

EAST BATON ROUGE PARISH

SALES AND USE TAX RULES AND REGULATIONS

August 1, 2000
Fourth Edition

City of Baton Rouge and Parish of East Baton Rouge
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RULES AND REGULATIONS**

August 1, 2000 - Fourth Edition

These rules and regulations have been promulgated by the Finance Director pursuant to the requirements of the Sales and Use Tax Ordinances of the local taxing jurisdictions in East Baton Rouge Parish. They apply only to the sales and use taxes levied by those local taxing authorities. At the present time, those taxing authorities and their respective tax rates are presented in the following table:

Parish of East Baton Rouge (exclusive of the Cities of Baton Rouge, Baker, and Zachary)	2%
Parish of East Baton Rouge (inclusive of the Cities of Baton Rouge, Baker, and Zachary), for sewers and sewage disposal works	½ %
for street improvements	½ %
City of Baton Rouge	2%
City of Baker	2½ %
City of Zachary	2%
East Baton Rouge Parish School Board	1%
Educational Facilities Improvement District	1%

These rules and regulations do not intend to cover every situation. Changes and additions may be promulgated as appropriate. If any questions arise which are not covered by them, please contact the City-Parish Finance Department, Revenue Division, at (225) 389-3084.

George Marretta
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including mailing of returns and remittances:

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Rule 1. Bracket Schedule

- A. All taxes shall be calculated and collected according to the integrated tables prepared by the Louisiana Department of Revenue.
- B. 1. On all taxable transactions in the taxing jurisdiction, other than those listed in Subsection C below, the following table shall apply:

5% Tax Table	
Purchase Price	Amount of Tax
.01 - .09	.00
.10 - .29	.01
.30 - .49	.02
.50 - .69	.03
.70 - .89	.04
.90 - 1.09	.05

On each additional one dollar of purchase price, the tax is determined by multiplying the sales amount by 0.05, and rounding the result to the nearest cent.

- 2. On May 5, 2001, the voters in the City of Baker approved a 1/2% sales and use tax increase. The total local sales and use tax rate in the City limits of Baker will change from 5% to 5½% effective October 1, 2001. The following table applies to taxable transactions in the City of Baker beginning October 1, 2001:

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5½% Tax Table	
Purchase Price	Amount of Tax
.01 - .09	.00
.10 - .27	.01
.28 - .45	.02
.46 - .63	.03
.64 - .81	.04
.82 - .99	.05
1.00 - 1.18	.06

On each additional one dollar of purchase price, the tax is determined by multiplying the sales amount by 0.055, and rounding the result to the nearest cent.

- C. The following exemptions specifically apply to the additional 1/2% tax that became effective January 1, 1989 (sewer and sewerage work), the additional 1/2% tax that became effective July 1, 1990 (street improvement), and the 1% Educational Facilities Improvement District tax that became effective July 1, 2000:
1. Drugs prescribed by a physician or dentist;
 2. Orthotic and prosthetic devices and wheelchairs and wheelchair lifts prescribed by physicians or licensed chiropractors for personal consumption or use;
 3. The sale or purchase of any ostomy, ileostomy or colostomy device or any other appliance, including catheters or any related items which are required as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste;
 4. Patient aids prescribed by a physician or a licensed chiropractor for home use;

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5. Food sold for preparation and consumption in the home, including by way of extension and not of limitation, bakery products; dairy products; soft drinks; fresh fruits and vegetables; package foods requiring further preparation by the purchaser; and
6. Any and all medical devices used personally and exclusively by the patient in the medical treatment of various diseases under the supervision of and prescribed by a registered physician.

D. With respect to transactions involving the exemptions in Subsection C, the following table shall apply:

3% Tax Table	
Purchase Price	Amount of Tax
.01 - .16	.00
.17 - .49	.01
.50 - .83	.02
.84 - 1.16	.03

On each additional one dollar of purchase price add three cents tax.

E. The brackets provided herein are applicable only to transactions that are taxable by the taxing jurisdiction. Similarly, the rates apply only to the 3%, 5%, and 5½% tax collected by the Finance Director and do not include taxes levied by the State of Louisiana.

Rule 2. Deliveries and Storage of Tangible Personal Property in the Parish

- A. In general, every sale of tangible personal property within the Parish is taxable, whether the purchaser or agent of purchaser picks up the merchandise or has it delivered. However, where the merchandise is delivered by the seller to a bona fide destination outside the Parish, the transaction is not taxable.
- B. Dealers must register with the Parish and collect tax when delivering tangible personal property into the Parish via their own vehicle (leased vehicles included) or enjoying the benefits of Parish services such as police protection, use of roads when performing

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taxable services in this Parish for the benefit of customers or otherwise establishing nexus with the Parish.

- C. When property comes to rest in the Parish and has become a part of the mass of property in the Parish, its sale, use, consumption, distribution, or storage for use in the Parish will be taxable. Transactions involving specific pieces of property delivered to a buyer in the Parish via carrier other than the seller's vehicle, which have had invoices or purchase orders clearly labeled (earmarked) for transshipment outside the Parish at the time of the property's manufacture or importation into the Parish, are exempt from use tax even though such property may be stored in the Parish for an indefinite period of time. Any disposition of the property for a purpose contrary to that originally labeled (earmarked) would immediately subject the transaction to tax.
- D. When merchandise is delivered to the buyer at a point in this Parish from a point outside the Parish via a seller's own vehicle, or when a seller in this Parish delivers goods to a buyer in this Parish, the transaction is subject to tax in this Parish. When the seller's vehicle is used, tax is due regardless of whether the goods are invoiced for use in another jurisdiction and stored in this Parish or whether the goods are delivered in this Parish and immediately put on the buyer's truck and transported outside the Parish. The key factor in the transaction is the delivery in this Parish via the seller's vehicle or by the seller's agent. In such event, the seller is physically giving possession of the goods to the buyer in the Parish and the place of storage or subsequent use of the goods is immaterial.

Rule 3. Export Sales

The power to regulate commerce with foreign nations is vested in the Congress of the United States. Accordingly, the taxing jurisdictions do not tax sales of tangible personal property requiring shipment to a foreign country.

Rule 4. Nonresident Purchases

If a nonresident of this Parish purchases articles of tangible personal property or taxable services from a dealer in this Parish and the transfer of title or possession or repair service takes place in this Parish, the sale is subject to the tax levied by the local taxing ordinance. It is immaterial that the property purchased or repaired will be subsequently transported outside this Parish or State.

Rule 5. Transactions in Interstate and Foreign Commerce - Use Tax

Even though a transaction is one in interstate or foreign commerce, if the property which is the subject of the transaction is brought into this Parish for use or consumption, use tax is owed. If the out-of-parish vendor is not engaged in business in this Parish within the meaning of the ordinance, the vendor is not required to collect use tax. However, the vendor's customer in this Parish must report and pay the use tax directly to the Finance Director. If the vendor is engaged in business in this Parish, he qualifies as a dealer under the ordinance and must collect and remit the use tax to the Finance Director. "**Engaged in business**" means and includes any of the following methods of transacting business: Maintaining directly, indirectly or through a subsidiary, an office, distribution house, sales house, warehouse, or other place of business; renting or leasing tangible personal property in the Parish; having an agent, salesman or solicitor operating within the Parish under the authority of the seller or its subsidiary, irrespective of whether such place of business, agent, salesman, or solicitor is located in the Parish permanently or temporarily or whether such seller or subsidiary is qualified to do business in the Parish; making deliveries into the Parish via the seller's vehicle; or enjoying the benefits of services provided by the Parish such as police protection, use of roads when performing taxable services in the Parish for the benefit of customers, or any other method satisfying jurisprudential requirements of nexus.

(See also Rule 9 for general rules concerning Use Tax.)

Rule 6. Sales to Taxing Jurisdiction Departments and Constitutional Offices

- A. When construction materials, supplies, equipment or other items of tangible personal property are sold and billed by the seller to the local taxing jurisdictions or any of the departments or agencies thereof, and such sales are paid for by such agencies, these transactions are not taxable.
- B. Local taxing jurisdictions and constitutional offices in the Parish such as the Sheriff's Office, the Clerk of Court, Registrar of Voters, etc., making purchases of tangible personal property should not be charged the local sales tax and the seller is not required to collect and remit tax on these sales.

Rule 7. Sales to the Federal Government, the State of Louisiana, and their Agencies

- A. When tangible personal property or a charge for taxable services is billed and sold directly to, and is paid for by check from the Federal Government, its departments or agencies, or the State of Louisiana, its departments or agencies, the local taxing jurisdictions are without power to impose the local sales/use tax on such transactions. The determining factor in all cases is whether or not a sale is made and billed directly to the Federal Government, its departments or agencies, or the State of Louisiana, its departments or agencies, and is paid directly by the Federal Government or the State.
- B. The ordinances contain a specific exemption relative to contracts with the U. S. Department of the Navy for the construction or overhaul of U. S. Naval vessels.

Rule 8. Sales to Religious Institutions

Purchases of bibles, song books, or literature used for religious instruction classes by churches or synagogues are exempt from tax. This exemption became effective July 1, 1996. All other taxable purchases by these organizations are not exempt.

Rule 9. Use Tax

- A. The local ordinances impose a tax on the use, consumption, distribution or storage for use, distribution or consumption within the Parish of tangible personal property purchased in such a manner that sales tax does not apply. The use tax does not apply to the use of any property which has been subjected to sales tax in a taxing jurisdiction outside the Parish in an amount equal to or greater than the amount of tax imposed by the local ordinances, nor does the tax apply to the use of any property which is exempt from the tax imposed upon the sales at retail by the local ordinances.
- B. Use tax is based on the cost price of the tangible personal property. Cost price is defined in the ordinances as the lesser of the reasonable market value of tangible personal property at the time it becomes susceptible to use tax or the actual cost of the property subject to the use tax liability. The lesser of the two applies, regardless of the manner by which the property was acquired, whether by purchase, manufacture or otherwise, and regardless of where acquired.
- C. The use tax applies to the use of property purchased in interstate commerce in another state or in another parish of the State of Louisiana for the purpose of use in the Parish

after the interstate or intrastate movement has ended. For the purpose of taxation, interstate or intrastate commerce ends when the property reaches the purchaser and comes to rest within the Parish. The tax does not apply until the property has come to rest in the Parish.

- D. Generally, it may be said that use tax applies to the use of property in the Parish, the sale of which would be subject to tax had there been a purchase within the Parish. The two taxes, sales and use, stand as complements to each other and provide a uniform tax upon either the sale at retail or the use of tangible personal property. There shall be no duplication of the tax.

- E. The State of Louisiana exempts from sales/use tax tangible personal property purchased for lease or rental purposes. Except for automobiles and motor vehicles as described in Rule 35 K, this exemption does not currently apply to the 5% local jurisdiction tax levied. The taxpayer must pay the 5% local tax on any purchases of tangible personal property for rental or lease purposes in East Baton Rouge Parish. There are some limited exemptions that are explained and can be referenced through the rules listed below.

(See also Rules, 2, 5, 15, and 17 for other applications of the use tax.)

Rule 10. Liability for Payment

Either the purchaser or seller, to any transaction, use, consumption, storage, or lease involving tangible personal property or sales of services, is liable for payment of the tax.

Rule 11. Certificate of Registration

- A. Every person who is responsible for collecting and accounting for the tax or who engages in any business involving transactions for which tax is imposed under the local taxing ordinances shall apply for and obtain a certificate of registration from the Finance Director. This requirement does not apply to persons whose entire gross proceeds are from sales which are expressly exempt under the ordinance, but responsibility for use tax may make it necessary for such persons to obtain a certificate of registration.

- B. The certificate of registration shall be posted in a conspicuous place in the place of business for which it is issued.

- C. A certificate of registration is personal and nontransferable. The old certificate must be canceled and a new one secured when there is a change of ownership of a business. No

change of ownership occurs upon the transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy.

- D. Whenever the place of business for which a certificate of registration has been issued is changed, the existing certificate shall be returned to the Finance Director for cancellation. The new certificate will be issued for the new place of business.
- E. If any original certificate of registration is destroyed or defaced as the result of an accident or from natural wear and tear, a duplicate certificate will be issued upon request.

