



DESK OF STEPHEN H. MYERS

## SPECIAL POINTS OF INTEREST

- **Professional Services**

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Business

## PROFESSIONAL SERVICES

To determine whether “professional services” are taxable, scrutiny as to the nature of the type of services rendered will help determine whether a taxable event has occurred. To do this, the definition of “tangible personal property” found in R.S. 47:301(16) needs to be examined. Whether the interpretation of “tangible personal property” by the DOR is ultimately found to be valid depends on how far the DOR is willing to broaden the definition of this term.

**Tangible Personal Property**—R.S. 47:301 (16)(a) defines tangible personal property as personal property that can be seen, weighed, measured, felt, touched, or is perceptible to the senses. The Louisiana Supreme Court has ruled that tangible personal property is equivalent to corporeal movable property as defined in Article 471 of the Louisiana Civil Code. The Louisiana Civil Code describes corporeal movable property as things that physically exist and normally move or can be moved from one place to another. Tangible personal property **does not** include:

- Incorporeal property such as patents, copyrights, rights of inheritance, servitudes, and other legal rights or obligations;
- Items that have intrinsic value, like works of art, photographs, or videos. Examples of sales of technical or professional services that are transmitted to the customer in the form of tangible personal property, but are not taxable, include but not limited to:
  - a. Audience, opinion, or marketing surveys;
  - b. Research or study groups reports;
  - c. Business plans; and
  - d. Investments analysis statements.



## STEPHEN HAWLEY MYERS ATTORNEY & COUNSELOR AT LAW

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# What You Don't See As A Taxpayer!

SEPTEMBER 2014

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Items specifically **excluded** from the definition of tangible personal property include:

- Stocks, bonds, notes, or other obligations or securities;
- Gold, silver, or numismatic coins of any value;
- Platinum, gold, or silver bullion having a total value of \$1,000.00 or more;
- Proprietary geophysical survey information or geophysical data analysis furnished under a restrictive use agreement even if transferred in the form of tangible personal property.
- Work products of persons licensed under Title 37 of the Louisiana Revised Statutes such as legal documents prepared by an attorney, financial statements prepared by an accountant, and drawings and plans prepared by an architect or engineer for a specific customer. However, if these items are reproduced without modification, they are considered tangible personal property and subject to sales and use tax.

The above is **not** an all-inclusive list of taxable transactions, but it illustrates how one must determine what is the "nature" of the property so as to determine if it truly "tangible personal property," and, as such subject to tax. Any ambiguity as to whether a sales and/or use tax is owed should be directed to an attorney active in this area of tax 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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