

Submitted Chatroom Questions for June 14, 2012

1. Please clarify when a waiver of prescription agreement is needed or not needed for businesses that are not filing or are not registered with the jurisdiction. We realized that when in doubt or there is a material liability at stake it is better to get the agreement than not. The real question is when there is not sufficient information can the statute be used to issue the assessment without the need for an agreement.

Here is a possible scenario.

Parish sends Notice of Examination to business in March 2012. The audit is scheduled for May 2012 with the audit period of January 1, 2009 through March 30, 2012. The audit begins as scheduled but due to issues with reports it is anticipated the audit will not be completed until February 2013. The business is not registered in the parish and has never filed a return for the parish. Would an agreement to suspend prescription be required to issue a valid assessment for Jan 2009 after December 31, 2012 under R. S. 47.337.67?

2. Subscription (License fees) for access to information via internet. No disc to aid downloads, just a password to enter website. Options to pay monthly, semiannually or annually. Is subscription/license fee taxable?
3. The state has issued a Notice of Intent concerning repealing Revenue Ruling No. 05-001. The original ruling said Contractors and their customers could choose to treat the purchases made as sales and therefore taxable to the customer or could treat as a contract and then it would be taxable to contractor. The state also said that if sales tax were charged and paid they would not issue a credit because it would be assumed that both parties agreed it was a sale. The current notice of intent will revert back to the way it should be, contractors are the final consumer and no sales tax should be charged. As I am sure everyone is aware of, the credit auditors are jumping all over this and wanting to start treating it retroactively. It is the opinion of this auditor, that it is clearly a change in the law and not a correction to an interpretation and therefore should only be treated prospectively if and when it is created and that all request for taxes previously paid should be denied as per RR 05-001. How is everyone handling this, are they allowing the retroactive treatment?

For discussion sake, if you wanted to use this, should all these be denied and the taxpayer told they should have paid it under protest since it is a question of fact or law if you want to call RR's law. It is a question of fact or law since the previously RR says it can be taxed and no refunds will be given, the current position is clearly changing the previous position not just clearing up a misunderstanding of how the RR should be interrupted.

4. The taxability of Shoe Shining services

5. How is use tax calculated on items that have not been purchased? Example: I have rock, but I didn't purchase it because there is a rock pit on my property. I am using this rock in a contract for build a road for "\$X.XX Dollars" (which the dollar amount of the contract and service is not taxable). I would typically pay use tax on the rock. But now I do not have a purchase price to calculate my use tax with. Do you not remit (or attempt to collect) any use tax on the rock? Or do you determine a Fair Market Value of the rock to pay (or collect) use tax on?

One quick addition – if the rock in this scenarios was for (retail) sale (not for use), then it would be taxable? Right?

6. Wondering if anyone has experience with LTC (long term care) pharmacies. These types of pharmacies provide mainly to nursing homes and do not sell to the general public. When they sell to the homes there are 3 types of transactions that could occur—
1. sales to a Medicaid recipient (not taxable—billed directly to MCD)
 2. sales to a Medicare Part D recipient (not taxable—billed directly to MRD) or
 3. sales to a Medicare part A recipient. In this instance, the patient is under Medicare part A coverage and the nursing home picks up the bill for room/board, prescriptions, DME, therapy, and other services/items associated with the part A diagnosis.

In order to get paid for the Medicare part A patient prescriptions, the pharmacy sends a bill to the home directly who in turn reimburses the pharmacy. The bill for these prescriptions is never sent to Medicare. The home gets paid by Medicare, but for these particular patients it is a per diem rate that is "all inclusive."

We have an LTC pharmacy in our parish and have found they are not collecting tax on the Medicare part A prescriptions when they bill the home. Any thoughts on why the pharmacy should/shouldn't be collecting the tax?

7. Television programming services converter boxes

A) Cable/DVR (Cox): Service providers provide a basic unit and remote control with the subscription for services. If the customer subscribes to more channels and/or DVR services there is an added charge. There is no separate charge for the converter boxes. In these cases, we would look for the service provider to pay sales/use tax on the cost of the converter boxes placed with the subscriber.

B) Cable/DVR (EATEL): Service providers provide a basic unit and remote control with the subscription for services. If the customer subscribes to more channels and/or DVR services there is an added subscription cost. There is separate charge for the digital converter boxes and DVR. The separate charges for the converter boxes appear to be taxed. Should the converter boxes be treated as a rental or as part of the vendor's equipment provided? Should the DVR units be treated as a rental or as part of the vendor's equipment provided?

C) Satellite (DirecTV): Service providers charge a monthly subscription plus rental for the converter box and remote control. Boxes for additional rooms are normally not an additional charge.

8. Portable on demand storage (PODS)

A) Storage units delivered to a customer's location and left on site for rental period are considered bare rentals and taxed accordingly.

B) Storage units delivered to a customer's location for receipt of goods and later picked up and moved to storage accessible only by the vendor. Is this a non-taxable service? Should sales/use tax be paid on the portable storage unit? Is it a hybrid transaction with a taxable rental of the unit and non-taxable storage? Since the renter does not have access to the storage unit until it is returned to the renter's location, would this be simply a nontaxable storage with pickup and delivery?