

LATA Newsletter

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Hotel room occupancy...

The Louisiana Department of Revenue has issued a revenue ruling which supersedes a previous ruling that is codified under La. Administrative Code 61:I.4301. This rule governs the taxability of hotel and motel room rentals to transient occupants.

This ruling reflects the amendment provisions that base the determination as to whether such rentals are taxable transient occupancies or nontaxable permanent occupancies on the character of the rental use, rather than the length of time for the rental.

There are several factors including, physical presence, and long-term use, contractual nature of the arrangement and the permanency of the habitation that may be considered essential to establishing the character of the use as that of a permanent residence.

For a transaction to be considered a nontaxable rental of a permanent residence, the physical properties must provide the basic elements of a home. Such elements would include a full-sized kitchen with integrated appliances and the facility and occupant must use the facility as a home, with intent of permanency.

(Revenue Ruling 07-003, superseding Ruling 03-007)

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Sales of immovable property...

In the interest of clarifying the tax sales law, and to avoid confusion between the statutory language, and the controlling language of such provisions of the state constitution, HB 578 has enacted Act 195.

Tax Collectors selling immovable property at tax sales are required to sell the “least quantity of property” that a bidder will buy for the amount of taxes, interest and cost, if it is determined that property is not divisible in kind.

Previously, the provisions being amended required tax collectors making the determination to sell the “lesser undivided interest of the whole property” that would satisfy the applicable taxes, interest, penalties and costs.

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There is nothing harder...

than the softness of indifference...

Energy tax credit...

The Louisiana Department of Revenue has issued a clarification of the effective date of the tax credit as enacted by SB 90 and Act 371. Beginning January 1, 2008, eligible taxpayers can obtain a credit for the cost of the purchase and installation of a wind or solar energy system. This system must have been installed in their residence in the state or at residential rental project in which they own.

To qualify for this credit, the purchase and installation of the energy system must have been accomplished on or after January 1, 2008.

(Revenue Information Bulletin, 07-025)

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Off road vehicle exemption...

The Louisiana Department of Revenue has issued a bulletin to clarify the provisions of HB 231 and Act 291. With an effective date of this past October, an exemption from state sales and use tax may be granted on off-road vehicles, bought by out-of-state purchasers who present proof that they are domiciled in another state.

The purchaser must sign an affidavit at the time of the sale indicating that they will pay the sales and use tax, on the vehicle in the state in which they are domiciled within a 60 day period.

To make such an exemption valid, the state in which the purchaser is domiciled must provide similar provisions. The dealer is responsible for properly administering this exemption by maintaining copies of the exemption certificate and affidavit forms, and the purchaser's proof of residency in another state. All supporting documentation for such sales must be reported to the motor vehicle audit section.

(Revenue Information Bulletin, 07-024)

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Separate location reporting for state taxes...

The Louisiana Department of Revenue has adopted an amendment to the administrative rule codified by Administrative Code 61:I.4351, that provides guidelines regarding the filing of tax returns. The rule amendment continues the procedure that authorizes taxpayers to request approval to file consolidated returns, made from multiple locations on one monthly return.

The Department, however; is authorized to require filing of separate returns by taxpayers located in tax increment financing zones, or in other instances in which such data is required by an individual sales location.

Furnishing of scaffolding...

The Department has issued a ruling to clarify the daily rate of the furnishing of scaffolding, without a transfer of title, to be taxable as a lease, or rental of tangible personal property.

The tax does not apply to charges for the set-up and tearing down of such scaffolding, or the on-site presence of the owner who advises in the use of such equipment. If the purchaser has the option to purchase or decline these services, the periodic rental rates for the scaffolding are not affected by the customer's decision if such charges are separately stated.

All dealers are required to collect tax on such rentals regardless of whether tax was paid on the units of property that are leased or rented after September, 2007.

(Revenue Ruling, 07-005)

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Occupational license tax...

With an effective date of January, 2008, Act 426, establishes an occupational license tax amount that localities are authorized to impose on a fixed location gasoline and motor fuel dealer.

The authorization is the total amount consisting of a gross sales component that ranges from a \$50 fee for annual gross sales up to \$50,000, to a fee of \$6,200 for annual sales of \$5.5 million, plus a gallonage component.

(HB123, Act 426, 07 Legislative Session)

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Advance sales tax...

The Department has issued a release which provides that manufacturers, wholesalers, jobbers and suppliers that are required to collect Louisiana state advance sales tax must continue to do so until January, 2009.

With an effective date of January 1, 2008, a new law decreases the amount of annual sales necessary for a dealer to be exempt from advance sales tax payment to an average of \$500,000 or more, which is down from a previous \$3 million.

