

**Revenue Information Bulletin**  
**No. 02-020**  
**December 6, 2002**  
**Sales Tax**

**State Sales Tax on Food for Home Consumption, Residential Electricity, Water, and Natural Gas to Be Reduced January 1, 2003, and Eliminated July 1, 2003**

The state sales tax rate on food for home consumption, and on electricity, natural gas, and water sold to consumers for residential use will be reduced from 3.9 percent to 2 percent, effective January 1, 2003, and will be completely eliminated on July 1, 2003. These rate reductions result from voters' approval on November 5, 2002, of Amendment No. 2, which added Article VII, Section 2.2 to the Constitution of Louisiana.

The constitutional change does not affect the state sales taxation of electricity, natural gas, and water sold for non-residential use. Electricity, natural gas, and water for non-residential use will continue to be taxable at 3.9 percent through June 30, 2003. On July 1, 2003, the rate of state sales tax on non-residential electricity, natural gas, and water will be reduced to 3.8 percent, as provided by Act No. 22 of the 2002 Regular Session of the Louisiana Legislature.

This constitutional amendment also provides that the 2 percent state sales tax rate maximum as of January 1, 2003, and the state sales tax exemption as of July 1, 2003, that applies to sales of food for home consumption, and residential electricity, water, and natural gas also applies to prescription drugs. However, since prescription drugs are already exempt from the state sales tax by Revised Statute 47:305(D)(1)(j), and this statutory exemption has been sheltered from suspension by Act No. 22, the constitutional rate limitation does not require any procedural changes in the collection or payment of the state sales tax on sales of prescription drugs.

Amendment No. 2 does not prohibit the levy of sales taxes on prescription drugs or food for home consumption by political subdivisions of the state, other than by political subdivisions, such as the Louisiana Tourism Promotion District, whose boundaries are coterminous with the boundaries of the state. This means that the tax on prescription drugs and food for home consumption levied by parishes, municipalities, school boards, and other local political bodies will continue to be collected despite the constitutional change.

**Food Sold for Preparation and Consumption in the Home**

The 2 percent state sales tax rate as of January 1, 2003, and the state sales tax exemption as of July 1, 2003, will apply to food sold for preparation and consumption in the home as defined in Louisiana Revised Statutes 47:305(D)(1)(n-r). This includes bakery products, dairy products, soft drinks, fresh fruits and vegetables, and packaged food requiring further preparation by the purchaser. Items such as malt beverages, beer, other alcoholic beverages, distilled water, carbonated water, water in containers, vitamins, and ice are not food items and are fully taxable.

Food sales by restaurants, drive-ins, snack bars, candy and nut counters, private clubs, and similar establishments who furnish facilities for the consumption of the food on the premises are not covered

by the "food" exemption. Sales by these dealers will remain taxable at the 4 percent rate. The "food" exemption applies to the state sales and use tax and is not generally applicable to the sales and use taxes levied by parishes, municipalities, and school boards.

The sale of food items by businesses other than restaurants, drive-ins, snack bars, candy and nut counters, private clubs and similar establishments will be taxed at 2 percent rate beginning January 1, 2003, and will be exempt beginning July 1, 2003, if the items are prepackaged in larger than single-serving size, or require or are generally intended for further preparation by the purchasers prior to consumption. Preparation includes cooking, heating, cooling, washing, or blending with other ingredients. Items sold by grocery stores, department stores, variety stores, drug stores, etc., that are eligible for the rate reduction and exemption include sugar, canned goods, fresh fruits and vegetables, coffee, condiments, relishes, spreads, shortening, flavorings, bread, soft drinks by the carton or case, large pre-wrapped boxes of candy, cheese, delicacies, and bakery products. Sales of other food items in small quantities are taxable at 4 percent even if they are not intended for immediate consumption on the premises where sold. Examples include individual packages of popcorn and chips, chilled single serving bottles, cans, or cups of soft drinks, loose candy, candy bars, nuts, mints, and chewing gum. Food items sold by grocery stores, department stores, variety stores, drug stores, etc., in identical eating condition as items sold from the menus of restaurants, drive-ins, or similar eating-places are likewise taxable at 4 percent.

