



Tax Topics

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"The mission of the Louisiana Department of Revenue is to administer applicable laws and collect revenues to fund state operations."

Cynthia Bridges
Secretary

"Stelly Plan" sales tax exemption fully in effect

On July 1, 2003, the temporary 2% sales tax on food for home consumption, and on electricity, natural gas, and water sold to customers for residential use was completely eliminated. This change is the final step of the sales tax phase-out resulting from voter approval of the Constitutional Amendment known as the "Stelly Plan," which was passed on November 5, 2002. Under that amendment, the state sales tax rate on food items sold for home consumption was temporarily reduced from 3.9% to 2% from January 1, 2003 to June 30, 2003, and eliminated completely on July 1, 2003.

The constitutional change did not affect the sales tax rate on electricity, natural gas, and water sold for non-residential use. However, that rate dropped from 3.9% to 3.8% on July 1, 2003, because of Act No. 22 of the 2002 Regular Session of the Louisiana Legislature.

Also not affected by the constitutional change is the rate of sales taxes levied on food and prescription drugs by political subdivisions of the state (other than those political subdivisions whose boundaries are the same as those of the state, such as the Louisiana Tourism Promotion District). The tax on food and prescription drugs levied by parishes, municipalities, school boards, and other local political bodies will continue to be collected despite the constitutional change.

The sales tax exemption that began July 1, 2003, applies to food sold for preparation and consumption in the home as defined in Louisiana Revised Statute 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 remain at the 4% rate.

Electricity, water, and natural gas utility companies are allowing 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 and 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."

(Continued on page 3.)

"Food for home consumption" clarified

Effective April 10, 2003, The Department of Revenue adopted an Emergency Rule, **Louisiana Administrative Code 61:1.4401**, to clarify what "food for home consumption" means. The rule helps taxpayers understand what food items are taxable and which are not so that Article VII, Section 2.2 of the Constitution of Louisiana (commonly referred to as the "Stelly Plan"), which became effective January 1, 2003, may be properly applied.

**Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered
Chapter 44. Sales and Use Tax Exemptions**

§4401. Various Exemptions from the Tax

1. R.S. 47:305(D) provides an exemption from state sales tax upon the sale at retail of food sold for preparation and consumption in the home, as well as for some other expressed types of food sales. For this purpose, meat, fish, milk, butter, eggs, bread, vegetables, fruit and their juices, canned goods, oleo, coffee and its substitutes, soft drinks, tea, cocoa and products of these items, bakery products, candy, condiments, relishes and spreads, are all considered food items. Items such as flour, sugar, salt, spices, shortening, flavoring and oil that are generally purchased for use as ingredients in other food items constitute food. Items considered to be food are not limited to the examples set forth above. The listing is not all inclusive.

(Continued on page 4.)



Natural gas severance tax rate set

Revenue Information Bulletin

No. 03-012 (5-01-03)

The natural gas severance tax rate effective July 1, 2003, through June 30, 2004, has been set as 17.1 cents per thousand cubic feet (MCF) measured at a base pressure of 15.025 pounds per square inch absolute and at the temperature base of 60 degrees Fahrenheit.

This tax rate is set each year by multiplying the natural gas severance tax base rate of 7 cents per MCF by the "gas base rate adjustment" determined by the Secretary of the Department of Natural Resources in accordance with Louisiana Revised Statute 47:633(9)(d)(i). The "gas base rate adjustment" is a fraction of which the numerator is the average of the monthly spot market price of gas fuels delivered into pipelines in Louisiana as reported by Dynegy, Inc. (formerly Natural Gas Clearing House) and the New York Mercantile Exchange (NYMEX) Henry Hub settled price for the previous 12-month period ending March 31, and the denominator is the average of the monthly spot market price of gas fuels delivered into the pipelines in Louisiana as reported by the Natural Gas Clearing House for the 12-month period ending March 31, 1990.