Rule 12. Resale Exemption Certificates

- A. The Finance Director will consider all sales to be taxable retail sales unless the seller takes from the buyer a Resale Exemption Certificate, signed by and bearing the name, address, and registration number of the buyer to the effect that the property is purchased for resale. Dealers may recognize the claim of a buyer that the articles are purchased for resale only when the buyer is properly registered under the provisions of the local ordinances (if the buyer is located in this Parish) or under the provisions of the State sales tax law (if the buyer is located elsewhere within the State).
- B. The seller shall be responsible for the collection of the tax on all sales made to persons who have not secured the proper registration certificate, except in cases where fertilizer and containers are sold directly to farmers. Resale Exemption Certificates claiming that goods are purchased for resale must state the registration number assigned to the buyer when such buyer is a retail merchant.
- C. Because a person is registered under the law does not mean that all of his purchases are being made for the purpose of resale. For example, a person engaged in selling automobile tires and accessories would not be buying a diamond ring for resale. The burden of proving that a sale is in fact for resale shall be upon the person who makes the sale. Claims of purchasers must appear reasonable, with consideration being given to the nature of their business.
- D. Dealers shall keep all Resale Exemption Certificates furnished them for examination by the Finance Director. Dealers may be given 30 days from the date examination is requested by the Finance Director to furnish the Director the properly executed and signed Resale Exemption Certificates. Certificates received by the Finance Director after such 30-day period will not be accepted. Any dealer who fails to secure a properly executed and signed certificate is liable for and shall pay the tax himself. Resale

Exemption Certificate forms may be obtained from the Finance Department Revenue Division.

Rule 13. Gratuities

The local ordinances require that the "sales price" of tangible personal property include any amount charged for services in connection with the sales. Restaurants, bars, and other sellers of food and drink frequently invoice to customers amounts labeled tips, gratuities or service charges. These charges, however labeled, are not included in the sales price if they are collected merely as a convenience to the server and customer and are passed on in whole by the seller directly to the person rendering the service. However, if the charges are collected to supplement labor cost or are retained by the seller, the tips, gratuities or service charges must be included in the sales price and tax paid thereon. Tips or gratuities which are given by customers directly to waiters, waitresses or service personnel are not includable in the sales price.

Rule 14. Cash Discounts

The sales price of an article of tangible personal property does not include the amount of bona fide cash discounts actually taken by the buyer, and the amount of such discounts may be deducted from taxable sales if such discount has been previously reported in taxable sales. For example, "A" sells merchandise to "C" for \$100 subject to a discount for cash of 2%-10 days. "A" credits his taxable sales with \$100. On the ninth day, "C" sends "A" his check for \$98, plus tax. "A" may deduct from taxable sales the \$2 discount taken.

Rule 15. Transportation Charges

- A. Separately stated transportation charges for delivery of purchased goods to the buyer's designated location are generally not taxable.
- B. Transportation charges by a manufacturer or wholesaler for delivering property to the retail dealer's location are subject to tax when the product is sold and these costs are passed on to the customer.
- C. An exception would be the sale of a product contingent on the satisfactory condition of the product on delivery. Concrete vendors, for example, must deliver their product to the job site in specialized vehicles that turn the ready-mixed concrete while in transit to ensure that the product reaches the job site in acceptable condition, and the conditions of the sale are not met until delivery is completed. The transportation charge under these circumstances is taxable.

Rule 16. Finance and Service Charges

"Sales price" does not include charges made to the customer for financing or servicing his account within certain amounts fixed by the ordinances. With respect to charges for financing, the ordinances limit the amount which can be charged and eliminated from sales price for sales tax purposes to the legal rate of interest and limits the amount which can be charged for servicing the customer's account to an amount not to exceed 6% of the amount financed, regardless of the time covered by the purchase contract.

Rule 17. Federal Excise Taxes

Import duties and federal excise taxes which are imposed on a producer, processor, manufacturer, or importer and passed on to the buyer are a part of the dealer's cost and cannot be excluded in determining sales price. The only exception is with respect to the federal retailers' excise tax which must be collected from the consumer or user. If those taxes are billed (invoiced) to the consumer or user separately, they may be excluded from the tax base. However, if such taxes are not billed separately, the total amount, including the excise tax, is taxable.

Rule 18. Record Keeping

- A. The local taxing ordinances require that every dealer keep and preserve suitable records of the sales, purchases, and sales of services taxable under the ordinances, and such other books of account as may be necessary to determine the amount of tax due. Records must be kept for at least three calendar years, in addition to the current year. In cases of assessments, waivers of prescriptions, and taxpayer fraud, records must be maintained for extended periods, which will vary depending on circumstances.
- B. Listed below are guidelines that indicate items needed to meet this record keeping requirement:
 1. Sales Records
 - a. Sequentially numbered sales invoices.
 - b. Daily sales register receipts or tapes which have been posted to a summary document, such as a sales journal or general ledger.
 - c. Bank statements.
 - d. Sales invoices posted to a journal or ledger which distinguish taxable sales and services from non-taxable sales and services.

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- e. Properly executed exemption certificates on non-taxable sales and services.
- f. Bills of lading, delivery tickets or similar transportation records for sales.
- g. Any other documentation to support entries on the sales/use tax return.

2. Purchase Records

- a. Purchase invoices or other billing documents.
- b. Purchases posted to a summary document, such as a purchase journal or general ledger.
- c. Check register.
- d. Depreciation schedule or fixed assets register.
- e. Any other records to support entries on the sales/use tax return.

3. Tax Returns and Work Papers

- a. Tax returns filed with the City of Baton Rouge and Parish of East Baton Rouge.
- b. Use tax accrual records to show invoices on which no tax was charged by the vendor, but was accrued by the business and reported on its own tax return.
- c. Any other records to support entries on the sales/use tax return.

- C. The sales, purchases, and tax return records itemized above should be secured, maintained, and kept by each business until each affected sales/use tax transaction has prescribed. These guidelines are not all-inclusive and, depending on the nature of the business, additional records may be required.
- D. The failure to comply with these record keeping requirements is a criminal offense. Refer to Section 32b(9) of the ordinance for more details.

Rule 19. Advertising "Tax-Free"

Each dealer is required to charge tax on all taxable sales, services, and rentals and must separately state and collect the tax from the price paid by the purchaser. It is unlawful for a dealer to advertise any taxable transaction as "tax-free."

Rule 20. Intercompany Transactions

Transactions between affiliated companies may be subject to tax. Questions used to determine the taxability of intercompany transactions are as follows:

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1. Do the companies employ separate personnel?
2. Are the employees of each company paid out of separate funds?
3. Is a markup included in the transactions between the companies?
4. Are the companies separate legal entities?
5. Are the Board of Directors and owners different in each company?

These questions are to be used for guidance when determining taxability, with affirmative answers being an indication that a transaction is taxable. The entire set of facts and circumstances must be evaluated before making a taxability decision. Taxability cannot be determined from the answer to just one of these questions.

Rule 21. Premiums and Other Gifts

Gross proceeds from the sales of goods to be given away as premiums or gifts, through promotion of products or otherwise, are taxable.

Rule 22. Exchanges and Adjustments

When any tangible personal property is returned to the seller for adjustment or exchange under a guarantee as to its quality of service and a new article is given pursuant to the guarantee, tax shall be due on the additional amount, if any, paid to the seller.

Rule 23. Returned Merchandise

- A. In the event articles of tangible personal property are voluntarily returned to the seller by the consumer or user, before such articles have been used, but after tax has been collected or charged to the account of the consumer or user and not yet remitted to the Finance Director, the seller may deduct the sales price of such articles from the gross proceeds shown on his report for the current month. The purchaser must provide a receipt documenting the payment of local sales taxes in this Parish. In the event the taxes have been remitted to the Finance Director, the dealer, within 90 days of making such refunds, may file a sworn statement of the gross amount of any refunds made by him and shall be issued an official credit memorandum equal to the net amount remitted by the dealer for such tax remitted. No credit shall be allowed for any refund claimed more than 90 days after it has been made. The credit memorandum may be used in payment for subsequent taxes owed under the ordinances.
- B. The records of the dealer must clearly reflect and support his claim for all such deductions for merchandise returned. Articles of tangible personal property that have

been used, but are then repossessed, cannot be classified as returned merchandise for the purposes of this rule.

Rule 24. Bad Debts

The ordinances allow reimbursement for taxes paid on debts incurred on and after September 3, 1989, which are determined to be worthless. In such event, the dealer shall submit a claim annually for refund, together with necessary documentation showing compliance with the ordinance and proof that the Louisiana Department of Revenue has found him to be entitled to a refund in accordance with Louisiana Revised Statutes 47:315(B)(4).

Rule 25. Repossessions

Dealers who repossess articles of tangible personal property shall not, for local sales tax purposes, deduct from their gross proceeds of sales the unpaid amounts on repossessed merchandise or claim any other deduction with respect to such repossessions.

Rule 26. Trade-Ins

The tax levied by the local taxing ordinances on any transaction in which a part of the sales price is represented by an article traded in, shall be calculated on the total sales price less the market value of the article traded in. At such time as the article taken in trade is sold, tax shall be collected on the sales price thereof.

Rule 27. Credit and Installment Sales

- A. Persons making credit sales or installment sales must report the total sales price of any such sales and remit the sales tax on such total in the monthly report due for the month in which the contracts of sales are executed.
- B. The foregoing applies even where such sellers arrange to receive payment of tax in installments or where the contract is discounted, pledged or sold to a finance company.
- C. No deductions for credit losses in case of repossession are allowable.

Rule 28. Lay-Away Sales

A sale whose delivery is conditional on payment of the amount due is not completed until the amount due is received by the seller; therefore, it is not taxable until the sale is completed.

However, tax is due on the total sales price, whenever the seller delivers the merchandise to the purchaser, regardless of payment terms.

Rule 29. Gift Certificates

- A. The sale of gift certificates by a restaurant, department store, etc., is not taxable, since the gift certificate is merely a means of payment similar to cash or check. The sale for which the gift certificate is used as a means of payment is taxable and the proper tax must be collected.
- B. The redemption of the gift certificate by the issuing restaurant, department store, etc., is subject to tax.

Rule 30. Total Tax Collected Must be Remitted

Every dealer is required to make returns to the Finance Director of the total amount of the tax collected from his purchasers. In cases where the total amount of taxes collected under the ordinances exceeds the percentage applicable to the particular transactions involved, any such excess must be remitted to the Finance Director. Failure to remit is a criminal offense. Refer to the local ordinance for more details.

Rule 31. Prescription of Taxes Collected but Not Remitted

When a dealer collects sales taxes and fails to remit them to the taxing authority, a prescriptive period of ten years applies.

Rule 32. Sales by Certain Fiduciaries

When trustees, receivers, executors, and administrators by virtue of their appointment continue to operate, manage or control the business engaged in selling tangible personal property at retail or selling services or leasing tangible personal property, they must remit the tax applicable to those transactions. It is immaterial that such officers may have been appointed by a federal court. They are deemed to be persons engaged in the business of selling or leasing tangible personal property or services.

Rule 33. Sales to Employees

When a dealer sells tangible personal property to his employees for use or consumption, such sales must be included in his gross taxable sales and the tax on each such sale shall be collected.

It is immaterial that such dealer makes sales at retail only to his employees and not to the general public.

Rule 34. Occasional or Casual Sales

- A. Occasional and/or casual sales made by persons who are not engaged in the business of selling tangible personal property are not subject to tax.
- B. Manufacturers, processors, wholesalers or jobbers engaged in distributing tangible personal property, who sell primarily other than at retail, are not deemed to be making casual or isolated sales when they sell such tangible personal property to purchasers for use or consumption, notwithstanding that such sales may comprise a small fraction of their total business.
- C. The exclusion of “occasional or casual” sales does not apply to the sale of motor vehicles nor to lease or rental transactions.

