NOTICE OF INTENT

Department of Revenue
Policy Services Division

Property Used in Interstate Commerce
(LAC 61:I.4420)

Under the authority of R.S. 47:305.50, R.S. 47:337.2, R.S. 47:337.9, and 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, Policy Services Division, proposes to amend LAC 61:I.4420 to provide guidance to taxpayers concerning the sales and use tax exemptions provided by Act 209 of the 2007 Regular Session of the Louisiana Legislature.

Act 209 retains the existing exemption from sales tax for trucks with a gross weight of 26,000 pounds or more and associated trailers if the trucks are used at least 80 percent of the time in interstate commerce. Act 209 amends R.S. 47:305.50 to provide that the determination of whether a truck is used at least 80 percent in interstate commerce shall be based solely on the actual mileage of such truck; however, no truck shall have more than 20 percent Louisiana intrastate miles.

Act 209 amends R.S. 47:305.50 to provide that the sales and use taxes imposed by the state or any of its political subdivisions shall not apply to the purchase, use, or lease of a qualifying truck or purchase, use or lease of a qualifying trailer purchased, imported, or leased, with or without qualifying truck, for use with a qualifying truck.

Act 209 also provides that during a gubernatorially declared state of emergency and if a taxpayer's emergency or relief related efforts undermine the taxpayer's ability to comply with the provisions of R.S. 47:305.50, then the secretary shall waive requirements contained in R.S. 47:305.50.

This proposed Rule sets forth the requirements relative to the exemption from state and local sales and use taxes for trucks and trailers and provides for administration of audits and documents a taxpayer must retain to document eligibility for the tax exemption and for waiver of the eligibility requirements contained in R.S. 47:305.50 during a gubernatorially declared state of emergency.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 44. Sales and Use Tax Exemptions
§4420. Property Used in Interstate Commerce

A. R.S. 47:305.50(A)(1) provides an exemption from state and local sales and use taxes for trucks with a gross weight of 26,000 pounds or more and for trailers, if such trucks and trailers are used at least 80 percent of the time in interstate commerce and are subject to the jurisdiction of the United States Department of Transportation. R.S. 47:305.50 allows certain taxpayers to register such trucks and trailers and contract carrier buses with the Office of Motor Vehicles of the Department of Public Safety and Corrections (OMV) without paying state or local sales or use tax. R.S. 47:305.50 provides an exemption from state and local sales and use taxes for the purchase, use or lease of qualifying trucks and qualifying trailers, both of which have been purchased, used, imported or leased. To qualify for the exemption, the taxpayer's activities must be subject to the jurisdiction of the United States Department of Transportation, and the taxpayer must certify to the OMV that the property will be used at least 80 percent of its actual mileage in interstate commerce. The Department of Revenue and the OMV provide forms on which to make these certifications.

B. Any taxpayer who claims the exemption in provided in R.S. 47:305.50(A)(1) must maintain records of the use of the property in order to document the actual mileage. This exemption is for trucks with a gross weight of 26,000 pounds or more and for trailers, if such trucks and trailers are used 80 percent of the time in interstate commerce and are subject to the jurisdiction of the U.S. Department of Transportation. The determination of whether a truck is used 80 percent of the time in interstate commerce must be based upon the actual mileage of such truck. It is required that a truck cannot have more than 20 percent Louisiana intrastate miles.

1. If the documentation indicates that the property was not used during the one-year period following the date of its purchase for the required 80 percent or more of its actual mileage in interstate commerce, the taxpayer will not qualify for the exemption and state and local sales or use tax will be due on the amount paid for the property at the rate that was applicable on the date the property was purchased, plus interest from the date the property was purchased to the date of the tax payment. The state sales or use tax must be reported on a sales tax return provided by the Department of Revenue and paid to the Department of Revenue by the twentieth day of the month following the end of the one-year period in which the taxpayer fails to qualify for the exemption. The local sales or use tax must be reported and paid to the proper local taxing authority in accordance with their ordinances and the Uniform Local Sales Tax Code.

a. Calculation of interstate mileage does not include commercial truck transportation that begins at a point of origin in a state other than Louisiana to a destination in the same state. Guidance for the sales and use tax exemption eligibility of trucks used in other states has been set forth in Department of Revenue, Revenue Ruling 05-004.

b. Interstate mileage is based on the actual mileage of the truck and must be proven through documentation such as with driver's logs, motor carrier bills of lading, expense bills, and other documentation reflecting the origin and destination points of items transported.

2. If, during any of the following one-year periods, the documentation indicates that the property was not used for the required 80 percent or more of its actual mileage in interstate commerce, the taxpayer will no longer qualify for the exemption. If this occurs, state and local sales or use tax will be due on the lesser of the purchase price or fair market value of the property on the first day of the one-year period that it does not meet the 80 percent test. The tax will be calculated based on the rate in effect on the first day of the one-year period in which the taxpayer no longer qualifies for the exemption, plus interest from the date the tax is due to the date of tax payment. The state sales or use tax must be reported on a sales tax return provided by the Department of Revenue and paid to the Department of Revenue by the twentieth day of the month following the end of the one-year period in which the taxpayer no longer qualifies for the exemption. The local sales or use tax must be reported and paid to the proper local taxing authority in accordance with their ordinances and the Uniform Local Sales Tax Code.

C. If the taxpayer fails to provide proper documentation, it will be presumed that the taxpayer does not qualify for the exemption and state and local sales or use tax will be due in accordance with Subsection B above.