Based on this computation, the Secretary of the Department of Natural Resources has determined the natural gas severance "gas base rate adjustment" for April 1, 2002 through March 31, 2003, to be 244.90 percent. Applying this gas base rate adjustment to the base rate of 7 cents per MCF produces a tax rate of 17.1 cents per MCF effective July 1, 2003, through June 30, 2004. The reduced natural gas severance tax rates provided for in Louisiana R. S. 47:633(9)(b) and (c) remain the same.

Revised reporting forms will be distributed as soon as they are available. Questions concerning the natural gas severance tax rate should be directed to the Severance Tax Division at (225) 219-2476.



Private Letter Rulings Issued

All Private Letter Rulings (redacted versions) are available on the Department's Internet web page at www.rev.state.la.us under "Laws and Policies" - "Policy Documents." Because of space limitations, *Tax Topics* does not print Private Letter Rulings in their entirety. The following are recent Private Letter Rulings:

On March 17, 2003, the Department issued **Private Letter Ruling No. 03-003** (redacted version) concerning the sales tax collection exemption at events held in publicly owned facilities, as provided by Louisiana Revised Statute 39:468.

On March 17, 2003, the Department issued **Private Letter Ruling No. 03-004** (redacted version) concerning taxability of sales of digital subscriber line (DSL) service to consumers for their use solely in accessing the Internet.

On April 4, 2003, the Department issued **Private Letter Ruling No. 03-005** (redacted version) concerning the status of already-installed durable medical equipment as movable or immovable property for sales and use tax purposes.

On April 29, 2003, the Department issued **Private Letter Ruling No. 03-007** (redacted version) concerning sales taxability of certain charges by a country club to its members.

Copies of these rulings are available on the Department's Internet web page at www.rev.state.la.us. Questions and comments about these rulings should be directed to the Policy Services Division at (225) 219-2780.



Negative Deductions a "No No" on Sales Tax Return

Deduction lines 18 through 34 (Schedule A) on the back of the Louisiana state sales tax return are used to identify sales, use, and leases of tangible property and services that have been reported on lines 1 through 3 on the face of the return, but are completely exempt from the state

sales tax, or are taxed at a sales tax rate of less than the full 4%. For example, line 18 of the current sales tax return [R-1029(7/03) edition] is used to report sales of intrastate telecommunication services and prepaid phone cards. That service is subject to only a 3% state sales tax. In order to calculate the correct amount of sales tax due, the total sales amount is entered in the left-hand column and multiplied by the 25% factor that appears in the middle column. The resulting product is entered in the right-hand column and combined with the other figures in that column. The result of that calculation generates an equivalent value that, when carried over to line 5 on the front page of the return, deducted from the Total Sales amount and multiplied by the 4% sales tax rate, will yield the correct 3% sales tax collected from customers on sales of intrastate telecommunication services.

If a deduction is inadvertently overstated, the dealer's only recourse is to file an amended return for that period. Adjustments to deductions cannot be made with the use of negative figures. Negative figures cannot be reported in any field on the return because the Department's data entry program only accepts and records the numerical information in each field numbers in its absolute value, without regard to minus signs or brackets that are written on the return. Doing so will result in a manual review of the return and make it necessary for an auditor to call or write a letter to the taxpayer in order to determine the correct tax treatment.

Taxpayers are reminded that total deductions may not exceed the total sales amount unless the excess is caused by sales returns. Beginning with the new July 2003 version of the sales tax return, Cash discounts, sales returns, and allowances are reported on line 32 of the sales tax return. Earlier versions of the return did not provide a special line for sales returns, and made it necessary for them to be reported on line 33, "Other Deductions".

Important Department Telephone Numbers
Tax Forms • (225) 219-2113
Taxpayer Assistance
(225) 219-7318

§ Rules Adopted

The following are brief descriptions of rules recently adopted by the Department. The full texts of the rules are available on the Department's Internet web page at www.rev.state.la.us under "Louisiana Administrative Code" – "Adopted Rules." The rules are also available from the Office of the State Register's Internet web page at www.state.la.us/osr/reg/.