Rule 35. Lease or Rental of Tangible Personal Property - Property Purchased for Lease or Rental Purposes

- A. According to Act 1266 of 1999, tangible personal property purchased for the purpose of being leased or rented is excluded from local sales and use taxes. The exclusion is phased-in as follows:
 - Beginning July 1, 1999, and ending June 30, 2000, one-fourth (1/4) of the sales or cost price is excluded.
 - Beginning July 1, 2000, and ending June 30, 2001, one-half (1/2) of the sales or cost price is excluded.
 - Beginning July 1, 2001, and ending June 30, 2002, three-fourths (3/4) of the sales or cost price is excluded.
 - Beginning July 1, 2002, purchases of tangible personal property for lease or rental purposes will be totally excluded from sales and use taxes.

The lessor or renter (rental dealer who owns the property) will owe local sales and use tax on the “sales price” or “cost price” of movable property purchased that is not excluded from local sales and use tax. Automobiles and motor vehicles purchased for rental/lease are exempt from local sales and use tax as provided in Rule 35 (K).

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- B. The lease or rental of tangible personal property constitutes a taxable transaction. The terms “lease or rental,” as defined in the ordinances, have their commonly accepted meaning, which is the granting of possession or use of tangible personal property by the owner thereof to another person for a consideration without the transfer of title to the property. The following criteria should be used when determining the situs of lease and rental transactions:
1. Lease transactions other than automobiles or motor vehicles.
 - a. The local sales/rental tax will be due where the rental property is used.
 - b. The lessor must determine, with written documentation, where the leased/rented property will be used. The rental company must register and remit sales/rental tax to the local taxing jurisdiction where the leased/rented equipment is used.
 - c. If the rental company is unable to determine where the leased/rented property will be used, then the local sales/rental tax is due where possession is transferred from lessor to lessee.
 - d. If an article of leased/rented property is used in more than one local taxing jurisdiction in the same month, then the sales/rental tax is due to the local taxing jurisdiction where the property is used for the longest period of time.
 2. Lease of an automobile or motor vehicle.
 - a. For purposes of a local tax levy, the lease tax due on automobiles shall be due to the jurisdiction where possession is transferred when the period of the lease is 180 days or less.
 - b. Where the lease period is more than 180 days, the tax shall be due to the jurisdiction where the lessee resides in the case of an individual; in the case of a business, the tax shall be due to the jurisdiction of the official domicile of the business, unless the automobile is assigned, garaged, and used elsewhere.

(See Rule 107 - Rentals of Automobiles.)
 3. In an instance where a legitimate disagreement exists as to which local taxing jurisdiction is owed, the local taxing authorities involved shall resolve the credit due among themselves through any legal means.

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- C.
1. Re-leases or sub-leases and re-rentals or sub-rentals, with the one exception hereinafter noted, are also subject to tax. The tax does not apply to lease or rental transactions involving immovables.
 2. Specifically excluded from the definition of "lease or rental" is the lease or rental of property to be re-leased or re-rented for the purpose of being used in connection with the operating, drilling, completion, or reworking of oil, gas, sulphur or other mineral wells. The lease or rental for re-lease or re-rental of casing tools, pipe, drill pipe, tubing, compressors, tanks, pumps, power units, and other drilling or related equipment qualifies for exclusion if the property is to be used for one of the specified purposes. The re-lease or re-rental to the ultimate user is subject to tax.
 3. The term lease or rental shall not mean or include a lease or rental of tangible personal property to be used in performance of a contract with the U.S. Department of the Navy for construction or overhaul of U.S. Naval vessels, nor the lease or rental of airplanes or airplane equipment by a commuter airline domiciled in Louisiana.
- D. A very limited exemption is provided to the operators of motion picture theaters wherein the amount paid by operators to distributing agencies for the use of film is specifically exempt from the sales and use taxes imposed by the local ordinances. Note that film is the only item covered by the exemption. Distributing agencies and suppliers selling to motion picture theaters are required to collect taxes on any other supplies, materials or equipment furnished to operators. Theaters are required to collect the tax on admission and the sales of snacks and refreshments.
- E. The terms of the contract under which tangible personal property is leased or rented shall be the basis for computing the tax. The tax is to be computed and paid on the "cash receipts" basis, either lump sum at the time of execution or on a monthly or periodic basis as provided in the contract.
- F. A transaction which qualifies as a lease or rental of movable property is taxable, regardless of whether or not the lessor or renter (rental dealer who owns the property) is regularly in the business of leasing or renting movable property. The taxable base includes the total charge to the lessee or the renter (the customer who rents). Operating expenses and maintenance costs for keeping rental/lease property in repair may not be deducted from gross proceeds in arriving at the taxable base. Freight charges to deliver rented or leased merchandise to customers are not taxable if separately stated on the rental/lease invoice. Delivery charges, if separately stated, are exempt from tax even if the delivery was made by the renter's or lessor's own trucks. The freight charges from

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the factory to the dealer renting or leasing the equipment must be included in the taxable base if billed to the customer, even if billed separately on the invoice, since this type of charge is a part of the dealer's cost and should be included in the rental/lease fee.

G. Leases of tangible personal property take a variety of forms (straight lease, lease-purchase, financial arrangement). The documentation may be structured as a sale, but the parties may consider the transaction to be a lease for financing or income tax purposes. In determining whether a transaction is a sale or lease for sales and use tax purposes, the Finance Director will consider the actions and intent of the parties and the supporting documentation. The following factors are indicative of a sale rather than a lease:

1. Title passes to the lessee at the inception of the agreement;
2. The lessee is obligated for the total amount of the purchase price regardless of seizure by the lessor for nonpayment;
3. The sales price is established in the lease agreement;
4. The lessee has the right to apply lease payments against the purchase price;
5. The lessee has the responsibility to insure, maintain, service, and repair the property; and
6. The total amount of the lease payments required to be made by the lessee is approximately equal to the fair market value of the property plus reasonable finance charges.

Generally, a lease agreement with an option to purchase is considered a "straight lease" if at the end of the lease term, the lessee has an option to purchase the equipment for an amount equal to or greater than fair market value. If the lessee has an option to purchase the equipment for a nominal amount, less than fair market value, the transaction is considered a lease-purchase.

H. Whether the owner of tangible personal property is in fact renting or leasing the property or is in reality furnishing a non-taxable service, depends upon the degree of control over the property retained by the owner. As an example, the owners of various types of equipment, such as boats, draglines, trucks, tractors or automobiles, may furnish the equipment to the user complete with an operator. In this situation, the owner of the equipment is performing a non-taxable service, even though the person paying the fee directs the specific use of the equipment. The owner, through furnishing

the operator, has retained sufficient control over the property to remove it from the rented or leased category. The fact that a separate charge is made for the salary of the operator is immaterial. The "sales price" or "cost price" of tangible personal property purchased for the purpose of furnishing equipment with an operator is not excluded from sales and use tax. The provisions of Act 1266 do not apply to property furnished with an operator.

- I. The operator concept relative to equipment does not extend, however, to advisory or engineering personnel furnished, with or without charge, when the lessee has operations personnel assigned to the property. For instance, the fact that a computer manufacturer furnished a full-time engineer, a full-time programmer, and a full-time computer operator to an installation having its own programmers and operators would not change the nature of the lease covering the equipment. Similarly, an engineer or superintendent furnished with equipment does not alter the rental charges for use of the equipment, if the owner would be unable to operate the equipment without personnel furnished by the lessee.

(For a special rule relative to the rental or lease of certain heavy equipment, see Rule 94.)

- J. Beginning July 1, 1994, lessors of tangible personal property to be used exclusively offshore, beyond the territorial limits of the State, are not required to collect rental tax on such leases or rentals. The lessees are responsible for remitting the taxes due directly to the proper taxing jurisdiction.
- K. Effective July 1, 1996, automobiles purchased for rental purposes and motor vehicles purchased for lease purposes are excluded from sales and use tax. Only automobiles and motor vehicles are covered by this exclusion provided that the vehicles are used exclusively for lease or rental purposes and all applicable lease and rental taxes are collected and remitted on the rent or lease proceeds.
- L. Retail sales of lease or rental equipment are subject to sales tax.

Rule 36. Equipment and Supplies

- A. Sales of tangible personal property to the ultimate user or consumer are taxable. For example, sales of machinery, tools, belts, and other equipment to a manufacturer, producer or contractor, or sales of furniture, fixtures, supplies, stationery, equipment, appliances, instruments, and tools to stores, shops, business establishments, offices, and professionals are taxable. Such sales are to final buyers or ultimate consumers and are

not sales for resale. If an item is originally purchased for resale, but is later used or consumed by the business, the tax is due. To further illustrate:

1. Sales to a millwright of shafting, pulleys, belts, saws, lathes, chisels, tools, and similar articles are taxable. These articles are not purchased for resale.
2. Sales of concrete mixers, trucks, dozers, and other machinery, equipment, and tools to a contractor are taxable retail sales. These articles are not purchased for resale since the contractor consumes them in his business.

B. This rule applies to all manner of office machinery, fixtures, equipment, and supplies, including by way of illustration and not limitation, furniture, cash registers, typewriters, stationery, pencils, pens, ink, account books, magazines, professional publications, calculating machines, dictaphones, computer equipment, and other articles.

Rule 37. Sales for Further Processing

Sales of materials for the primary purpose of further processing into articles of tangible personal property for subsequent sale at retail do not constitute retail sales. This provision does not cover all materials which are used in any process by which tangible personal property is produced, but only those materials which themselves are further processed into tangible personal property. Whether materials are further processed or are simply used in the processing activity will depend entirely upon an analysis of the end product. Although any particular material may be fully used, consumed, absorbed, dissipated, or otherwise completely disappear during processing, if it does not become a recognizable and identifiable component which is of some benefit to the end product, it is not exempt under this provision. The fact that the material remains as a recognizable component of an end product by accident because the cost of removal from the end product is prohibitive, or it was not "material for further processing," is irrelevant and the tax is due.

Rule 38. Leased Departments

When a store leases some of its departments to other persons for the selling of tangible personal property to consumers, each such leased department shall make separate monthly returns if the lessee keeps his own books and makes his own collections on account of sales at retail. If the store leasing such departments keeps the books for the leased departments and makes collections on account of their sales, the store shall, as agent for the lessee, include in its tax returns all taxes due by the leased department, but the lessee shall not be relieved of liability in case the store fails to make the proper returns or fails to remit the taxes due.

Rule 39. Wholesale Sales

Sales of tangible personal property by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale are not sales at retail and are not subject to tax.

Rule 40. Fabrication

When a person or a business fabricates materials into tangible personal property, the entire charge to the customer (materials and labor), is included in the sales price. Fabrication is taxable whether the materials are provided by the fabricator or by the customer. Examples of fabrications are as follows: portable buildings, signs, storage tanks, etc.

When a contract is for the fabrication of tangible personal property that will be permanently installed and become immovable, and if the fabricator is also the installer, then the fabrication contract will be treated as a real property construction contract. Tax is due on the cost price of the materials used and the labor is not taxable. If the fabricator and the installer are different, then the total charge for the fabricated item is taxable (materials and labor) and the separately stated installation charges are not taxable.

Examples of fabrication of tangible personal property include coating, wrapping, and galvanizing of pipe and other types of property which have not previously been treated by these methods. Monogramming and engraving of tangible personal property are also taxable as fabrication of tangible personal property.

Rule 41. Repairs to Tangible Personal Property

- A. Repairs to tangible personal property are included in the definition of sales of services, and all charges (parts, labor, travel, etc.) for such repairs are taxable as sales of service.
- B. For the purpose of the ordinances, tangible personal property is movable property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses, and includes machinery, appliances, and equipment which have been declared immovable under the provisions of Article 467 of the Louisiana Civil Code and all items which have been separated from land, buildings or other construction permanently attached to the ground or their component parts, as defined in Article 466 of the Louisiana Civil Code. All charges (parts, labor, travel, etc.) for repairs to tangible personal property which have been declared immovable under Article 467 are taxable, whether the property is repaired at the dealer's shop or at the location of the property. When the property defined in Article 466 has been separated from the land, buildings or other construction permanently attached to the grounds, such charges

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are taxable only when the property being repaired is removed from the property of the owner. Items are considered permanently attached if they cannot be removed without substantial damage to the items or to the property to which they are attached.