Establishments, with or without eating facilities that are engaged in the sale of food for immediate consumption will be considered restaurants, drive-ins, or snack bars. Sales by these establishments are not covered by the food exemption, even though some of the items sold are not intended for immediate consumption on the sellers' premises. For example, restaurants must collect 4 percent state sales tax on the sale of wedding or birthday cakes, even though the cakes are removed from the restaurants for consumption. Similarly, doughnut shops that provide facilities for on-premises consumption must collect the 4 percent state tax on all of their sales, regardless of the quantity sold or whether the items are consumed on or off of the premises. Bakeries and doughnut shops that do not have eating facilities will as of January 1, 2003, collect the temporary 2 percent rate on the sale of food items of larger than single-serving quantity or on sales of foods that require further preparation prior to consumption. Those sales will be exempt from state sales tax as of July 1, 2003.

Wholesale dealers must collect advance sales tax at the 4 percent rate on sales of food products and ingredients to restaurants, drive-ins, snack bars, and other retailers whose food sales are taxable under the law. The advance tax is collectible at the 2 percent rate on sales of food items to grocery stores and other retailers who certify that the majority of their retail sales of food will be subject to the 2 percent temporary state sales tax rate. The Department of Revenue has published form R-1006 for use in making this certification. Vending machine operators cannot use the form.

### **Water, Natural Gas and Electricity; Tax Rate Transition Procedures**

Utility companies must remit the state sales tax on the sales tax return for the month in which they invoice their customers. For example, if a customer's utility meter is read on January 5<sup>th</sup>, and an invoice is rendered to the customer on January 6<sup>th</sup>, the state sales tax on that invoice is payable to the department with the utility's January sales tax return which is due on or before February 20.

Utility companies must use a special formula to calculate the taxes due for service periods that

include days before and after the January 1, 2003, and July 1, 2003, rate changes. For example, that customer whose residential meter that is read on January 5, 2003, with 30 days in the service period since the previous reading, will have 25/30ths of his/her charges for the period subject to the tax at the 3.9 percent rate that was applicable before January 1, 2003. The remainder, or 5/30ths of the charges for the period, will be subject to the 2 percent rate applicable to residential sales for periods on and after January 1, 2003. These fractions will change for each meter reading date.

### **What Is a Residence?**

Electricity, water, and natural gas utility companies will collect the 2 percent rate as of January 1, 2003, and allow the complete sales tax exemption as of July 1, 2003, only on sales made “directly to the consumer for residential use.” Article VII, Section 2.2 of the Louisiana Constitution defines this term to include the furnishing of these utilities “to single private residences, including the separate private units of apartment houses and other multiple dwellings, actually used for residential purposes, which residences are separately metered or measured, regardless of the fact that a person other than the resident is contractually bound to the supplier for the charges, actually pays the charges, or is billed for the charges.” Article VII, Section 2.2 also states specifically that “(t)he use of electricity, natural gas, or water in hotel or motel units does not constitute residential use.”

This constitutional provision does not require that the residences to which the utility services are delivered be the principal residences of the occupants. Eligible residences will include single-family homes, duplexes, triplexes, apartment units, condominiums, town homes, and camps, provided that the utility services are billed separately for each occupied unit.

### **Examples of Utility Sales That Are Not Eligible for Reduced Rate or Exemption**

- Sales of utility services, where a single meter is used to measure consumption by several residential units, are not eligible for the reduced sales tax rate or the sales tax exemption.
- Sales of utility services for any building or facility that is used other than for residential purposes, such as a business, commercial, industrial, or institutional facility, are not eligible for the reduced sales tax rate or the sales tax exemption.
- Sales of utility services for hotels, motels, bed and breakfasts, rooming houses, campgrounds, and nursing homes are not eligible for the reduced sales tax rate or the sales tax exemption.

Questions concerning these matters can be directed to the Taxpayer Services Division in Baton Rouge at 225.219.7356 or to any of the department's regional offices.

Cynthia Bridges  
Secretary

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