

Revenue Information Bulletin No. 16-034

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Sales Tax

**Items of Tangible Personal Property Purchased or Leased for Use
Outside of Louisiana**

Tangible Personal Property Purchased for Use in Federal Offshore Waters

Louisiana Revised Statute 47:302(A)¹ imposes a tax upon the sale at retail, the use, the consumption, the distribution and the storage for use or consumption in Louisiana of each item of tangible personal property.

When property has come to rest within a state being held there at the pleasure of the owner for disposal or use, so that the owner may dispose of it either within the state or for shipment elsewhere as his interest dictates, then it is deemed to be a part of the general mass of the property within the state and is subject to its taxing power.² Items of tangible personal property purchased to be stored for use or consumption in Louisiana are subject to sales tax, because the item has become a part of the mass of property within the state.

Louisiana Revised Statute 47:305(E) provides that it is not the intention of any taxing authority to levy a tax upon articles of tangible personal property imported into this state, or produced or manufactured in this state, for export; nor is it the intention of any taxing authority to levy a tax on bona fide interstate commerce. LAC 61:I.4401(I) provides that specific pieces of property, which have been clearly labelled for transshipment outside the taxing jurisdiction at the time of manufacture or importation into the taxing jurisdiction, meet the requirements of La. R.S. 47:305(E), even though the item may be stored for an indefinite period of time.

This would include items purchased for use in an offshore area beyond the territorial limits of Louisiana. The item must be clearly labelled for shipment to the offshore area beyond the territorial limits of Louisiana at the time of its purchase to be eligible for the interstate commerce exclusion pursuant to La. R.S. 47:305(E). Items, which are stored and awaiting shipment in Louisiana, will not be subject to state sales tax, if the item is clearly labelled for transshipment to a federal offshore area.

If a taxpayer diverts an item of tangible personal property labelled for shipment to a federal offshore area for his own use or disposition within Louisiana, then the item is no longer in interstate commerce and will be subject to state sales and use tax. Failure to clearly mark that

¹ State sales tax is levied pursuant to La. R.S. 47:302, 321, 321.1., and 331 and La. R.S. 51:1286 for a total state tax rate of 5%. For purposes of this RIB all references to tax levied by R.S. 47:302 include the taxes levied by R.S. 47:321, 321.1, 331 and R.S. 51:1286,

² *State of Minnesota v. Blasius*, 290 U.S. 1, 10, 54 S. Ct. 34, 78 L. Ed. 131 (1933)

goods are bound for an offshore area beyond the territorial limits of Louisiana will render the item of tangible personal property subject to state sales and use tax.

Tangible Personal Property Leased for Use Outside of Louisiana

A lease or rental is defined under La. R.S. 47:301(7) as the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter, for consideration, without transfer of the title of such property. Lease payments are subject to state sales tax pursuant to La. R.S. 47:302(B) on each leased item of tangible personal property within Louisiana. The sales tax is applied to each payment whether it is made monthly or according to some other schedule.

LAC 61:I.4303(B)(2)(c) provides that state sales and lease tax is not due, if the leased property is rented for use and is actually used in an offshore area beyond the territorial limits of Louisiana. The regulation LAC 61:I.4303(B)(2)(b) provides that if a lessee uses the leased tangible personal property both in bona fide interstate commerce and in intrastate commerce in Louisiana, then the lease tax is due only on the portion of the lease payments attributable to operational usage in Louisiana in intrastate commerce. The average operational usage in Louisiana intrastate commerce shall be determined by a ratio. The numerator of this ratio will be the total Louisiana intrastate operational use, and the denominator will be the total operational use of both intrastate and interstate usage. If the average operational usage in Louisiana intrastate commerce is equal to or greater than 90 percent of total operational usage during a lease payment billing period, then the leased property shall be deemed to be used in Louisiana intrastate commerce, and lease tax shall be due on the entire lease payment for that period. The operational usage shall be based on industry custom and the type of property at issue. If the average operational usage in Louisiana intrastate commerce is equal to or less than 10 percent of total operational usage during a lease payment billing period, then the leased property shall be deemed to be used exclusively in interstate commerce and there will be no lease tax due for that period. The average operational usage in bona fide interstate commerce shall also be determined by a ratio; the numerator of this ratio will be the total bona fide interstate operational use and the denominator will be the total operational use of both intrastate and interstate usage.

The Louisiana Department of Revenue is not prohibited from imposing a lease tax on leased property stored in Louisiana for use in intrastate commerce in Louisiana. Louisiana Revised Statute 47:301(4)(d)(ii) defines use as the operational or functional use of the property.

Conclusion

An item of tangible personal property clearly marked for transshipment to an offshore area beyond the territorial limits of Louisiana at the time of its purchase is not subject to state sales tax. If the item marked for transshipment is stored awaiting shipment to an offshore area beyond the territorial limits of Louisiana, then it is not subject to state sales tax, because it is not being stored for use or consumption as provided in La. R.S. 47:302(A). If the item is consumed or used in Louisiana, then the purchaser shall be liable for state sales and use tax. The invoice issued to the purchaser should evidence that the item is for use in a federal offshore area with the federal lease number, area and block number information in the destination area on the invoice. If this information is not available, then the invoice should note that the item is being shipped to the purchaser's yard to await shipment to the purchaser's platform in an offshore area beyond the territorial limits of Louisiana. If a taxpayer is moving its property from its yard in another state to a yard in Louisiana to be used in an offshore area beyond the territorial limits of Louisiana, then

the taxpayer should document on the material transfer sheet with the federal lease number, area and block number.

An item leased for use both in interstate and intrastate commerce may be subject to state sales and lease tax depending upon its usage. If the average operational in Louisiana intrastate commerce is less than or equal to 10 percent of the total operational usage during a lease payment billing cycle, then the leased property is being used exclusively in interstate commerce, and no state lease tax will be due for this transaction. If the average operational usage in Louisiana intrastate commerce is greater than or equal to 90 percent of the total operational usage during a lease payment billing period, then the leased item is deemed to be used in Louisiana intrastate commerce and state sales and lease tax is due upon the entire payment. If a leased item of tangible personal property is used in an offshore area beyond the territorial limits of Louisiana, then state sales and lease tax does not apply. The average intrastate usage shall be applied to the rental or lease payment to determine that amount of the payment subject to lease tax.

The provisions of this Revenue Information Bulletin do not apply to ships of 50-ton displacement and ship's supplies, which are exempt from state sales tax pursuant to La. R.S. 47:305.1.

Questions concerning this publication can be directed to sales.inquiries@la.gov.

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Secretary

<p>A Revenue Information Bulletin (RIB) is issued under the authority of LAC 61:III.101 (D). A RIB is an informal statement of information issued for the public and employees that is general in nature. A RIB does not have the force and effect of law and is not binding on the public or the Department.</p>