- C. Repairs performed in this Parish are taxable even if the repaired property is picked up and/or delivered to a customer outside the Parish. Repair services performed outside the Parish are not taxable in this Parish, although the owner of such property which has been repaired would owe a use tax, subject to a credit for local taxes paid on the cost of the parts added by such repairs.
- D. The sale of materials and parts to repairmen for use in repairing tangible personal property for others when such materials and parts will become a part of the article repaired are not retail sales and may be made under a Resale Exemption Certificate. The sale of supplies which are consumed in the process of performing the repair services without becoming a part of the articles repaired are taxable retail sales.
- E. Services rendered pursuant to service contracts and maintenance agreements are deemed prepaid repairs and are subject to tax. Repairs made pursuant to warranty for which no charge is made to the owner are not subject to tax because the cost of the warranty is considered to have been included in the sales price of the merchandise purchased upon which tax was due at the time of the sale.
- F. The following examples of various repair transactions illustrate the application of these rules. In each instance, the dealer is located in East Baton Rouge Parish and the entire charges for the transactions (including without limitation parts, labor, travel, etc.) are taxable.
 - 1. **TRANSACTION:** Repair dealer picks up a forklift in New Orleans, repairs it in Baton Rouge and then returns it to New Orleans.
 - 2. **TRANSACTION:** Repair dealer repairs a backhoe, which has been declared an immovable by XYZ Manufacturer in East Baton Rouge Parish.
 - 3. **TRANSACTION:** Repair dealer picks up generators in Texas and Arkansas, repairs same in East Baton Rouge Parish and then returns them via his own truck.
 - 4. **TRANSACTION:** Repair dealer removes a ceiling fan from a restaurant, repairs it in his shop and reinstalls same.

5. **TRANSACTION:** Repair dealer removes elevator lift motor from a building, repairs it in his shop, then returns and installs same.

G. Repairs to tangible personal property for resale are exempt from sales tax provided the repair dealer receives a Resale Exemption Certificate from his customer. The repair dealer must collect sales tax when the customer cannot provide a Resale Exemption Certificate.

Rule 42. Installation Charges

Persons selling tangible personal property which is to be permanently affixed to real property and thereby become part of realty, who, in connection with such sales, contract for the installation of the articles so sold, are vendors of the articles and material to the same extent as is the case of articles sold without installation. Vendors so selling and installing must make a separation of that portion of the price which is for the tangible personal property sold and that portion of the price which is for installation. Failure to so segregate such amounts subjects the entire amount to tax.

Rule 43. Repairs to Immovables

The repair of immovable property is not a taxable service. The repair dealer is deemed to be the user or consumer of the materials and parts employed by him in furnishing the service. If the repair dealer purchased materials or parts under a Resale Exemption Certificate, but later uses or consumes the same in furnishing the service, he must report and pay tax at the time they are so employed.

Rule 44. Advertising Agencies

Advertising services rendered by advertising agencies, design firms, and print and broadcast media are not subject to tax, whether these services involve a transfer to the client of tangible personal property or not. However, a sale to a client of mass-produced advertising items by an advertising business which manufactures the items itself is subject to tax. In no event shall charges for creative services which are separately invoiced be subject to tax.

Rule 45. Aircraft

Aircraft, including but not limited to airplanes, helicopters, aircraft kits, ultra lights, etc., are tangible personal property, the sale, lease or repair of which is subject to tax with the following exceptions:

- A. Antique airplanes are not subject to tax. The antique airplane must be maintained by a private collector and not used for commercial purposes. The term "antique airplane" is defined by Louisiana Revised Statute 47:6001 for purposes of the exemption as an airplane manufactured at least 25 years ago.

- B. The following information pertains to the lease and rental of helicopters:
 - 1. Any helicopter which is to be used directly in the exploration for, or the extraction or production of, oil, gas, and other minerals, or helicopters used in providing services to other businesses which are engaged in such activities, may be acquired through a lease transaction and the entire transaction will be treated as a sale. The transaction may be entitled a rental, lease, lease-purchase, sale and lease-back, or any other similar term. In any case, the lessor or renter (rental dealer who owns the property) shall not incur a sales or use tax liability on the acquisition of the helicopter for lease, nor on the withdrawal of a helicopter from resale inventory to be placed in rental service, when the lessee is engaged in the exploration or production of oil, gas, or other minerals, or related service industries. Unlike rental transactions involving other tangible personal property, the lease contracts involving such helicopters will not be required to contain language which guarantees any rights of title to the lessee, nor will it need any obligations to maintain the lease for its full term.

 - 2. The sales tax due on such transactions shall be payable in equal monthly installments over the entire term of the lease, rather than at the inception of the lease agreement as with rental transactions involving other tangible personal property. In addition, unlike conventional lease transactions, the tax is due and payable by the dealer/lessor for the period the receipts are invoiced to the buyer/lessee, and not for the period in which active collection is made.

 - 3. Since these transactions are taxed as sales and not leases, the location of the intended use of the helicopters would not determine taxability as would be the case in a rental transaction.

Rule 46. American Red Cross

Any sales to or purchases made by the American Red Cross are exempt from taxation by Congressional Act.

Rule 47. Places of Amusement, Clubs, Etc.

- A. Charges for admissions to places of amusement, entertainment, recreation, or athletic events, except those sponsored by schools, colleges or universities, are classified as sales of services and as such are taxable. Note that only those events which are sponsored by schools, colleges, and universities are exempt. The same admission charges by charitable, religious, social, and other organizations are taxable, unless specifically exempted under some other provision. The term "sales of services" shall not include dues and membership fees of nonprofit civic organizations such as YMCA, CYO, YWCO, and nonprofit museums.
- B. Fees or other consideration and dues paid for the privilege of obtaining access to clubs are similarly classified as sales of services. Such dues, fees, or other consideration are taxable even though some personal services may be rendered by the owner of the club after access thereto has been obtained. Dues, fees, or other consideration paid for the privilege of having access to places of amusement, entertainment, athletic, or recreational facilities are also included in the definition of sales of service.
- C. The cost of stock or certificates of membership required to be purchased prior to becoming a member of a club is not included in sales of services if the club member has the prerogative of disposing of the stock or certificate of membership when he ceases to utilize the club or facilities. If a person is required to surrender his stock or certificate of membership upon leaving a club, then the purchase price is considered nothing more than a fee for his participation and is classified as sales of services.

Rule 48. Art Objects

Sales of objects of art are sales of tangible personal property and are taxable.

Rule 49. Auctioneers, Agents, Factors, Etc.

- A. Every factor, auctioneer or agent acting for either a known or an unknown or undisclosed principal, entrusted with any bill of lading, customhouse permit or warehouseman's receipt for delivery of tangible personal property or entrusted with the

possession of property for the purpose of sale, shall be deemed the owner thereof for the purpose of sale, and upon the sale at retail of such property, such factor, auctioneer or agent shall be required to collect the sales tax thereon and remit it to the Parish. The same rule applies to lien holders, such as storage men, pawnbrokers, and artisans.

- B. The provisions of this rule shall not apply to trustees and auctioneers at bankruptcy auctions, since such transactions are casual sales.

Rule 50. Automobile and Aircraft Dealer's Demonstrators

The sale at retail, the use, the consumption, the distribution, and the storage to be used in the Parish of the following are exempt from tax: new trucks, new automobiles, and new aircraft withdrawn from stock by factory-authorized new automobile and new aircraft dealers, and used trucks and used automobiles withdrawn from stock by new or used motor vehicle dealers, with the approval of the Secretary of the Department of Revenue and titled in the dealer's name for use as demonstrators are exempt from tax. However, when such vehicle or aircraft is sold, tax shall be collected. The term "demonstrator" will be construed in its narrowest sense and is limited to use for the purpose of demonstrating its qualities to prospective customers. The demonstrators cannot be used by members of the family of dealership personnel nor can the units be used to run errands or for pleasure purposes.

Rule 51. Automobile Refinishers and Painters

Automobile refinishers, automobile painters, and automobile repair shops furnish repairs to tangible personal property. The entire amount charged for such services, including any charges for materials, parts used, and labor is subject to tax. Materials and parts purchased by such businesses which will become a part of the automobiles when refinished, repaired or painted, may be purchased under a Resale Exemption Certificate.

Rule 52. Barbers and Cosmetologists

Barbers and cosmetologists render personal services which are not taxable. They are consumers of the various items which are used or consumed in the rendition of their services. Sales of such tangible personal property to them are retail sales and subject to tax. If these persons sell beauty products to the public, they are required to register as dealers and collect the tax from their customers, but may purchase such products under a Resale Exemption Certificate.

Rule 53. Sales of Building Materials

Sales of materials and supplies to persons to be used in erecting, altering, improving, or repairing buildings or other improvements are sales to consumers and not sales for resale and are taxable. The seller of such materials must collect and remit the tax.

Rule 54. Catalogs

Catalogs distributed or mailed directly to Parish residents without charge are exempt from tax.

Rule 55. Caterers

- A. If a caterer prepares, furnishes or serves tangible personal property which is consumed on the caterer's premises, those activities, whether billed as one item or billed separately, constitute a taxable sale.
- B. On the other hand, if a caterer prepares, furnishes or serves tangible personal property not consumed on the caterer's premises, the preparing and serving is not a part of the taxable sale if, and only if, a separate charge is made for the preparation and serving. If a lump sum bill is rendered, the entire amount thereof must be included in taxable sales. All consumables served by a caterer at the customer's premises or designated location are includable in taxable sales.
- C. Purchases by a caterer of such items as food, drinks, ingredients, and non-reusable food containers, plates, and eating utensils are purchases for resale if they become the property of the caterer's customer at the time meals are served. Purchases by a caterer of such items as tablecloths, napkins, cooking utensils, and equipment, which are not sold or delivered to customers, but are used by the caterer, are not purchased for resale and are taxable.

Rule 56. Computer Software

- A. Effective May 1, 1995, all computer software is "tangible personal property," whether considered "canned software" or "customized software." Thus, transactions involving software are subject to tax regardless of the type and function of the software or whether transferred via diskette or other storage medium, via telephone lines, or by any other method.

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- B. This section shall not be construed to include software developed by persons for their own use. Subsequent transfer of this software will be considered a retail sale and subject to sales tax. The sale of software developed for another person will be considered a retail sale and subject to sales tax.
- C. The purchase of a software program may contain many components. These components may contain some non-taxable services when considered individually. When purchasing a software package, all charges the customer is required to pay to acquire the software, except those specifically exempt, will be subject to sales tax. Any non-taxable services, such as personnel training and consultation services, are not subject to sales tax. If any non-taxable services are purchased from the same vendor at the time the software is purchased and billed on the same invoice as the software purchase, these services must be separately stated on the invoice or they will be subject to tax in the same manner as the software.
- D. The purchase of a maintenance agreement on computer software may contain many components. These components may contain both updates for the software and some non-taxable services. The modifications and updates for the computer software are considered subject to tax, as they represent additional tangible personal property purchased. Any non-taxable services, such as consultation services or personnel training, are not subject to tax as a purchase of tangible personal property. If any non-taxable services are purchased from the same vendor at the time the software is purchased and billed on the same invoice as the upgrades of the computer program, these services must be separately stated on the invoice or they will be subject to the tax in the same manner as the software.

Rule 57. Contractors

- A. Contractors and subcontractors are engaged in the business of constructing, erecting, building or otherwise improving, altering or repairing real property such as buildings, highways, roads or other structures. Contractors provide labor and material to improve real property and are not liable for the collection of sales taxes on their contracting revenues. Contractors are treated as the ultimate consumer of materials which become affixed to real property and on other articles of tangible personal property used or consumed by the contractor in performing the contract. The contractor must pay sales and use tax on the purchase of those materials. Contractors must also pay sales and use tax on tools, equipment, and supplies purchased and used in their business.
- B. **Contractor-Dealers** - Contractors and subcontractors engaged in the business of erecting, building or otherwise improving, altering or repairing real property for others

may also be engaged in the retail business of selling materials and supplies to other contractors, consumers or users. If, at the time of his purchase of materials and supplies, the contractor is unable to segregate that portion of the materials and supplies he will sell at retail from that portion which he will use or consume in the fulfillment of his contracts, he should furnish a Resale Exemption Certificate to the seller of the materials and supplies. The contractor or subcontractor purchasing on a Resale Exemption Certificate must include in his gross sales upon which the tax is to be computed, all proceeds from his retail sales. In addition, he must report and pay tax on all materials he uses in the performance of his contracts, based on his cost price of such materials and supplies.

