moves the property to a subsequent jurisdiction, then use taxes may be due at the subsequent jurisdiction.

D. When there is no writing evidencing the sale, or where the purchase agreement or bill of lading or other writing does not specifically state, or inaccurately states the location where the buyer takes physical possession of the property, the evidence of the parties showing their respective obligations determines when delivery by the seller and possession by the buyer has occurred. Point of sale is not affected by the type of carrier chosen to move the property, be it common carrier, contract carrier, or a party's carrier or truck.

E. The collector may rebut a presumption that when the transportation charges of the property from seller's location to the buyer's location is stated as arranged by the buyer or his agent, the point of sale occurred in the seller's location or jurisdiction. Transfer of risk of loss is the presumptive factor for transfer of physical possession.

F. Sales of vehicles and motor vehicles subject to the Registration License Fee or Tax set forth in R.S. 47:451 et seq., are not subject to the provisions of above regulation, but are subject to all applicable statutes for payment of sales, use, or other tax or fee set forth in R.S. 47:301 et seq., and R.S. 47:451 et seq.

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511, in conjunction with R.S. 47:337.2(C)(4).

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Policy Services Division, LR 35:

Family Impact Statement

The proposed adoption of LAC 61:I.4313, regarding the taxing jurisdiction where applicable sales and/or use taxes are due 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. The implementation of this proposed Rule 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 budgets;

5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Interested persons may submit written data, views, arguments or comments regarding this proposed Rule to Raymond Tangney, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be submitted no later than July 29, 2009. A public hearing will be held on July 30, 2009 at 2:30 p.m. in the River Room located on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Point of Sale for Jurisdiction Where Sales and/or Use Tax Is Due

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed regulation is a restatement of law on the jurisdiction where sales taxes and use taxes are paid. It makes no change to current law. There are no anticipated implementation costs to be incurred, nor any savings anticipated. The intent is to clarify and/or explain existing law.

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

The adoption of this proposed regulation will have no impact on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The adoption of the proposed regulation should assist taxpayers and practitioners in the proper collection and/or payment of sales and use taxes. There should be no taxpayer cost associated with the adoption of this regulation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed amendment should not affect competition or employment.

Cynthia Bridges
Secretary
0906#030

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office