

SALES TAX

RESTAURANTS,
LOUNGES,
+ NIGHT CLUBS



LDR

Contributing to a better quality of life.

SALES TAX:

RESTAURANTS, LOUNGES, + NIGHTCLUBS

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INTRODUCTION

Louisiana restaurants, lounges, and nightclubs offer some of the country's finest cuisine and liveliest entertainment. Many excellent restaurants, some of which specialize in foods unique to this state and offer a blend of music and entertainment found nowhere else, have given Louisiana an international reputation as a gourmet's paradise and a reveler's haven.

Restaurants, lounges, and nightclubs not only fulfill the food and entertainment needs of our citizens and visitors, but they also collect the state's general sales tax on the sales of products and services they provide.

This brochure has been prepared to familiarize owners and operators of restaurants, lounges, and nightclubs with their responsibilities as collectors of the state sales tax. The information contained in this brochure explains the owners' and operators' responsibilities and procedures by which they can comply with their obligation to collect, account for, and remit the state sales tax.

HOW TO REGISTER

Any individual, partnership, or corporation planning to open a restaurant, nightclub, or lounge in Louisiana is required by law to register with the Louisiana Department of Revenue (LDR) for the collection of, accounting for, and remittance of the state sales tax. This requirement can easily be satisfied by visiting LDR's website at www.revenue.louisiana.gov and clicking the business registration link.

Restaurant and lounge owners may also inquire about other state tax responsibilities, such as state corporation income, corporation franchise, and withholding taxes. Prospective restaurant, nightclub, or lounge owners should also contact their parish or municipal taxing authorities for information concerning local sales taxes, occupa-

tional licenses, and other requirements.

In addition to sales tax, food and beverage establishments in Orleans Parish and the New Orleans airport must also register for the E.N. Morial Exhibition Hall Authority Food and Beverage Tax. For more information about this tax, visit LDR's website at www.revenue.louisiana.gov or contact LDR at (225) 219-0102.

Before doing business, the owner must have a permit to serve alcoholic beverages on the premises. To obtain the appropriate permit for the business, the owner should contact the Office of Alcohol and Tobacco, Louisiana Department of Revenue, Post Office Box 66404, Baton Rouge, 70896-6404 or call (225) 925-4041. Additional information may be found on their web site at www.atc.revenue.louisiana.gov.

For more information on registration, contact LDR at (225) 219-7462 or write to:

Louisiana Department of Revenue
P.O. Box 201
Baton Rouge, LA 70821-0201

FILING SALES TAX RETURNS

The Department of Revenue will mail the sales tax return form to the address provided through the registration process. Forms are routinely mailed by LDR to taxpayers on the 25th day of the month. If the blank sales tax return form is not received by the 5th day of the following month, the taxpayer should contact LDR at (225) 219-7462 or the appropriate regional office, to request that a second return form be mailed in order to avoid late-filing charges.

Blank sales tax return forms can also be downloaded through LDR's website at www.revenue.louisiana.gov.

All returns for new accounts for state sales tax must be filed on a monthly basis. Once a taxpayer has filed six monthly returns, he may apply for and receive a quarterly filing status, providing the state sales tax liability averages less than \$500 per month. The Department also allows a limited number of businesses to file returns on a seasonal basis. Taxpayers interested in filing on a basis other than monthly should contact LDR at (225) 219-7462.

Any taxpayer whose sales tax payment exceeds \$5,000 is required to make payment by Electronic Funds Transfer (EFT). Taxpayers whose payments are less than \$5,000 may volunteer to pay electronically. For more information, download Louisiana Electronic Funds Transfer Guidelines, R-20201.

All taxpayers are encouraged to file their sales tax returns electronically. LDR's LaTAP program allows taxpayers to file returns, make payments, and check accounts. More information about LaTAP can be found on LDR's web site at www.ldrtap.rev.louisiana.gov.

All information pertinent to the business required by the sales tax reporting form must be included on the return. This includes information on how the tax liability was calculated, the return period, the signature of the preparer, the signature of the business owner, and the date signed. Instructions for preparing the sales tax return are included with the form. The completed return is due no later than the 20th day of the month following the close of the taxable period. If the due date falls on a weekend or holiday, the return is due the next business day and becomes delinquent the first day thereafter. For example, the July sales tax return is due by the 20th day of the following month, or August 20.