1. When the contract with the customer is expressed in terms of a sale of certain materials at a stipulated price, plus a charge for installation, the contract is considered a retail sale subject to tax to the extent of the stipulated price.
2. When the contract is expressed in terms of a sale of certain materials, coupled with an obligation to install them for a lump sum charge, the entire charge is considered the selling price and is subject to tax.
3. Those contractors whose operations are covered by this rule must register as retail dealers and are required to furnish their registration number when signing a Resale Exemption Certificate.

- C. **Contracts Financed by the Federal Government** - The sale of materials, supplies, equipment or other items of tangible personal property to a contractor although on a cost-plus, cost-plus fixed fee or lump sum contract with the Federal Government, wherein the contractor will be reimbursed by the Federal Government with a Federal Government check, is taxable and the seller is required to collect from the contractor and remit the taxes due. It is immaterial that part or all the funds by which payment is made by the contractor may have been advanced, granted, loaned or paid to the contractor by the Federal Government.

(See also Rule 7.)

Rule 58. Containers, Bags, Wrapping Paper, Etc.

- A. The sale or purchase of items actually accompanying the products sold to the ultimate consumer, without which the delivery of the products is impracticable on account of the character of the contents, and for which there is no separate charge, is not subject to tax. These items include such things as grocery bags, cans or bottles in which goods, paints,

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and other commodities are contained; medicine bottles; boxes in which jewelry, candy, etc., are delivered to a consumer; ice cream cartons and cones; milk bottle caps; labels or nameplates affixed to products manufactured; and printed matter containing only directions for use when it is impracticable to affix such printed matter to the article sold.

- B. When container materials, such as crating, packing cases, excelsior, bale bindings, and the like are used in connection with the preparation for sale of other tangible personal property, and these materials do not pass to the ultimate consumer together with the tangible personal property originally contained therein, the sale of such materials is considered a purchase for resale, provided the seller receives a Resale Exemption Certificate from his customer.
- C. Whenever tangible personal property is sold in barrels, bottles, boxes, bags, kegs, drums, cartons, sacks, cans, or other containers, the title to which is retained by the seller of the tangible personal property contained therein and which are to be returned to the seller and are tendered by the seller to provide merely a means of containing such tangible personal property while in the process of being delivered or conveyed to the purchaser for use or consumption, then the sale to the seller using such containers is a taxable sale at retail.
- D. Sales of boxes, twine, tape, and similar articles to persons engaged in rendering services, who use such articles in connection with the services rendered, who make no separate charge thereof and who are required to collect the tax upon the receipts from such services, are sales for resale. For example, sales of plastic wrap and twine to a dry cleaner or laundry are sales for resale and should be made under a Resale Exemption Certificate, since such materials pass to the consumer along with the taxable service.
- E. Sales of wrapping paper, boxes, ribbons, and bows to sellers of tangible personal property for use in gift-wrapping services are considered sales for resale and should be made under a Resale Exemption Certificate.
- F. When gift-wrapping services are provided in connection with the sale of tangible personal property and no separate charge is made, no tax is due. When a separate charge in connection with the sale of tangible personal property is made for gift-wrapping services, the entire charge is considered to be a charge for the sale of tangible personal property and is taxable.
- G. When the gift-wrapping service is not rendered in connection with the sale of the tangible personal property being wrapped, only the separately stated charge for gift-wrapping materials is subject to sales tax and the separately stated labor and service

charge is not taxable. If no separation of charges is made, the entire charge is considered to be for the sale of tangible personal property and is taxable.

Rule 59. Cold Storage

Charges for the service of furnishing cold storage space and for the service of providing tangible personal property for cold storage, when such service is incidental to the operation of cold storage facilities, are subject to tax. Cold storage space means any enclosed space in which the temperature and/or humidity are regulated and controlled.

In order for sales tax to apply to charges for furnishing cold storage space, the provider of the cold storage space must guarantee that the temperature of the cold storage facility will be maintained at a temperature suitable for the preservation and storage of perishable items to be maintained in the facility. Generally, the owner of the facility must guarantee that the temperature will be maintained below the normal building temperature.

The taxability of charges for the use of climate-controlled, self-service storage facilities depends upon the terms of the contract. Charges for the use of a climate-controlled, self-service storage unit will only be taxable if the contract between the owner of the unit and the lessee of the unit guarantees that the temperature of the unit will be maintained below the normal building temperature and at a level necessary to maintain or preserve perishable items. In the alternative, charges are not taxable where the contractee receives a key to a specific unit and may place or remove items at their own discretion, and where there is no guarantee to maintain the temperature of the unit below the normal building temperature.

Rule 60. Dental Laboratories

According to Act 1065, 1991, orthotic and prosthetic devices, prostheses, and restorative materials sold to and utilized by dentists are exempt from sales and use tax. Sales of other tangible personal property to dentists or other businesses that are not specifically exempt are taxable.

Rule 61. Dentists

A dentist is the consumer of tangible personal property which he uses in the practice of his profession. According to Act 1065, 1991, orthotic and prosthetic devices, prostheses, and restorative materials utilized by or prescribed by a dentist are exempt from sales and use tax.

Purchases of other tangible personal property, including dental chairs, motors, instruments, x-ray machines, drilling machines, office furniture, and equipment, are subject to sales and use tax.

Rule 62. Dirt, Sand, and Gravel

Dirt, sand, and gravel are tangible personal property after they have been severed from the land; therefore, the sale thereof is subject to tax. The tax is measured by the sales price of the dirt, sand or gravel, which includes all charges made in connection with the sale, but does not include separately stated charges for hauling or delivery. If the dirt, sand or gravel is used by a contractor, the contractor would owe either a sales or use tax on the sales price or cost price of any dirt, sand or gravel purchased and other charges made, including loading or hauling. If the contractor severed and used dirt, sand or gravel owned by him, there would be no tax due.

Rule 63. Farm Equipment, Fertilizer, Farm Products' Containers, Seeds, Pesticides, Feed and Feed Additives, Livestock and Poultry, and Farm Supplies

- A. Farm equipment, machinery, farm tools, and other items purchased by farmers for use or consumption are subject to tax unless specifically exempted. Specifically exempted from tax are purchases of fertilizer; containers used for farm products; feed and feed additives purchased for the purpose of sustaining animals held primarily for commercial business or agricultural use; pesticides; seeds for use in the planting of crops; and livestock, livestock products, poultry products, and farm, range and agricultural products when produced by the farmer and used by him and members of his family.
- B. The word "fertilizer" means what is commonly known in the "trade" as commercial fertilizer and means a substance which increases the plant food content and as a result, becomes a part of the product grown.
- C. The exemption for feed and feed additives does not apply to such purchases for pets, hunting dogs, or any animal kept primarily for personal, sporting or other purposes.
- D. The word "pesticide" means any preparation useful in the control of insects, plant life, fungus, or any other pest detrimental to agricultural crops, including the control of animal pests and diseases that meets the definition of a pesticide in accordance with the Department of Agriculture and Forestry of the State of Louisiana under Louisiana Revised Statute 3:3202. Qualifying pesticides must be registered with the U.S. Environmental Protection Agency and must carry a valid Federal Insecticide, Fungicide,

and Rodenticide Act number. Pesticides include, but are not limited to, insecticides, herbicides, fungicides, crop oils, surfactants, adjuvants, emulsions, soaps, and drift agents. The exemption for pesticides does not include pesticides used for private family vegetable gardens or in protecting ornamental plants used in landscaping.

- E. Only seeds planted in a sufficient quantity to result in a harvest of recognized commercial value, depending upon the product being planted, qualify for exemption. The exemption does not cover the planting of a garden to produce food for personal consumption by the planter or his family or seeds used in planting for landscape purposes, unless the planter is in the business of harvesting the plants and selling them in a commercial market.

Rule 64. Fast Food Supplies

- A. The containers used by fast food businesses, which actually accompany the products sold to the consumer without which the delivery of such products is impractical on account of the character of the contents, and for which there is no separate charge, are not subject to tax. These items are purchased for resale. Such containers include, but are not limited to, trays, cups, cup lids, cardboard and styrofoam containers, hash brown and french fry containers, and paper bags.
- B. Napkins, straws, forks, salt and pepper packets, ketchup packets, stir sticks, and other items which accompany the primary items sold, and for which there is no separate charge, are not subject to tax and may be purchased by the business under a Resale Exemption Certificate.

Rule 65. Finance Companies

- A. Finance companies are engaged primarily in the business of financing or acquiring promissory notes given by purchasers of automobiles, furniture, refrigerators, or other items of tangible personal property. For the repayment of such notes, they sometimes take as security chattel mortgages or other security upon such tangible personal property. When the purchaser fails to meet his obligation, the finance company repossesses the property and sells it to satisfy the obligation evidenced by the notes. These sales are subject to tax.
- B. When financing companies acquire title to such tangible personal property and engage in the business of selling and/or renting such property, the sales or rentals thereof are taxable.

Rule 66. Florists

- A. Florists are engaged in the business of selling tangible personal property at retail and all such sales are subject to tax.
- B. When florists conduct transactions through a florists' telegraphic delivery association, the following applies:
 - 1. On all orders taken by a florist in this Parish and telegraphed to another florist in Louisiana for delivery in Louisiana, the florist located in this Parish shall collect and remit the tax;
 - 2. On all orders taken by a florist in this Parish and telegraphed to another florist located outside Louisiana for delivery of flowers to a point outside of Louisiana, the florist located in this Parish shall collect the tax; and
 - 3. When a florist in this Parish receives telegraphic instructions from a florist located outside the Parish for delivery of flowers in this Parish, there is no tax due with respect to the receipts realized by the florist located in this Parish.
- C. When a nursery owner or florist sells shrubbery, young trees or similar items, and, as a part of the transaction, transplants them to the land of the purchaser for a lump sum or a flat fee, the nursery owner or florist is considered the consumer of the shrubbery, trees or similar items and owes tax on the cost price of such items.
- D. Tax does not apply to charges for the maintenance of live plants.

Rule 67. Fuel Sales

Unless specifically exempted by the ordinances, sales of coal, coke, fuel oil, and other combustibles, whether sold in carload lots or other quantities to persons who use or consume such substances in producing other tangible personal property or in the rendering of service, are taxable. The coal, coke, fuel oil or other combustibles do not physically enter into or become a constituent component or integral part of tangible personal property, and hence, are sold for use or consumption rather than for resale.

Refinery gas used for any purpose is taxable after September 12, 1990. Prior to September 12, 1990, refinery gas was taxable only if used for boiler fuel.

(See also Rule 85 concerning Liquefied Gas and Rule 92 relative to Refinery Gas.)

Rule 68. Funeral Directors and Undertakers

- A. When funeral directors and undertakers charge lump sums to customers covering the entire cost of the funeral, without separating the charge for tangible personal property and the charge for services, the full amount of the funeral bill, less any cash advanced for purposes such as the purchase of a cemetery lot or grave, opening and closing a grave, other cemetery expenses, remuneration of a minister, choir, use of a church, press notices or other cash advanced, shall be reported and tax paid on 50 percent of the total bill, less cash advanced.
- B. Funeral directors and undertakers are considered to be the users or consumers of such articles as embalming fluid, cosmetics, chemicals, furniture, equipment, funeral home furnishings, advertising, calendars, booklets, motor vehicles and accessories, embalming equipment and instruments, grave equipment, stretchers, baskets and other items which are used or consumed in the operation of the business and the title and possession to which are not passed on to customers. Sales of such items to the funeral director or undertaker are taxable retail sales.