On February 20, 2003, the Department adopted **Louisiana Administrative Code 61:I.4301** relative to the definition of the term "tangible personal property" for sales and use tax purposes. The rule provides guidance regarding the definition of tangible personal property in Louisiana Revised Statute 47:301(16) and describes items included and excluded from that definition.

On February 20, 2003, the Department adopted **Louisiana Administrative Code 61:I.4420** relative to the sales tax exemption provided for by Louisiana Revised Statute 47:305.50(A) for certain large trucks, trailers, and contract carrier buses operating 80% of the time in interstate commerce. The rule provides guidance on the length of time vehicles must be in interstate commerce in order to qualify for the exemption. It also discusses the consequences if a taxpayer claims the exemption at the time of purchase and subsequently does not qualify for the exemption.

≥ Revenue Information Bulletins

All Revenue Information Bulletins are available on the Department's Internet web page at www.rev.state.la.us under "Laws and Policies" – "Policy Documents." Because of space limitations, *Tax Topics* does not print all Revenue Information Bulletins in their entirety. The following are recent Revenue Information Bulletins:

Personal Income Tax

No. 03-007 – Penalty for underpayment of estimated individual income tax (2-18-03)

No. 03-008 – Louisiana military in combat zones receive state tax filing extensions (3-21-03)

No. 03-011 – Credit for federally qualifying long-term care insurance premiums paid by individuals (4-24-03)

Sales Tax

No. 03-009 – Limited credit is allowed for dealer costs of reprogramming cash registers to implement state sales tax rate or base changes (3-25-03)

Stelly Plan cont'd

Article VII, Section 2.2. also states specifically that the use of electricity, natural gas, or water in hotel or motel units does not constitute residential use. The constitutional provision does not require that the residences to which the utility services are delivered be the principal residences of the occupants. Provided that the utility services are provided separately for each occupied unit, eligible residences include single-family homes, duplexes, triplexes, apartment units, condominiums, town houses, and camps.

Liquefied petroleum gases are not eligible for the exemption. Propane, butane, and other liquefied gases that are sold and delivered in bulk tanks are not considered utilities for the purposes of the sales tax exemption. Although the sales tax law (Revised Statute 47:305.39) has a provision to exempt these fuels when sold for residential heating and cooking, the statute is currently suspended.

For more information about this exemption, go to the Department's Internet website at www.rev.state.la.us. Questions concerning the above sales tax exemption should be directed to the Taxpayer Services Division at (225) 219-7356 or to any of the Department's regional offices.



§ Sales Tax Deductions take on New Look

Schedule A of the sales tax return, deductions for exempt or partially exempt transactions, has been completely redesigned beginning with the July 2003 return. Quarterly filers will not see the new format until they receive their September 2003 return. This change has been made possible, in part, by the implementation of the Department's new mainframe computer database system.

Since the legislature began suspending certain exemptions from the levy of sales taxes in 1986 (sometimes at varying rates), the deduction lines on Schedule A have been grouped together according to the applicable sales tax rate. After each tax-rate group, a sub-total was calculated, followed by multiplication of the sub-total by a deduction factor. Over the years, unexpected changes in the tax rates of various transactions resulted in routine perennial changes to the format lines appearing in Schedule A.

Schedule A of the July sales tax return uses a three-column format to provide dealers a more consistent method of reporting exempt and partially-exempt transactions. The left column is used to report the gross sales amount of partially exempt transactions. The middle column indicates the deduction percent factor to be applied to the sales amount for that reporting period. The resulting product of that calculation is reported in the right column in the machine scannable boxes. Fully exempt transactions are reported at 100%, and are merely entered in the right-hand column because no calculations are necessary. Because the returns are machine-read, only information appearing in the right column is captured by the Department's processing equipment.

This change of format affects only the reverse side of the sales tax return. The front page remains virtually identical to returns for earlier tax periods. The Department's web page at www.rev.state.la.us will continue to make most of the earlier versions of the sales tax return available so dealers can download a printable copy of those forms in order to file an amended return.