Returns and/or payments that are received by the Department after their due date will be subject to:

1. disallowance of vendor's compensation (line 10 of the return),
2. interest on the tax liability from the due date until date of payment, and
3. delinquent payment penalties at the rate of 5% of the tax for each month or portion of month until the return is filed, up to an aggregate maximum (delinquent payment and delinquent filing) penalty of 25%.

Taxpayers who have no taxable sales are still required to file a timely return. A restaurant or lounge owner who temporarily closes the business and is unable to file a return should contact LDR prior to the due date of the return. If the business is to be closed for an extended period of time, the sales tax account should be closed and a new application submitted when business is resumed. If the taxpayer does not file a return, the Department's automated records system will calculate an estimated assessment based on previous returns or other information gathered by the Department.

Taxpayers who fail to file proper returns or to remit the tax owed could be subject to other legal action. Examples of such failure are as follows:

1. filing a fraudulent return;
2. refusing to file a return; or,
3. collecting taxes from customers and failing to remit these taxes to LDR.

Legal actions that may result from failure to file a proper return are as follows:

1. criminal or civil charges;
2. cease-and-desist order (court-ordered closing of business);
3. suspension of any and all liquor permits by the Alcoholic Beverage Control Board; and/or,
4. any other legal action permitted by law.

CLOSING A SALES TAX ACCOUNT

To close a sales tax account, the taxpayer should sign the reverse side of the sales tax certificate, indicate the last day of business, and return the certificate to LDR along with a final sales tax return. The Final Return box on the back of the sales tax return should be filled in as well as the date the business was sold or terminated.

Taxpayers may obtain assistance or information on filing and assessment procedures involving sales tax returns by calling (225) 219-7462, or by writing to:

Louisiana Department of Revenue
P.O. Box 201
Baton Rouge, LA 70821-0201

RESTAURANT, LOUNGE, AND NIGHTCLUB SALES

Meals, drinks, and other food items sold by restaurants, drive-ins, snack bars, nightclubs, lounges, private clubs, etc., are taxable regardless of whether or not the establishment provides facilities on the premises for their immediate consumption. The term facilities, when used in these situations, includes indoor and outdoor areas. Prepared food sold by vendors other than restaurants, drive-ins, etc., in such a manner that

it is readily available for immediate consumption, is also taxable.

Louisiana Revised Statute 47:305(D)(2) provides an exemption for meals furnished to the following:

1. staff and students of educational institutions (including kindergartens);
2. staff and patients of hospitals;
3. staff, inmates, and patients of mental institutions;
4. boarders of rooming houses; and,
5. occasional meals furnished in connection with educational, religious, or medical organizations.

In order for these establishments to keep an exempt status, the following conditions must be met:

1. the meals must be consumed on the premises where purchased; and,
2. the establishment cannot be open to outsiders or the general public.

Items sold by restaurants intended for consumption away from the premises, such as cakes, pies, and meats, are considered taxable sales and should be included on Line 1 of the sales tax return. Sales of nonfood items by a restaurant, nightclub, or lounge, such as T-shirts, gifts, or souvenirs, are also taxable and must be included in total sales on Line 1 of the sales tax return.

CATERING

Businesses, such as caterers, engaged in the preparation of food and drink for consumption at a location designated by the customer, and providing additional services to the customer at that location, have a responsibility to collect tax on the sales of food and drink.

The charges for preparing and serving the food and drinks are not taxable when:

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1. the food is consumed at a location other than the restaurant or lounge owner's premises; and,
 2. the charges for preparing and serving the food and drinks are listed separately from the price charged for the sale of the food and drinks.

The entire amount of catered sales is taxable if a lump-sum price is charged for the food, preparation, and serving.

VENDING MACHINES

Sales of food, drinks, or other items through coin-operated vending machines are treated differently from over-the-counter sales of these items. For convenience in collecting and reporting the state sales tax, there is a special provision in the law for the treatment of sales of items made from vending machines. R.S. 47:301(10) provides that the sales tax is due when the operator purchases the goods, not when they are resold through the machines. Vending machine operators must pay state sales tax on all items sold through vending machines. Also, in the event that the wholesaler does not charge tax to the vending machine operator, the operator must accrue use tax on the cost of the purchases and remit the tax directly to LDR.