Rule 69. Gold and Silver Bullion

The sale of monetized bullion, including platinum, gold or silver bullion, having a total value of \$1,000 or more is not subject to tax. "Monetized bullion" means gold, silver or numismatic coins or other forms of money manufactured from gold, silver, or other metals and used as a medium of exchange under the laws of Louisiana, the United States or any foreign nation.

Rule 70. Hospitals

- A. Hospitals, chemical dependency units (c.d.u.), and mental health facilities are primarily engaged in the business of furnishing non-taxable services. However, they are consumers or users of all tangible personal property purchased for use or consumption by them in connection with the operation of the institution and sales of such tangible personal property to them are taxable. Purchases of the following tangible personal property are exempt from the 1/2% Sewer Improvement tax, the 1/2% Street Improvement tax, and the 1% Educational Facilities Improvement District tax.
 - 1. Purchases of drugs, medicine or ingredients thereof, ostomy, ileostomy or colostomy devices.
 - 2. Effective January 1, 1998, purchases of orthotic and prosthetic devices, medical devices, and patient aids.

3. Effective, January 1, 1998, purchases of food to be used for preparation of staff and patients' meals are exempt from 5% local tax.
- B. If a hospital, chemical dependency unit (c.d.u.) or mental health facility operates any division that sells tangible personal property or taxable services, such as a pharmacy, pay parking facility, coffee shop, gift shop, and supplies of any nature, then the hospital, c.d.u. or mental health facility becomes a dealer and must register, collect, and remit tax upon all such sales.

(See also Rule 79 regarding cafeteria sales.)

Rule 71. Hotels And Tourist Camps

- A. The furnishing of rooms by hotels and tourist camps is a taxable service.
- B. The term "hotel" or "tourist camp" means any establishment engaged in the business of furnishing sleeping rooms, cottages or cabins to tourists or other transient guests when the number of guest sleeping rooms, cottages or cabins at a single location is six or more. The classification is determined by the type of guest accommodated and the number of units at each location. Whether cooking and eating facilities are furnished is immaterial.
- C. If an establishment contains less than six sleeping rooms, cottages or cabins, the tax does not apply.
- D. The tax applies only to charges made to transient guests. Whether the guests of a particular establishment are transient guests must be determined on the basis of the facts in each case. A guest who pays for a room by the month and who resides in the establishment for 60 consecutive days shall be considered a permanent guest and the tax would not apply. In addition, the tax does not apply to rooms rented on an annual contract basis.
- E. When an establishment provides facilities for both transient and permanent guests, the facilities for the permanent guests are not included in determining the status of the establishment. For example, if there are eight sleeping units furnished to transient guests and ten apartments for permanent guests, the establishment constitutes a hotel or tourist camp, since more than six of the rooms are furnished to transient guests.
- F. Government employees are not exempt from sales tax. However, rooms billed and paid directly by federal, state or local governments are not subject to sales tax.

- G. The tax does not apply to charges for meeting rooms or rooms provided on a complimentary basis.

Rule 72. Human Organs, Bone, Skin, Blood, Cornea, Etc.

The term “sale at retail” does not include the sale of any human tissue transplants which are defined to include all human organs, bone, skin, cornea, blood, or blood products transplanted from an individual into another individual, and such human tissue transplants are not sales at retail.

Rule 73. Ice

Sales of ice by manufacturers and wholesalers to retail dealers who are engaged in the retail business of selling ice to users or consumers and have an established place of business are sales for resale and not subject to tax. All other sales of ice to consumers or users are subject to tax.

Rule 74. Jewelry Repair Shops

- A. Jewelry repair shops primarily repair tangible personal property such as watches, clocks, and jewelry, which are taxable services. Sales by supply houses to jewelry repair shops of articles of machinery, equipment, and supplies used or consumed incidentally in the rendering of such services, but which do not become part of the articles repaired, are taxable retail sales. Sales of materials and supplies, such as springs, crystals, jewel staffs, gold, silver, and similar articles, which become a part of the articles repaired, are sales for resale and may be purchased with a Resale Exemption Certificate.
- B. Sales by jewelry repair shops of watches, watch chains and straps, clocks, pins, rings, jewelry, and other tangible personal property are taxable retail sales. Sales of such articles by supply houses to jewelry repair shops are sales for resale and are not taxable.
- C. Engraving services provided by jewelry repair shops are subject to sales tax as a fabrication of tangible personal property.

Rule 75. Labels, Tags, and Nameplates

- A. Sales of labels, tags or nameplates to a manufacturer who affixes them to products manufactured by him constitute sales for resale if such labels, tags or nameplates become affixed to or are an integral and necessary part of the final product sold, such as labels

required by law in the sale of certain drugs and chemicals or metal nameplates of manufacturers permanently attached to automobiles, appliances, and the like.

- B. When labels and tags, such as price or shipping tags, do not become a part of the product sold, the manufacturer or other person affixing them is deemed to be the purchaser for use or consumption and the sales to him are taxable.

Rule 76. Laundry, Dry-Cleaning, and Carpet Cleaning Services

- A. The furnishing of laundry, cleaning, pressing, and dyeing services is taxable. The cleaning of both immovable wall-to-wall carpets and movable rugs is taxable.
- B. The operation of coin-operated washing or drying machines in a commercial laundromat, which is an establishment engaged solely in the business of furnishing washing or drying laundry services by means of coin-operated machines, is not a taxable service.
- C. Operators of laundromats, laundry, dry-cleaning, and carpet cleaning services are consumers of all materials and supplies used by them in rendering their services, and sales to them of such materials and supplies are taxable retail sales. However, sales to laundries and dry-cleaning establishments of materials such as plastic bags, hangers, and fasteners, which will be delivered to their customers along with the articles laundered, cleaned or pressed, are sales for resale and may be purchased with a Resale Exemption Certificate.

Rule 77. Machinists, Foundry Men, and Pattern Makers

- A. Sales by machinists, foundry men, and pattern makers who fabricate and sell dies, castings, patterns, tools, lathes, drill and punch presses, machinery, structural steel castings, or other tangible personal property are taxable retail sales. When such sales are made to manufacturers or construction contractors not registered as dealers or other persons, such sales are not for the purpose of resale and tax must be collected with respect thereto. Any charges for labor or fabrication or other costs of production may not be deducted from the sales price in computing tax.
- B. Machinists and foundry men who repair tangible personal property of others are furnishing taxable services.

Rule 78. Meals Furnished by Hotels, Restaurants, Clubs, Etc.

- A. Sales of meals by hotels, restaurants, drive-ins, drugstores, private clubs, and establishments not specifically exempt under the ordinance are subject to tax. This is true whether individual meals are sold, whether a flat charge is made, or whether meals are furnished as a part of the compensation for services rendered.
- B. When employers, such as restaurants, furnish meals to employees as a part of the compensation for services of such employees, but make no specific charge, the tax shall be calculated upon the cost price of such meals. Sales of food to hotels, restaurants, and others are sales for resale which are not subject to tax.
- C. Food provided to customers on a complimentary basis is taxable. The tax shall be calculated upon the cost price of such food products.

Rule 79. Meals Sold by Schools, Hospitals, Etc.

- A. Public school boards, high school boards, churches, hospitals, religious organizations, colleges, universities, and private schools operating lunch rooms, cafeterias or dining rooms for the exclusive purpose of providing only their respective students, members, staff, or patients with meals are deemed not to be engaged in the business of selling tangible personal property at retail and are not liable for collection of sales tax with respect to such transactions. Purchases of food products by such institutions are exempt from local sales and use taxes.
- B. When any cafeteria, lunch or dining room is available for use by the public, the school, hospital, college, church, university, or religious organization operating it is deemed to be in the business of selling tangible personal property at retail and is liable for collecting the sales tax on the sale of such meals to the public. The school, hospital, college, church, university, or religious organization, in this case, may provide a Resale Exemption Certificate to its vendor for the purchase of the food.

Rule 80. Memorial Stone and Monument Vendors

Memorial stones are tangible personal property and when sold to users or consumers, the sale thereof is taxable. When the seller of a memorial stone agrees to install such stone or monument upon a foundation, a segregation must be made of materials used and labor charged. The seller may deduct such labor charges or services when computing the tax, if a segregation is made on the invoice. Failure to make a segregation subjects the entire amount to tax.

Rule 81. Newspapers and Magazines

Sales of newspapers and magazines are not taxable.

Rule 82. Off-Road Vehicles

Dealers of off-road vehicles, as defined in Louisiana Revised Statute 47:301(17), are responsible for collecting and remitting the tax on sales of all such vehicles, notwithstanding that they are also dealers of motor vehicles subject to registration and licensing by the Motor Vehicle Commissioner.

Rule 83. Ophthalmologists, Opticians, and Optometrists

- A. The taxability of transactions by ophthalmologists, opticians, and optometrists depends upon the nature of the transaction.
- B. Opticians are engaged in the sale of tangible personal property. When such sales are to the ultimate consumer, the sales are taxable retail sales. When the sales are to optometrists or ophthalmologists who use them in the rendition of professional services to their patients, the sales are likewise taxable retail sales. When the sales are to ophthalmologists or optometrists for the purpose of reselling them to their patients, then the sales would be sales for resale and could be made under a Resale Exemption Certificate.
- C. The charges of an ophthalmologist or optometrist for his professional services are not taxable. If glasses or contact lenses are furnished as a part of the rendition of such services and an overall fee is charged, no tax is due. In such cases, the ophthalmologist or optometrist is a user or consumer of the eyeglasses, contact lenses, and other materials employed in rendering services and tax is owed thereon by the ophthalmologist or optometrist. If a separate charge is made for the glasses or contact lenses, the sale is a taxable retail sale.
- D. Some ophthalmologists or optometrists also maintain their own optical laboratories in which they prepare and assemble the glasses or contact lenses furnished to their patients. If a separate charge is made to the patient for glasses or contact lenses, then tax is due on such charge, and the materials which were used in the preparation of the glasses or contact lenses are being purchased for resale and may be purchased under a Resale Exemption Certificate. If no separate charge is made, then the optometrist or ophthalmologist is deemed to be the user of such glasses or contact lenses and his purchase of such materials is taxable.

- E. Eyeglasses and contact lenses sold at retail, as a result of a prescription written by either an optometrist or ophthalmologist, are considered orthotic devices and are exempt from the 1/2% Sewer tax, the 1/2% Street Improvement tax, and the 1% Educational Facilities Improvement District tax for sales in this Parish.

Rule 84. Orthotic, Prosthetic, Ostomy, Ileostomy, and Colostomy Devices, Wheelchairs, and Patient Aids

Sales of orthotic, prosthetic, ostomy, ileostomy, and colostomy devices, wheelchairs, and patient aids are sales of tangible personal property subject to tax. However, the 1/2% Sewer tax, 1/2% Street Improvement tax, and the 1% Educational Facilities Improvement District tax provide an exemption for those devices. Eyeglasses and contact lenses prescribed by an optometrist or an ophthalmologist are also exempt from the above taxes when sold at retail.

(See Rule 1.)

Rule 85. Oxygen, Acetylene, Hydrogen, and Liquefied Gas

Sales of oxygen, acetylene, hydrogen, and liquefied gas (butane, propane, etc.) to manufacturers, processors, refiners, repairmen, contract welders, dentists or junk dealers, or for use as fuel or illumination, are sales to consumers or users and are subject to tax. If such products are sold to dealers for resale in their original state or for use for further processing, such sales are not subject to tax.

(See also Rule 67.)

Rule 86. Parking Lots, Etc.

The furnishing of parking privileges by parking garages and parking lots is a taxable service. Persons who regularly furnish space for the parking or storage of automobiles, trucks, trailers or other vehicles are deemed to be operators of parking lots or parking garages. Charges made for parking recreational vehicles at campgrounds and parks are taxable. The total charges made for such storage or parking privileges are taxable whether such charges are made by hotels, hospitals or any other person.

Valet parking charges are considered part of the parking service and are taxable. Valet parking charges are taxable even when parking is “free” and there is a charge only for valet parking.

Rental of real property for a flat fee is not taxable when the property is used for parking and no parking fees are collected from individual parkers.