D. R.S. 47:305.50(A)(2) provides an exemption from state and local sales and use taxes on the purchase, use or lease of a qualifying truck. The exemption also applies to the purchase, use or lease of a qualifying trailer, which has been purchased, imported or leased, with or without a qualifying truck, for use with a qualifying truck. The definition of qualifying truck and qualifying trailer are set forth as follows.

1. A Qualifying Truck meets the following requirements:

a. registered as a Class I vehicle, which is one carrying or transporting freight, merchandise or other property, and shall have a registered gross weight of at least 80,000 pounds in accordance with R.S. 47:462. Gross weight is the weight of a vehicle or vehicle combination without the load on all axles, including the steering axle plus the weight of any load thereon as provided by R.S. 47:451;

b. subject to the jurisdiction of the U.S. Department of Transportation;

c. will be or is registered with apportioned plates through the International Registration Plan, or will be issued or is issued a special permit according to provisions of R.S. 32:387(J) from the Department of Transportation and Development. In cases of issuance of a special permit under R.S. 32:387(J), the qualifying truck shall engage in no less than 200 intermodal container moves per year, regardless of whether or not the moves require a special permit. In the year of acquisition, sale, disposal or destruction of the qualifying truck, the number of intermodal container moves per year shall be prorated for the portion of the year the truck was owned, operated, or owned and operated by the taxpayer. R.S. 32:382(J) governs vehicles hauling prepackaged products in international trade originating from or destined to an intermodal facility, which such products are containerized in a manner that they cannot be subdivided.

2. A Qualifying Trailer is one subject to the jurisdiction of the U.S. Department of Transportation.

E. To obtain prior approval to audit or investigate, an auditor shall submit a written justification, which may be submitted via email, to the secretary. This approval is required to:

1. audit or investigate for the purpose of determining the correct amount of the tax exemption;
2. an audit or investigation of a place of business and the books, records, papers, vouchers, accounts and documents of any taxpayer;
3. approval from the secretary is not necessary for political subdivisions to audit, examine, or investigate to determine the correct amount of tax exemption.

F. During a state of emergency declared by the governor, if the declared emergency or related relief efforts undermines the ability of a taxpayer, who is eligible for the exemption and the provisions under R.S. 47:305.50, to comply with this statute, then secretary shall waive the requirements. However, a waiver of the requirements should not affect the secretary's ability to begin or conduct an audit or investigation.

G. The terms "trucks" and "trailers" shall have the meaning ascribed to the terms truck, trailer, road tractor, semi trailer, tandem truck, tractor and truck-tractor as defined in R.S. 47:451.

H. The weights referred to in R.S. 47:305.50 are "gross vehicle weight ratings" (GVWR), as determined by vehicle manufacturers. Manufacturers' determinations of GVWR are usually indicated on plates or decals affixed to vehicles at the time of their manufacture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.50, R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:188 (February 2003), amended LR 31:97 (January 2005), LR 35:

Family Impact Statement

This proposed Rule, LAC 61:I:4420, which provides guidance relative to the exemption from state and local sales and use taxes for certain trucks and trailers, 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 data, views, or arguments, in writing to Emily Toler, Attorney, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., January 26, 2009. A public hearing will be held on January 27, 2009 at 1:30 p.m. in the River Conference Room on the Seventh Floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Property Used in Interstate Commerce

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

This proposed rule provides guidance as to a taxpayer's eligibility to qualify for the state and local sales and use taxes exemption contained in R.S. 47:305.50 for certain trucks and trailers. This proposed rule also provides for administration of audits and documents, which a taxpayer must retain to document eligibility for the exemption. It also provides for a waiver of the eligibility requirements during a gubernatorially declared state of emergency. There is no anticipated direct material effect on governmental expenditures as a result of this measure.

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

There are estimated revenue losses for state government collections. According to the Legislative Fiscal Note for Act 209 of the 2007 Regular Session of the Legislature, the estimated fiscal impact of the anticipated losses will be as follows: Fiscal Year 2008-2009 $415,000; Fiscal Year 2009-2010 $415,000, Fiscal Year 2010-2011 $415,000, Fiscal Year 2011-2012 $415,000, and Fiscal Year 2012-13 $415,000. The five year total of revenue losses for State will be $2,075,000. There are estimated revenue losses for local government collections. The fiscal impact of the anticipated losses will be as follows: Fiscal Year 2008-2009 $482,000, Fiscal Year 2009-2010 $482,000, Fiscal Year 2010-2011 $482,000, Fiscal Year 2011-2012 $482,000 and Fiscal Year-13 $482,000. The five year total of revenue losses for local governments will be$2,410,000. The annual total loss for state and local governments is estimated to be $897,000. Over the five year period, the estimated total of revenue losses for state and local governments will amount to $4,485,000.

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

R.S. 47:305.50 was amended to extend the sales tax exemption to a small number of trucks. As per the Legislative Fiscal Note for Act 209 for the 2007 Regular Session of the Legislature, 545 trucks, which weighed 80,000 pounds or more and registered with apportioned plates, paid the sales taxes due to the Office of Motor Vehicles during the period of February 1, 2006 through January 31, 2007. There are no estimates in place to determine the impact on receipts and/or income, except that owners and operators of certain trucks and/or trailers will receive a positive economic benefit, if they qualify for and take advantage of the sales tax exemption upon registration of qualifying trucks and/or trailers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will have no effect on competition or employment.

Cynthia Bridges
Secretary

Robert E. Hossee
Staff Director
Legislative Fiscal Office