DOOR AND ENTERTAINMENT CHARGES

Many lounges, nightclubs, and bars have a practice of collecting door sales or cover charges for the privilege of admission to their establishments. Louisiana law imposes a sales tax on fees and other considerations given for access to places of entertainment or amusement. These amounts should be included on Line 3 of the sales tax return as sales of taxable services.

TIPS AND GRATUITIES

Tips or gratuities that are freely given by a customer over and above the price charged for food or drinks are not subject to state sales tax. Any gratuity, tip, or service charge added as a separate item to the customer's bill as a requirement of the eating establishment is not subject to the sales tax if the full amount of the service charge is disbursed directly to the employees who customarily and regularly provide the service. If any portion of the tip or gratuity is retained by the restaurant or lounge operator, then the entire amount of the gratuity becomes taxable.

EXCESS TAX

R.S. 47:304(D) requires taxpayers to remit to the Department the total amount of sales tax collected when that amount exceeds the amount determined by multiplying the tax rate by taxable sales. The total tax collected during any given month often exceeds the tax as calculated by multiplying total gross sales by four percent. This occurs because of rounding differences for sales tax charged on individual transactions when the tax tables established by R.S. 47:304(C) are used. For example, ten individual sales of \$10.93 at the seven percent tax rate will amount to \$7.70 in tax collected. Yet, tax as reported will amount to only \$7.65 (10 sales @ \$10.93 or \$109.30 times seven percent tax rate), or 5¢ less than the tax collected.

The amount by which the tax collected exceeds the amount of tax calculated on Line 7 of the state sales tax return is called excess tax and must be included on Line 8 of the state sales tax return. The excess tax amount should be prorated between the state and local sales tax returns when sales tax for both authorities is being collected on the same sales.

FOR EXAMPLE:

Taxable sales	\$5,000
Tax rate (state: 4% and local: 3%*)	7%
Actual tax collected	\$364

	State tax	Local tax
Taxable sales	\$5,000	\$5,000
Tax rate	<u>x 4%</u>	<u>x 3%</u>
Tax due	\$200	\$150

Tax collected	\$364
Less tax calculated	
(\$200 state and \$150 local)	(350)
Excess tax collected	\$14

State share..... $\$14 \times 4/7 = \8
 (Line 8 of state sales tax return)

Local share

$$\$14 \times 3/7 = \$6$$

(included on local sales tax return)

* This tax rate will vary from one local taxing authority to another.

USE TAX

R.S. 47:302(A)(2), et seq., levies a use tax on the cost price of items of tangible personal property when the property is not sold but is used, consumed, distributed, or stored in this state for the private use of the business. Use tax is due only when the state sales tax has not been paid on the purchase of these items. Items that have not been subject to state sales tax typically might include:

1. purchases from out-of-state vendors not registered to collect Louisiana tax when such purchases are delivered to the restaurant or lounge operator in this state;
2. items taken from inventory for the personal use of the business on which no state sales tax has been paid; or,
3. any other purchases of tangible personal property, not specifically exempt by laws, on which state sales tax was not collected by the vendor.

Examples of items on which use tax would be due if the state sales tax has not been paid include the following:

1. tables, chairs, and other furnishings;
2. plates, utensils, napkins, etc., if reusable;
3. the cost of meals and drinks when they are not sold but are given to customers, employees, etc.;
4. equipment used for the storage, preparation, or distribution of food and drinks;
5. lease payments for equipment and furnishings rented by the restaurant or lounge;
6. repairs to equipment and furnishings; and,
7. T-shirts or gifts given to customers or employees.