Rule 87. Drugs

The sale of drugs, whether by prescription or over the counter, is taxable. The sale of prescription drugs is exempt from the tax levied for sewers and sewerage disposal works, the tax levied for street improvements, and the tax levied by the Educational Facilities Improvement District.

Rule 88. Photo Finishing and Photographers

- A. Photo finishing involves the developing of negatives and the printing of finished pictures. If a single charge is made for both operations, the entire charge is taxable. If separate charges are made for the developing of the negatives and the printing of the pictures, only the charge for the printing is taxable.
- B. The tinting or coloring of photographs by a photo finisher constitutes a non-taxable service.
- C. Sales to photographers of materials which become an ingredient or component part of the finished picture, such as mounts, frames, and sensitized papers, are sales for resale and are not taxable. Sales of materials such as chemicals, plates, proof paper, trays, etc., which are used or consumed in the manufacture or fabrication of pictures and do not become an ingredient or component part thereof, and sales of materials to be used or consumed in the tinting or coloring of photographs, are taxable.
- D. Sales of frames, film, portraits, and other articles by photographers or photo finishers are taxable retail sales.

(See Rule 105 - Videographers.)

Rule 89. Physicians and Medical Clinics

- A. Physicians, surgeons, and medical clinics are the consumers of the various items of tangible personal property which they use or consume in the rendition of their professional services, and sales to them of such items are taxable.
- B. Tax does not apply to the fee for professional services rendered by physicians and surgeons. If physicians and surgeons sell to their patients medicines, medical supplies,

bandages, and the like, they must register as dealers and collect and remit the tax on such sales.

Rule 90. Printing Industry

- A. Sales by printers of advertising circulars, books, briefs, envelopes, folders, posters, racing forms, shopping guides, tickets, and other printed matter to persons who do not resell such articles in the regular course of business, but who either use or consume them, or lease or distribute them free of charge, are subject to tax. The cost of labor, author's alterations or other service charges in performing the printing may not be deducted from the sales price even though such charges are stated or shown on any evidence of sale separately from the charge for the printed material, since such charges are considered an integral part of the articles sold.
- B. When stamped envelopes or government postals are purchased and printed for customers or when stamps are provided, the charge for the postage may be deducted in determining the sales price.
- C. Sales of printed matter to advertising agencies who purchase for their own use or for the use of their clients, and not for resale in the regular course of business, are taxable retail sales.
- D. Sales of tickets to theater owners, amusement operators, transportation companies, and others are sales for consumption and subject to tax. Such tickets are not resold by the purchasers as tangible personal property, but are used merely as a receipt to patrons for payment and as evidence of the right to admission or transportation. Sales of school annuals and similar publications by printers to schools or student organizations therein are subject to tax.
- E. Sales by printers of books, envelopes, folders, posters, racing forms, stationery, tickets, and other printed matter to dealers for resale in the regular course of business are not retail sales and are not subject to tax.
- F. The binding and rebinding of books for others is taxable as a fabrication.
- G. The purchases and sales of the following, including all chemical supplies necessary to produce such items, whether manufactured by a printer or purchased from a subcontractor, are not taxable:
 - 1. Artwork

2. Blankets and bars
3. Chemicals
4. Color separations
5. Dies
6. Film, including negatives
7. Offset plates
8. Press proofs and photomechanical proofs
9. Layouts
10. Typesetting
11. Rubber plates
12. Paper
13. Ink

H. The sale of a plate to a particular customer and the purchase of equipment and furniture by printers is taxable.

Rule 91. Per Diem or Car Hire on Freight Cars, Piggy-Back Cars, and Rolling Stock; Repairs

A. The sales, use, and lease tax shall not apply to:

1. Hourly, daily or periodic mileage or other charges referred to as “per diem or car hire” on freight cars and other rolling stock, when such charges are paid by reason of the presence of freight cars and other rolling stock owned by another on the tracks of the taxpayer;
2. Piggy-back trailers or containers when brought into or operated as piggy-back trailers or containers in the Parish; and
3. Rollingstock, such as engines, switch engines, freight cars, and machinery owned, operated or leased by a railroad or any other person, firm or corporation.

B. Repairs made in the Parish to railroad rolling stock, such as engines, switch engines, freight cars, boxcars, and tank cars, are subject to tax. If the rolling stock is repaired out-of-parish and is returned to the Parish, a use tax is due on any materials added to the rolling stock during the repair. If labor charges are not separately stated on the out-of-parish repair invoice, the entire amount of the repair is subject to use tax. A credit against the use tax due will be granted to taxpayers who have paid an equal or greater local tax in another local taxing jurisdiction for the rolling stock repair.

Rule 92. Refinery Gas

- A. Refinery gas is subject to tax. Refinery gas is defined as a “waste” gas or “by-product” gas which is produced in the process of distilling crude petroleum into its marketable products.
- B. The annual cost basis computed by the Louisiana Department of Revenue shall be the value at which such refinery gas is taxed.
- C. The sales price of refinery gas, when sold at retail, wholesale, or for further processing, shall be the average of the monthly spot market price per thousand cubic feet of natural gas delivered into pipelines in Louisiana as reported by the Natural Gas Clearing House and as determined by the Department of Revenue for natural gas severance tax purposes at the time of such sale, or the price for which such property is actually sold, whichever is greater, and such sale shall be taxable (Act 29, 1996).
- D. The “cost price” of refinery gas shall be 52¢ per thousand cubic feet multiplied by a fraction, the numerator of which shall be the posted price for a barrel of West Texas Intermediate Crude Oil on December first of the preceding calendar year and the denominator of which shall be \$29, and provided further that such cost price shall be the maximum value placed upon refinery gas by the State and by any political subdivision under any authority or grant of power to levy and collect use taxes.

Rule 93. School Books and Supplies

- A. Sales of school books by persons engaged in the business of selling such books to users or consumers are subject to tax.
- B. Purchases of school books by public schools for distribution to students or for library purchases are exempt from local sales and use tax (Act 1029, 1991). Effective July 1, 1997, purchases of school books, work books, computer software, films, videos, and audio tapes by approved private and parochial schools are exempt from local sales and use tax (Act 15, 1996).
- C. When publishers or proprietors of bookstores sell books to school boards strictly for the purpose of filling orders previously taken for the same from students and such school boards do not maintain any stock of books or engage in the business of selling books, such school boards are deemed to be the agents of the student and such sales are retail sales subject to tax.

- D. Publishers or proprietors of bookstores selling books to school boards, teachers or other persons operating bookstores and maintaining stocks of books for the purpose of resale to school students are deemed to make sales for the purpose of resale. In such cases, the purchasing school board, teachers or other persons operating such bookstores and engaged in the business of making sales at retail shall be responsible for collecting and remitting the tax upon such retail sales. In all cases, the burden of proof shall be upon the publishers or proprietors of the bookstores to show that any particular sale was made for the purpose of resale.
- E. This rule applies with equal force to sales of writing paper, drawing materials, ink, laboratory, and other school supplies.

Rule 94. Self-Propelled Vehicles or Heavy Equipment

Louisiana Revised Statute 47:305.22 provides an exemption from local sales/use taxes for self-propelled vehicles or heavy equipment which were purchased or imported tax-free for resale and are subsequently withdrawn from resale inventory, for rental, as a method for promoting sales. To be eligible for this exemption, the equipment must (1) be of a type not subject to titling under Louisiana Revised Statutes, Title 32; (2) have a dealer's cost of not less than \$3,000 per unit; (3) be mobile, motorized, self-propelled farm equipment and attachments thereto; and/or (4) mobile, motorized, self-propelled earth-moving equipment and attachments thereto; and/or (5) mobile, motorized, self-propelled construction equipment and attachments thereto. The dealer shall be liable for the tax levied on the rental income and a sales tax upon any ultimate sale of said item.

Rule 95. Ship Supplies

The sale of materials and supplies, the furnishing of repair services, the sale of materials and supplies used in such repairs when they enter into and become a component part of ships or vessels operating exclusively in foreign or interstate coastwise commerce, and laundry services when purchased by owners and operators of such vessels, are not subject to tax. The seller of materials or supplies or the furnisher of repairs or laundry services shall secure from the purchaser an exemption certificate furnished by the Finance Director and signed by the purchaser, stating that such materials and supplies are to be used exclusively in vessels operating in foreign or interstate coastwise commerce. Any dealer who fails to secure such an exemption certificate will be held liable for and must pay the tax himself.

Rule 96. Shoe Repairing

The charges of shoe repairmen for the services of shoe repairing, shining or rebuilding are subject to tax. Sales to shoe repairmen of materials such as sole leather, rubber heels, thread, and nails, which become a part of the articles repaired, are sales for resale and are not subject to tax.

Rule 97. Sign Painters and Manufacturers

- A. Persons engaged in the business of painting signs on buildings or other real or personal property belonging to others are furnishing non-taxable services. However, sales of paint, brushes, and other tangible personal property to such sign painters are taxable retail sales.
- B. When a sign painter fabricates and paints a sign from his own material or from materials supplied by his customer and sells it to the customer as a finished article, the transaction is a taxable retail sale. No deductions may be made from the selling price for labor or service charges.
- C. Sales of electric, neon or other illuminated signs, whether manufactured by the seller or not, are taxable retail sales. If at the time of such sale, the seller contracts to furnish periodic maintenance or repair service for a flat charge, including the purchase price of the sign, the total gross proceeds are taxable. If the charges for maintenance or repair services are rendered subsequent to the sale, such charges are taxed as sales of service. If the maintenance contract includes non-taxable services, such as insurance and inspection, the portion of the charge representing the cost of inspecting and insurance may be excluded from the taxable amount if such charges are segregated in the contract and on the invoice.

Rule 98. Stocks, Bonds or Other Securities

The term “tangible personal property” does not include stocks, bonds, notes, or other obligations or securities, and accordingly, the sale of such is not subject to tax.

Rule 99. Transportation Services

The tax does not apply to the furnishing of transportation services by taxi, boat, bus, or other instrumentalities for a fare. It does apply to the rental of such instrumentalities when the price paid is in the form of a rental and not a fare.

Rule 100. Tire and Tube Repair

Persons engaged in repairing and vulcanizing tires and tubes and retreading tires are performing taxable services. The gross proceeds derived from such services are subject to tax. Materials and supplies purchased for use in performing such repairs, which become a part of the articles repaired, are deemed purchased for resale and may be purchased tax-free under a Resale Exemption Certificate.

Rule 101. Vending Machines

- A. The sale, use or leasing of vending machines is subject to tax.
- B. Sales of tangible personal property via vending machines are taxable and the seller of the merchandise vended is responsible for the reporting and payment of tax on total taxable sales. Taxable sales may be computed by dividing the total gross receipts removed from the machine by 1.00, plus the total state and local tax rate. The tax is computed by multiplying taxable sales by the local tax rate.

Rule 102. Warehouse, Shipping, and Packaging Services

- A. Moving, storing (other than cold storage), packing, and shipping tangible personal property belonging to other persons are activities which constitute services of a type which are not ordinarily taxable. Crating, boxing, packaging, and packing materials used in the performance of these services are deemed to be purchased for use or consumption by the person furnishing the non-taxable services and the seller of such materials to a person for such use is making a sale for use and consumption, which is taxable.
- B. Sales of secondhand furniture or other tangible personal property to which title has been acquired through the provision of these services, as a result of the abandonment of property, is subject to tax when the seller holds himself out to the public as being engaged in the business of selling such property.

Rule 103. Waiver Of Penalty

- A. The Finance Department, Auditing Division, is responsible for performing sales and use tax audits of taxpayers doing business in East Baton Rouge Parish. The Finance Department, Revenue Division, is responsible for the assessment and collection of taxes, interest, and penalties. After an assessment is made, the taxpayer has the right to request

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a waiver of penalty. Any request for waiver must be made in writing and addressed to the Revenue Manager. This request becomes a permanent record in the taxpayer's audit file.

