

**Revenue Ruling
No. 01-010
October 10, 2001
Sales and Use Tax**

**Sales, Repair Services, Fabrications made by Roustabouts, “Work as Directed”
Service Providers may be Sales Taxable**

The purpose of this Revenue Ruling is to clarify the state sales collection and remittance liability of general service companies whose personnel, often called “roustabouts”, provide a variety of services while temporarily “working as directed” by customers of the service companies.

Louisiana Revised Statute Title 47, Sections 302(A)(1) and (A)(2), 321(A)(1) and (A)(2), and 331(A)(1) and (A)(2) authorize the levy of sales tax or use tax on the sales price or cost price of each item or article of tangible personal property when sold at retail, used, consumed, distributed, or stored for use or for consumption in Louisiana. La. R.S. 47:302(B), 321(B) and 331(B) levy the sales tax on the lease or rental within Louisiana of each item or article of tangible personal property. Similarly, La. R.S. 47:302(C), 321(C), and 331(C) levy the sales tax on all sales of services, as defined in the law.

In contrast to the broad tax imposition on the sale or use of tangible personal property, sales tax, as applied to services, is levied only on the eight types of services that are enumerated in the law. These include the furnishing of sleeping rooms by hotels; the furnishing of vehicle parking services; the furnishing of admissions to places of amusement and access to amusement, entertainment, athletic or recreational facilities; the furnishing of cold storage space and the furnishing of the service of preparing tangible personal property for cold storage; the furnishing of telecommunication services; the furnishing of printing services; the furnishing of laundry services; and the furnishing of repair services to tangible personal property.

When a seller or service provider engages in a transaction for the sale, lease, or rental of tangible personal property, or for the furnishing of taxable services, the sales tax must be collected and remitted. Each transaction for the sale, use, lease, or rental of tangible personal property is taxable. The only exceptions are those transactions that are specifically exempted or excluded by law.

General service companies whose personnel work as directed by customers are liable for the collection and remittance of the state sales tax on all taxable transactions, the same as other dealers. These businesses should be particularly aware that taxable transactions include both the fabrication and repair of tangible personal property by their personnel for customers.

Definitions of terms

- **“Fabrication”**: This term is not defined in the sales tax law. In its administration, the department follows the generally accepted meaning of the term: to construct by combining or assembling. The term encompasses a variety of commercial services, including, for example, the assembly of machinery that is sold in an unassembled state, the making of

issued under Section 61:III.101(C) of the Louisiana Administrative Code to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department’s position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.

window draperies or clothing using fabrics supplied either by the fabricator or the customer, and the painting of new not previously painted customer-owned tangible personal property.

- **“Repair”**: “to mend, remedy, restore, renovate. To restore to a sound or good state after decay, injury, dilapidation, or partial destruction.” – **Black’s Law Dictionary, 6th Ed. 1990, pg. 1298**
- **“Sale”**: “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, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, preparing or serving, for a consideration, of any tangible personal property, consumed on the premises of the person furnishing, preparing or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.” – **La. R.S. 47:301(12)**
- **“Sales Price”**: (in pertinent part) “the total amount for which tangible personal property is sold, less the market value of any article traded in including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise, and includes the cost of materials used, labor or service costs, except costs for financing which shall not exceed the legal interest rate and a service charge not to exceed six percent of the amount financed, and losses; provided that cash discounts allowed and taken on sales shall not be included, nor shall the sales price include the amount charged for labor or services rendered in installing, applying, remodeling or repairing property sold.” – **La. R.S. 47:301(13)**
- **“Tangible Personal Property”**: (in pertinent part) “includes personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses.” – **La. R.S. 47:301(16)**

When is tax collection required?

The collection and remittance of sales taxes is required on all sales of Tangible Personal Property and taxable services. The tax must be collected and remitted on the “Sales Price” of the property. Computer software is considered to be Tangible Personal Property. Tax must be collected on any computer software.

Both the repair and routine servicing of all kinds of Tangible Personal Property are considered taxable repair services. All repairs performed within Louisiana to Tangible Personal Property are taxable, unless a statutory exemption or exclusion applies to a specific transaction. One exclusion applicable to repairs is provided by La. R.S. 47:301(14)(g)(i) for repair services that are rendered to Tangible Personal Property that is returned to a customer in another state by common carrier or by the repair dealer's vehicle.

When an individual or company is hired to independently perform a repair to or fabrication of Tangible Personal Property, or to develop and provide property to be sold to the customer such as computer software, and is expected to use its expertise to achieve a specific result desired by the customer independently of any supervision or advice given by customer personnel in the achievement of those results, the entire charge for the sale, repair or fabrication is subject to the

sales tax. The tax will be due, regardless of whether the sale, fabrication or repair is requested prior to or during the independent company's period of service to the customer, and regardless of how the various elements of the independent company's charges are segmented on the billing to the customer. The sales tax liability on a transaction is not determined by the method of billing. Very often general service providers furnish both taxable and non-taxable services. These companies must prepare and retain work records for their service personnel that are sufficiently detailed to enable proper tax collection on the taxable portion of the sales and services that their personnel provide.

When tax might not be collectible

The tax liability may be different when a general service provider or other company at arms-length with the customer is hired to furnish personnel to work as directed under the continuing direct supervision of the customer, where the company's personnel are intended to supplement the expertise of the customer's regular employees, and are not independently responsible for the achievement of a specific results. Depending upon the facts surrounding each transaction, the personnel of the service provider might, for sales tax purposes, become leased or "quasi employees" of the customer. If the facts surrounding the transactions show that this type of relationship has been established in the agreement between the parties, tax collection might not be required. Factors that indicate this type of relationship include:

- The customer assimilates the personnel of the independent company into the corps of the customer's own employees, having them perform all or some of the functions performed by regular employees.
- The customer determines the daily routine of the personnel of the independent company, including assignment, priorities, starting and ending work times, lunch times, and breaks.
- In the performance of their tasks, the personnel of the independent company use the customer's facilities and equipment.
- The personnel of the independent company receive training and/or supervision from the customer or the customer's personnel.
- The customer provides all or some of the same fringe benefits to the personnel of the independent firm that are provided to employees, including paid vacations, sick pay, pensions, and bonuses.

In any case where personnel of the general service providers engage in taxable transactions, the service providers are liable for the collection and remittance of the tax and their customers are liable for the payment of the tax. If tax is not collected properly when invoices for services are rendered, and remitted to the Department of Revenue on or before the deadlines provided by law, both service providers and their customers will remain liable for the tax until it is paid.

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