(Information Bulletin, 07-028)

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A man went to see a doctor and requested treatment for his ankle. After a careful examination, the doctor inquired, "how long have you been going about like this?" The man replied about two weeks. Why, man, your ankle is broken. How you managed to get around is a marvel. Why didn't you come to see me sooner? "Well, doctor, every time I say something is wrong with me, my wife tells me I have to stop smoking."

Release of refund claim...

A taxpayer's claim for refund of additional taxes was dismissed after acceptance of refund as originally assessed. A taxpayer's claim for a refund of additional taxes assessed, on its off-road diesel fuel, was properly dismissed after the taxpayer accepted a refund, based on another assessment.

The taxpayer accepted the refund on the amount of taxes as originally assessed and signed a "receipt and satisfaction of judgment" acknowledging that the refund constituted a full and complete refund of all taxes having been paid under protest.

By timely challenging the original assessment, paying it under protest, and filing suit for its recovery, the taxpayer was deemed to have challenged the additional taxes found to be due and owing for the same sales transactions, during the same audit period and arising from the same assessment. Although the taxes on the underlying transactions were held unconstitutional and the additional taxes had not been refunded, the taxpayer's signed acknowledgment, constituted a final resolution and release that barred all further claims with respect to the sales transactions at issue.

*(Simons Petroleum v Falgout, 1st Cir, Dkt. #2006 CA 1781)
(although a public transaction, case is not noted or designated for publication)*

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Medical records...

The Department recently issued a ruling relative to the taxation of medical records. Sales tax does not apply to a medical provider's charge for the furnishing of medical record copies. Such copies are sometimes provided to patients or other persons that may be authorized by the patient to receive them.

As such, they are excluded from the definition of tangible personal property under the statutory work product exclusion codified at LRS 47:301(16)(e). However; if a third party entity provides copies of such records, for a hospital to provide to patients, the third party is deemed to be providing a taxable service of reproducing written or graphic matter.

If a third party provides copies of medical records or copies for a fee based on the number of images reproduced and delivered to the requester either by electronic means or in hardcopy, the third party is deemed to make a taxable sale of tangible personal property.

The tax will apply to such transactions even if the third party is considered to be a business associate of the medical provider for purposes of federal privacy provisions.

(Revenue ruling 07-006)

It's important in this life that people know what you stand for...

But remember, its equally important that they know what you won't stand for...

Construction barricades...

Sales tax applies to transactions in which providers furnish temporary barricades, lights and fencing to contractors for use in and around their construction and street repair sites. Such transactions are deemed to be taxable leases or rentals.

The taxable base includes the charges for the lease or rental of the barricades, lights and fencing and any charges for bulb replacement or other such maintenance of the items rented, whether or not the replacement or maintenance charges are separately stated.

Providers can buy barricades and the like as well as other durable tangible personal property without paying the tax, if they acquire the items for the exclusive purpose of leasing or renting them to other persons.

(Revenue Ruling 07-007)

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Outdoor signs...

The Department has issued a Revenue Ruling 07-004, relative to the taxation of outdoor signs. The ruling indicates that sales tax does apply to free-standing signs and signs that can be removed, or replaced without damaging, or materially defacing buildings, or other property to which they are attached, since such signs are deemed to be movable property.

Charges for installing such signs are not taxable, if separately stated on the bill. Tax Does not apply to sales of permanent signs on fixed, immovable foundations. Tax does apply to signs that are picked up at facilities where they are manufactured.

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Tax recovery...

The question is whether taxpayers can pursue the recovery of taxes paid, prior to the issuance of an Attorney General Opinion relative to the validity of the tax?

The courts found that the remedy provisions, and procedural requirements of LRS 47:2110, did not prohibit a taxpayer's class action lawsuit to recover Livingston Parish documentary transaction tax payments paid before the AG's determination (OAG 04-0381). The opinion found that the Louisiana Constitution did not authorize the parish to impose such a tax and that LRS 47:2110, did not constitute a remedy for protesting such transaction taxes.

The first reference to "taxes" in the language of that statute was to "ad valorem taxes," which was evidence that, in the context of the statute, the term "taxes" used in the remaining language referred to ad valorem taxes. Additionally, the courts found that the statute made repeated references to "property taxpayers." Since the documentary transfer tax at issue was neither a property tax nor an ad valorem tax, the requirements of LRS 47:2110 did not apply in this case.

(Kinchen v Livingston Council, La S. Ct., Dkt 2007 C 0478)

MEMBERSHIP INVITATION AND APPLICATION

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Annual Dues: \$150.00 (Government Employees)
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