PURCHASES FOR RESALE

Business owners may purchase items for resale in their business without payment of the state sales tax. To qualify as a purchase for resale, an item must become a component part of the finished product and add something of benefit to it. The following are some examples of resale items for restaurant, lounge, and nightclub operators:

1. food
2. liquor
3. mixers
4. soft drinks
5. nonreusable cups
6. disposable napkins
7. swizzle sticks
8. nonreusable utensils
9. condiments
10. ice served in beverages
11. straws
12. carry-out packaging

Examples of items that do not qualify:

1. mops, brooms, etc.
2. reusable glasses
3. reusable linen
4. cleaning liquids
5. invoices or guest checks
6. printed menus
7. free advertising specialty items

Taxpayers who are charged state sales tax on purchases of items for resale should present a copy of their Louisiana Resale Certificate (R-1055 or R-1064) to their vendor. The vendor should credit the taxpayer for the state sales tax paid in error. The Louisiana Resale Certificate is issued to all taxpayers who are engaged in the business of selling tangible personal property upon registration with LDR. Any taxpayer who does not receive a Louisiana Resale Certificate should contact LDR at (225) 219-7462 to request one.

RECORDS TO BE KEPT

R.S. 47:1542.1 requires that any document or record necessary to support any tax administered by the Department be maintained by the taxpayer until the tax prescribes. These records should clearly support any and all items claimed on the return.

Restaurant, lounge, and nightclub operators, like all other taxpayers, are required to keep and maintain suitable books and records that clearly show how their tax liabilities were calculated. R.S. 47:309 requires dealers to “keep and preserve suitable records of sales, purchases, or leases taxable under this Chapter, and such other books of accounts as may be necessary to determine the amount of tax due.” R.S. 47:309 also provides that any taxpayer who fails to keep and maintain suitable records will be subject to a fine of up to \$500 and/or up to 60 days in jail for each month that adequate records are not kept.

Examples of documents and records that restaurants, lounges, and nightclubs should keep are as follows:

SALES RECORDS

- restaurant guest checks or sales tickets

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- daily sales register receipts or tapes
 - sales journal and/or general ledgers
 - bank deposit records
 - state and federal income tax returns

PURCHASE RECORDS

- purchase invoices
- purchase journals and/or general ledgers that distinguish inventory purchases from expense purchases
- cash disbursements journal or checkbook
- depreciation schedule of fixed assets

OTHER RECORDS

- sales tax returns with supporting work papers
- information on items on which use tax has been accrued

These examples are for illustration only and are not to be considered as all-inclusive. The required records are to be maintained by the taxpayer for three years from the end of the year in which the taxes became due, or until such time as agreements to suspend prescription have prescribed, if the taxpayer has entered into such agreements with LDR.

R.S. 47:1542 authorizes the Secretary of Revenue, or any authorized assistant, to examine or investigate the place of business and any records of a taxpayer to determine the correct tax liability. LDR's field representatives and their supervisors are authorized assistants to the Secretary of Revenue who will routinely contact businesses to examine their books and records. *Rights of the Taxpayer* (R-20161) is a brochure that discusses LDR audit and appeals procedures.

This brochure may be downloaded at LDR's web site at www.revenue.louisiana.gov.

DIRECTORY

Assistance is available from any of the Louisiana Department of Revenue's regional offices located throughout the state. The addresses and telephone numbers of these offices are listed below.

Baton Rouge Headquarters

Post Office Box 201

Baton Rouge, LA 70821-0201

617 North Third St. • Baton Rouge, LA 70802
(225) 219-0102 • (225) 219-2114 (TDD)

Southeast District

New Orleans
(504) 568-5233

Thibodaux
(504) 568-5233

Southwest District

Baton Rouge
(225) 219-5500

Lafayette
(337) 262-5455

Lake Charles
(337) 491-2504

North District

Alexandria
(318) 487-5333

Monroe
(318) 362-3151

Shreveport
(318) 676-7505

www.revenue.louisiana.gov

This public document was published at a total cost of \$557.15. Five hundred copies of this public document were published in this first printing at a cost of \$557.15. The total cost of all printings of this document, including reprints, is \$557.15. This document was published by Division of Administration, State Printing Office, 950 Brickyard Lane, Baton Rouge, LA 70802, to provide sales tax information to owners and operators of restaurants, lounges, and nightclubs, under authority of R.S. 47:1509. This material was printed in accordance with the standards for printing by state agencies established pursuant to R.S. 43:31.

