

# Louisiana Tax Topics

Department of Revenue and Taxation



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The mission of the Louisiana Department of Revenue and Taxation is to serve the citizens of Louisiana by efficiently collecting the state's tax revenue in a manner that will generate the highest degree of public confidence in our integrity and fairness.

## Major change in taxation of computer software

The department has published a revised rule in the Louisiana Administrative Code, to be effective October 1, 1995, under which all sales of computer software, for state sales and use tax purposes, will be treated as sales of tangible personal property. The revised rule eliminates the language in the former sales tax rule under which only "canned" or pre-written software was treated as tangible personal property. The rule was revised to comply with the October 17, 1994, holding of the Supreme Court of Louisiana in South Central Bell Telephone Co. v. Sidney J. Barthelemy et al. [643 So.2d 1240 (La. 1994), rehearing denied December 15, 1994]. The entire text of the revised rule is published in this issue.

The revised rule will change the state's sales and use taxation of computer software from taxing only "canned software" to taxing all sales of software. The Louisiana Supreme Court ruled in South Central Bell that both customized and canned software is tangible personal property, which is subject to the sales and use tax. The former rule had treated customized software as a nontaxable service. The revised rule removes all language from the Louisiana Administrative Code concerning the taxation of computer software and thus will allow the Supreme Court of Louisiana's decision in South Central Bell to become effective for state sales tax. Under the Court's decision, software would be subject to tax regardless of the function of the software, or whether transferred in physical form, via telephone

lines, or in any other method. All payments associated with the computer software will be subject to tax, except specific separately stated and commercially severable charges for technical services, such as personnel training and consultation services. The taxable base on software sales will include license fees and consideration paid for new versions of software programs.

Disposal sales, by a nondealer in software, of software that the seller acquired or developed for personal use or consumption, and not for the purpose of sale, will be treated as nontaxable "isolated or occasional" sales under Louisiana Revised Statute 47:301(10)(c) only when the seller sells and surrenders to the purchaser the original software and all copies (including copies contained in any computer memory or storage), along with all of the seller's rights to the software and copies.

A notice of intent to promulgate this revised rule (LAC 61:I.4301.16), associated with the statutory definition of "tangible personal property" under L.R.S. 47:301(16), was originally published in the February 1995, issue of the *Louisiana Register*. A public hearing related to that notice of intent was held on March 30, 1995. The final rule was published on September 20, 1995, in the *Louisiana Register*.

Additional information on computer software will be included in upcoming issues of the *Louisiana Tax Topics*. ■

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and  
Administered by the  
Secretary of Revenue and Taxation

**Chapter 43. Sales and Use Tax**

**§4301. Definitions**

\* \* \*

16. *Tangible Personal Property*

- a. General. With the exception of certain provisions of R.S. 47:301(14) relating to the furnishing of services, the question of whether an item constitutes tangible personal property is of utmost importance in determining whether its sale, use, storage, consumption, rental, or lease is subject to tax under the provisions of this Chapter. Under pertinent provisions of the Louisiana Civil Code, tangible personal property must be construed to be tangible movable property. Thus, if property is movable and meets the definition of tangible personal property contained in this Section, it is tangible personal property. R.S. 47:301(16) defines tangible personal property to be any property which may be seen, weighed, felt, or touched, or is in any manner perceptible to the senses.
- b. Exceptions. R.S. 47:301(16) provides for specific exceptions from the definition of "tangible personal property." The term "tangible personal property" shall not include:

*Continued on next page*

## Sales and use tax rule continued

- i. stocks, bonds, notes, or other obligations or securities;
  - ii. gold, silver, or numismatic coins, or platinum, gold, or silver bullion having a total value or \$1,000 or more;
  - iii. proprietary geophysical survey information or geophysical data analysis furnished under a restrictive use agreement even if transferred in the form of tangible personal property; or
  - iv. repairs of a motor vehicle by a licensed motor vehicle dealer that is performed subsequent to the lapse of an applicable warranty on that vehicle and at no charge to the owner of the vehicle. The services performed on this repair, along with the parts used will not have any value for sales and use tax. The dealer performing this repair must be licensed as a dealer in motor vehicles through the New Motor Vehicle Commission or the Used Motor Vehicle Commission. The repair must be associated with a warranty extended by the manufacturer.
- c. Movable Versus Immovable. The nature of the property may change from movable to immovable or from im-

movable to movable so that its character at the moment of a transaction or activity must be established, in order to determine the taxability of that transaction or activity. As an example, a movable piece of machinery may be attached to a building in such a manner that it cannot be removed without doing damage to the machinery or to the building. In this case, the character of the property will have changed from movable to immovable. If, however, the machinery is attached in such a way that it may be removed from the building without doing damage to either it or the building, its character upon being separated reverts to movable property.

- d. Repairs of Immovable Property. The distinction between movable and immovable property is of particular importance in determining whether repairs to property are taxable. If equipment or machinery removed from real property has been damaged, the item constitutes tangible personal property and repairs made thereto are taxable.

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## International Fuel Tax Agreement (IFTA) renewals

Current Louisiana International Fuel Tax Agreement (IFTA) credentials (license and decals) expire on December 31, 1995. Licenses and decals are valid for the calendar year, January 1 through December 31. In October 1995, renewal information will be sent to all currently registered carriers.

Regulations governing IFTA allow for the display of coming year credentials one month prior to the effective date. If the licensee chooses to display renewal credentials prior to January 1, the current year license card should also remain in the qualified vehicle until January 1, 1996.

For more information concerning IFTA credentials, contact the Excise Taxes Division at (504) 925-7671. ■

## Family responsibility credit

Individuals who have a contract with the Louisiana Department of Social Services to contribute to medical care in the family responsibility program are eligible for a credit of one-third of their contribution, limited to \$200 per year. The credit is claimed on Schedule A of the individual income tax return under "Other Credits."

There is no carryover or refund of the credit amount that exceeds the Louisiana tax. For more information about this credit, contact the Income and Corporation Franchise Taxes Division at (504) 925-4611. ■

## HOUSTON OFFICE RELOCATES

The Houston District Office has moved to their new location. The new address is:

5177 Richmond Avenue  
Suite 325  
Houston, TX 77056-6736

The new telephone number is  
(713) 629-8335.

### Baton Rouge – Main Office

Central Registration .....	504•925•7318
Collection .....	504•925•7448
Excise Taxes .....	504•925•7656
Income & Corporation	
Franchise Taxes .....	504•925•4611
Inheritance & Gift Taxes .....	504•925•7424
Sales Tax .....	504•925•7356
Severance Tax .....	504•925•7500
Tax Forms .....	504•925•7532
Unclaimed Property .....	504•925•7407
Withholding .....	504•925•4611
TDD .....	504•925•7533

### Regional Offices

Alexandria .....	318•487•5333
Lafayette .....	318•262•5455
Lake Charles .....	318•491•2504
Monroe .....	318•362•3151
New Orleans .....	504•568•5233
Shreveport .....	318•676•7505
Thibodaux .....	504•447•0976

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