“Food for home consumption” cont’d

2. Alcoholic beverages, malt beverages and beer; tobacco products; distilled water, water in bottles, carbonated water, ice and “dry ice” are not considered to be food. Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts are also not considered to be food.

Dietary Supplements

—any product, other than tobacco, intended to supplement the diet that:

i. contains one or more of the following dietary ingredients:

- (a). a vitamin;
- (b). a mineral;
- (c). an herb or other botanical;
- (d). an amino acid;

(e). a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(f). a concentrate, metabolite, constituent, extract, or combination of any ingredients described in i-v above; and

ii. is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

iii. is required to be labeled as a dietary supplement, which is identifiable by the fact that the product contains a “Supplemental Facts” box on the label.

3. “Food for home consumption” as used in La. R.S. 47:305(D)(1)(n) does not include “prepared food.”

Prepared Food

i. food sold in a heated state or heated by the seller;

ii. two or more food ingredients mixed or combined by the seller for sale as a single item, which does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,

poultry, and food containing these raw animal foods requiring cooking by the consumer in order to prevent food borne illnesses; or

iii. food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

4. Notwithstanding language to the contrary in Paragraph F.3, bakery products, dairy products, soft drinks, fresh fruits and vegetables, and package foods requiring further preparation by the purchaser are considered “food for home consumption” unless sold by an establishment listed in R.S. 47:305(D)(3). However, soft drinks that are sold with a cup, glass or straw are not considered “food for home consumption.”

5. Sales of meals furnished to the staff and students of educational institutions including kindergartens; the staff and patients of hospitals; the staff, inmates and patients of mental institutions; boarders of rooming houses; and occasional meals furnished in connection with or by educational, religious or medical organizations are exempt from the taxes imposed by this Chapter, provided the meals are consumed on the premises where purchased. Sales of food by any of these institutions or organizations in facilities open to outsiders or to the general public are not exempt from the taxes imposed by this Chapter, and tax should be charged on the entire gross receipts, rather than just the receipts from the outsiders or the general public.

6. Facilities for the consumption of food on the premises as discussed in R.S. 47:305(D)(3) include not only inside facilities, but also outside facilities, including parking facilities.

7. Purchases of food items by stores, institutions and organizations can be purchased without payment of the advance sales tax provided the ultimate retail sale or consumption of the food is exempt from taxes imposed by this Chapter. Regardless of the type of purchaser, if a majority of the food purchased and disposed is taxable under the established rules, advance sales tax must be paid by the purchaser.

Oil Spill contingency fee suspended

The State Treasurer has notified the Secretary of the Department of Revenue that the Oil Spill Contingency Fund has reached a balance of \$10 million. Therefore, in accordance with the provisions of Louisiana Revised Statute 30:2486.A., the collection of the fee was suspended starting May 1, 2003. This fee is suspended until the fund has a balance of \$8 million at which time notice will be given to resume collection.

However, collection of this fee for the month of April 2003 is still required. This one month is to be remitted as the quarter annual period ending June 30, 2003, which is due by July 31, 2003. Failure to collect and/or remit this fee to that date will result in an assessment of tax, interest, and penalties.

If you need further information concerning the Oil Spill Contingency Fund, please contact the Severance Tax Division at (225) 219-2500.

Tax Topics is a quarterly publication of the Louisiana Department of Revenue. Information contained herein is of a general nature; taxpayers requiring information concerning a specific tax matter should contact the appropriate tax office. Subscription information may be obtained from the Public Affairs Section at the address below, or by calling (225) 219-2760.

This public document was published at a total cost of \$7,657.00. One hundred eight thousand copies of this public document were published in this first printing at a cost of \$7,657.00. The total cost of all printings of this document, including reprints, is \$7,657.00. This document was published for the Department of Revenue, Post Office Box 201, Baton Rouge, LA 70821-0201, by the Division of Administration, State Printing Office, to disperse information concerning Louisiana tax matters deemed to be of public interest 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.

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