



DESK OF STEPHEN H. MYERS

SPECIAL POINTS OF INTEREST

- **An Overview of Louisiana Sales and Use Taxes**
- **General Review of Louisiana Sales and Use Tax System**
- **What Triggers Sales and Use Tax?**

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Business

A GENERAL REVIEW OF LOUISIANA SALES AND USE TAX SYSTEM

The current structure of the Louisiana Sales and Use Tax System is a two-tiered system. The Louisiana Constitution grants the power to tax to the State, and also to the "Locals," meaning the City and Parish. The State codifies its tax at R.S.47:302, 321, 331, and 341. Now, parish and local taxes may be codified at R.S. 47:302(K), but only if the local taxing jurisdiction consents to the new uniform local sales tax code. Otherwise, the local taxes are enacted by ordinance.

The resolution of disputes concerning State Sales and Use Taxes involve the Department of Revenue, while disputes involving local Parish Sales and Use Taxes are resolved in an entirely different manner involving local officials. Both systems overlap and have totally different measures for redress of contested Sales and Use Taxes. Ultimately, problems arise when multiple jurisdictions are taxing the same event, and each jurisdiction has its own interpretation of what is taxable, and which jurisdiction is entitled to the tax.

WHAT TRIGGERS SALES AND USE TAX?

Transactions—basically, Sales and Use Taxes are levied on any **retail sales**, or on the **use or consumption, distribution, or storage for use** of tangible personal property. In addition, there is a Sales Tax on most leases and rentals and on other specifically named enumerated services. This is, of course, subject to various exclusions and exemptions. However, the basic concept is that all Sales and Use Tax levies are transactional in nature, and a tax is placed on such sales or on the use of certain tangible personal property during a given tax period. It should be noted that basically the object of the Statutory Enactments is to place a tax on all potential tangible personal property which is **bought into the State** (Use Tax); or which is **transferred by means of sale** (Sales Tax).

Retail Sale—the key in most instances is to determine whether or not a "retail sale" has taken place. A sale is the **transfer of possession or title** of an object for a consideration. An occasional sale of tangible personal property by someone who is not in the business is normally exempted from Sales and Use Tax levies. "Retail Sale" is further refined by a series of limitations and exclusions. These include:

- A sale made for resale is not a retail sale. A sale is considered a retail sale only when it goes to the ultimate consumer.
- A capital expenditure for new research equipment by a biotechnology company is not a retail sale.
- For State sales tax only, a purchase made in connection with motion picture filming.
- For the state and local treatment of vending machine operators.
- A sale of materials for further processing into articles of tangible personal property for sale at retail is not a retail sale.



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What You Don't See As A Taxpayer!

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- Sale of any human tissue is excluded.
- Raw agricultural commodities for animals or crops intended for market.
- Corporeal movable for sale to U.S. Government is excluded.
- Funeral services are excluded.

Taxable Services—in addition to the above, certain services are expressly enumerated by Statute as being subject to Sales and Use Tax levies. Revised Statute 47:301 (14) outlines particular types of services that are taxable. These include:

- Hotel Rooms, admission to athletic or amusement events, and parking spaces and retail parking facilities.
- Reproduction of written or other graphic materials in the form of Xerox or Photostat facilities and laundry or dry-cleaning facilities.
- Facilities which provide cold storage services to the public.
- Merchants who perform repairs to tangible personal property.
- Merchants whose services are utilized in the fabrication of an ultimate production of a product for retail sale.
- Telecommunication services such as local telephone services, long-distance services and computer online services.

Sales Price—R.S. 47:301 (13) covers the definition of sales prices, the amount used to calculate the tax due. It is generally the amount at which the item is sold. Some exclusion to the sales price include any manufacturer rebates of the first \$50,000.00 of farm equipment, and installation fees. Note: Do Not Confuse "installation" with fabrication, which is usually done prior to the sale.

Use Tax and Cost Price—the use tax is the purest tax levy, and is imposed not on the sale of the object, but rather on the utilization of the tangible personal property. A use tax is one made to tax the consumption, distribution, or storage of tangible personal property. The Statutes both on the State, and on the local level, provide for the taxation of a "sale" or the "use" of tangible personal property. However, a "sales" tax and a "use" tax cannot be imposed during the same tax period. A use tax uses "cost price" to calculate the amount of tax due. Cost price is generally the lesser of the actual cost paid, or the fair market value.

Dealer—the cornerstone of the Louisiana Sales and Use Tax System is the "Dealer". The Dealer is required by law to collect all taxes owed. The "Dealer" in this instance is normally the Seller or the Lessor. However, if the original Seller or Lessor fails to collect the tax, the definition of a "Dealer" as found in the Revised Statute is as broad as to ultimately encompass the retail consumer. As such, the "Dealer" and the Taxpayer can both be held liable for Sales and Use proceeds resulting from a given Sales and Use Tax transaction. **The above is a very basic outline as to how Louisiana Sales Tax System works. The more you know, the better you are at protecting yourself.**

The above is **not** an all-inclusive list but a general overview of Louisiana sales and use tax system. It illustrates how one must determine what is the "transaction" for sales & use tax purposes. Any ambiguity as to whether a sales and/or use tax is owed should be directed to an attorney active in this area of law.

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PROTECT YOURSELF AS A TAXPAYER!

Businesses, big and small, need to organize their business records in a certain manner to protect itself from burdensome, expensive and intrusive audits that State or parish taxing authorities can initiate at any time. Depending on the volume of business transactions, preventative measures can preclude tens of thousands of dollars in sales and use tax being imposed. If business records are properly maintained, any audit initiated by a taxing authority will be less costly and short-lived. If business records are not organized in a certain manner, the Taxpayer has a monstrous burden to locate, collect and prove that thousands of transaction are not taxable; or excluded or exempted from tax. This is especially true since most audits involve transactions that occurred more than three years after the fact. This three year gap can, and usually results in missing records, missing or invalid invoices, exemption certificates, bills of lading and other documentation which will result in the taxation of such transactions. It is the Taxpayer's responsibility to prove the taxing authority wrong. Being ill prepared is not acceptable and can result in a great deal of expense unless the Taxpayer protects himself upfront. Be aware that the Taxpayer is ill advised to just pay whatever amount of tax the State or Parish auditor claims is owed. If the Taxpayer takes this course of action, expect a new audit for other tax years since the taxing authority will consider your business as "easy pickings." The cost of protecting your business now is much less costly and disruptive than to ignore the situation in the hopes that the inevitable will not occur. Prior to finding yourself in this position, call me today and schedule a meeting to get you on the right path. This is the best way to protect yourself as a Taxpayer!

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