- B. Penalty waivers not exceeding \$10,000 are approved by the Revenue Manager. Penalty waivers exceeding \$10,000 must be approved by the Finance Director
- C. The following are the primary factors considered when acting on a request for waiver:
1. **Level of Cooperation with Auditors.** If a taxpayer has imposed needless time delays in providing the necessary records to conduct an audit, uses abusive language, subjects auditors to unnecessarily uncomfortable working conditions, or has provided incomplete records, he is less likely to receive favorable consideration.
 2. **Previous Audits.** A taxpayer is more likely to receive a penalty waiver on an initial audit than on subsequent audits. Additionally, if the tax issues in question have previously been the subject of an audit with the taxpayer requesting a waiver, the taxpayer is less likely to receive favorable consideration.
 3. **Level of Taxpayer Effort.** If a taxpayer is attempting to collect or accrue taxes properly and the errors made do not appear to be intentional, then the taxpayer is more likely to receive favorable consideration.
 4. **Taxpayer Payment History.** If a taxpayer has been paying his taxes timely in prior periods, his chances of receiving favorable consideration are enhanced.
 5. **Taxpayer Registration.** A taxpayer that has not registered for sales and use taxes with Revenue is less likely to receive favorable consideration than one who has been properly registered.
 6. **Taxes Collected but Not Remitted.** If a taxpayer has collected, but not remitted taxes, he is not in a good position for obtaining favorable consideration.
 7. **Complexity of Tax Issue.** There may be circumstances in complex tax situations when it is not clear whether or not tax applies. If the tax issue in question is a complex one where the applicability of tax to the transaction is not clear, the taxpayer is in a better position to obtain favorable consideration.
 8. **Special or Unusual Conditions Relative to Audit Findings.** If the tax in question resulted from apparent inadvertent coding errors, the taxpayer is in a

better position for obtaining favorable consideration than under other circumstances.

9. **Prompt Payment.** If a taxpayer pays the tax and interest in a timely manner after being billed and following their audit, he is in a better position to obtain favorable consideration.
10. **Corrective Action.** Willingness of a taxpayer to take corrective action to prevent a recurrence of tax underpayment is an important consideration. If a taxpayer is willing to change his method of accounting and procedures in order to reduce the likelihood of the same error occurring again, he is more likely to obtain favorable consideration.

D. Requests for waivers of penalties may be granted or denied in whole or part. In all cases, the goal of the Finance Department is to maintain a consistent and effective policy while treating all taxpayers fairly. The factors listed above are also utilized, to the extent applicable, in making decisions relative to penalty waivers in non-audit situations.

Rule 104. Credit for Taxes Paid

- A. Louisiana Revised Statute 33:2718.2 E clearly states that no person shall be taxed on a particular event more than once, provided the person can produce documentary evidence of a good faith effort to recover taxes paid to the incorrect taxing jurisdiction. Documentary evidence consists of the following:
 1. A formal request for refund by certified mail to the taxing jurisdiction paid in error, including all evidence supporting such claim.
 2. A second request by certified mail if no response was received within 60 days of the first refund request.
 3. Either the response approving or denying the first or second request, or an affidavit from the person stating that no response was received within 60 days of the second request.
- B. This statute further provides that no penalty or interest can be imposed on taxes erroneously paid to another jurisdiction, unless bad faith or gross negligence can be proved. In addition, in instances where a legitimate disagreement exists as to which taxing authority is owed, the involved taxing authorities shall resolve the dispute among themselves without involving the taxpayer in the dispute.

- C. If a taxpayer is assessed for sales taxes paid to the wrong local taxing jurisdiction, it is in the taxpayer's best interest to obtain a refund from the taxing jurisdiction originally paid before remitting payment to the proper taxing jurisdiction.

Rule 105. Videographers

The same rules that apply to photographers apply to videographers. The total selling price of the videotape is subject to tax. This would include the charges for videotaping weddings, special events or programs, etc.

(See Rule 88 - Photographers.)

Rule 106. Cleaning (of Textiles) Services

- A. The taxability of cleaning services for laundering, cleaning, pressing, and dyeing of clothing, furs, furniture, carpets, and rugs is taxable. Dealers performing cleaning services on these items must collect and remit the local tax.
- B. The cleaning of pipe, tanks, barges, or automobiles is not taxable.
- C. Cleaning services performed as a part of a repair of tangible personal property will be treated as a repair of tangible personal property and, as such, considered taxable.

Rule 107. Rentals of Automobiles

The rental tax on automobiles shall be due to the jurisdiction where possession is transferred when the rental period is less than 180 days. When the lease period is more than 180 days, the tax shall be due to the jurisdiction where the lessee resides in the case of an individual; in the case of a business, the tax shall be due to the jurisdiction of the official domicile of the business, unless the automobile is assigned, garaged, and used elsewhere. Separately stated charges for refueling and insurance are not subject to local sales tax. However, drop charges are subject to local sales tax.

(See Rule 35 B - Lease or Rental of Tangible Personal Property.)

Rule 108. Exempt Organizations

The following organizations, agencies, commissions, etc., are exempt from paying the local sales and use tax:

Assessor	Food Banks
Baton Rouge Port Commission	Greater Baton Rouge Airport District
Baton Rouge Recreation & Parks Commission	Lane Memorial Hospital
City of Baker	Louisiana Lottery Corporation
City of Baton Rouge	Parish of East Baton Rouge
City of Zachary	Public Schools and School Boards
Clerk of Court	Registrar of Voters
Coroner	Safety Council of Greater Baton Rouge
Court Systems	Sheriff
Demco (Electrical Co-op)	State of Louisiana
District Attorney	State Universities
Federal Credit Unions	The American Red Cross

Rule 109. “Tax-Free” Shopping

The 2% general sales tax of the City of Baton Rouge and Parish of East Baton Rouge, East Baton Rouge Parish School Board tax, Educational Facilities Improvement District tax, and the ½% Street Improvement tax are eligible for refund under the “Tax-Free Shopping Program,” which provides tax-free shopping for foreign visitors. The tax-free shopping program does not affect the 1/2% Sewer Improvement tax. This program allows foreign visitors to qualify for a refund of local sales taxes paid on retail purchases. Hotel accommodations, meals, entertainment, and car rentals do not qualify. Any merchant interested in participating in the program should call the Louisiana Tax-Free Shopping Program office at (504) 529-1601. The program was established by Louisiana Revised Statute 51:1302 and is administered by the State of Louisiana.

Rule 110. Enterprise Zone Program

Louisiana Revised Statute 51:1781 establishes a sales tax rebate to encourage economic growth in depressed economic areas in the Parish. Sales taxes must be remitted to the proper local authority before they are eligible for rebate to the taxpayer. The enterprise zone rebates apply only to the 2% general sales tax of the City of Baton Rouge and Parish of East Baton Rouge. The East Baton Rouge Parish School Board tax, the Educational Facilities Improvement District tax, the Street Improvement tax, and the Sewer tax are not subject to rebate.

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The rebate applies to purchases of materials used in the construction of or additions to buildings, equipment, and machinery that remain with the buildings after completion.

1. Examples of qualifying items are as follows:
 - depreciable capital assets.
 - equipment used in the business such as machinery, desks, cabinets, chairs, copy machines, and forklifts used exclusively on the enterprise zone site.
 - general construction items such as pilings, couplings, rebars, paneling, sheetrock, shell, sand, and gravel which remain on site, lumber, bricks, concrete for building and driveways, grass, shrubs, and landscaping materials.

2. Examples of non-qualifying items are as follows:
 - all hand tools
 - safety equipment
 - office supplies
 - blueprints, photographs
 - repairs to equipment
 - leases and rentals of any type
 - purchases made by contractors that do not become a component part of the building or are not passed on to the business.
 - vehicles licensed for highway use

3. Filing Deadlines Strictly Enforced

Taxpayers should review the Enterprise Zone contract to determine filing deadlines. The contract allows for a 60-day period to file for rebates. An additional 60-day extension can be granted upon written request prior to the end of the initial 60-day period. If the rebate is requested after the deadline, the rebate request will be denied in its entirety.

4. Required Documentation

When filing for rebates, the request must include a worksheet which includes the following information:

- Description of the Item Purchased
- Invoice Number
- Name of the Vendor
- Invoice Date

- Purchase Price
- Amount of State Sales Tax
- Amount of City-Parish Sales Tax
- Tax Paid to Vendor
- Tax Paid to the City-Parish

An invoice must be provided for every item listed on the worksheet. The invoice should indicate whether tax was paid, the delivery dates, and what items were purchased. If tax was paid, this tax must have been remitted to the City of Baton Rouge - Parish of East Baton Rouge by the purchaser or vendor to be eligible for the rebate.

If tax was not charged and your business accrued the tax directly to the City-Parish, then detailed accrual documentation is required. We also require this detailed accrual documentation for transactions involving contractors and subcontractors. This documentation must prove that accrued taxes were actually remitted to the City of Baton Rouge - Parish of East Baton Rouge.

5. Common Reasons Rebate Requests are Denied

The following is a list of reasons that invoices are commonly denied for rebate:

- The vendor was not registered with East Baton Rouge Parish.
- The vendor had insufficient sales tax remittances to East Baton Rouge Parish.
- The purchase did not comply with contract requirements.
- Sales tax was not paid to the vendor.
- Local sales tax for another jurisdiction was charged by the vendor.
- Mathematical errors are found in the worksheet submitted with the refund request.
- Additional information is needed regarding the purchase.
- Copies of invoices are not provided.
- The invoice amounts are adjusted as a result of vendor's compensation taken.

Rule 111. Non-Profit Organizations

- A. Louisiana Revised Statute 47:305.14 provides a sales and use tax exemption on admission charges and the sale of tangible personal property at events sponsored by domestic, civic, educational, historical, charitable, fraternal, or religious organizations that are non-profit. In order for the exemption to apply, the entire proceeds, except for necessary

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expenses connected with the event, must be used for educational, charitable, religious, or historical restoration purposes.

- B. The exemption provided by Louisiana Revised Statute 47:305.14 does not apply to any event intended to yield a profit to either the promoter or to any individual engaged in providing services or tangible personal property. Neither does this statute exempt any organization or activity from the payment of sales or use taxes on any purchases made by the organization.
- C. An organization must apply for and receive an exemption certificate from the Louisiana Department of Revenue before the Revenue Division will issue a local exemption certificate under this statute. A certificate of exemption will apply only to sales made directly by the organization seeking the exemption. Any organization that endorses any candidate for political office or is otherwise involved in political activities is not eligible for this exemption. Another limitation on the exemption is that it does not exempt regular commercial ventures of any type such as bookstores, restaurants, gift shops, commercial flea markets, and similar activities that are sponsored by qualifying organizations which are in competition with retail merchants.

Rule 112. Direct Pay Permits

- A. The Direct Pay Permit allows taxpayers to pay all sales and use taxes due in East Baton Rouge Parish directly to the East Baton Rouge Parish taxing jurisdiction. The taxpayer must provide vendors with a Direct Pay Certificate that will allow the taxpayer to purchase items without paying tax to the vendor. The taxpayer will accrue the tax each month.
- B. Taxpayers must meet the following qualifications for approval of a Direct Pay Permit:
 - 1. Qualify under Louisiana Revised Statute 47:303.1.
 - 2. Pay 90% of tax due for last three years.
 - 3. Have an annual average of \$30 million or more in purchases and leases of tangible personal property.
 - 4. Describe its accrual system in detail.
 - 5. Notify all vendors that they have a Direct Pay Permit.
- C. The Direct Pay Permit applies to taxable transactions occurring in East Baton Rouge Parish. It does not apply to taxable transactions occurring in another parish. These latter transactions are taxable in the parish where the sale occurs or the services are furnished.

Rule 113. Video Poker Machines

The purchase and sale of video poker machines is subject to local sales and use tax. According to Louisiana Revised Statute 27:314, an annual license fee of \$50 is due on each machine located in this Parish.

Rule 114. Corporate Officers' Liability

When a corporation fails to file sales/use tax returns or to remit the sales and use taxes collected from purchasers or consumers, the corporate officers and directors may be liable as set forth under Louisiana Revised Statute 47:1516.1.

Rule 115. Parochial and Private Schools

- A. Act 15 of the 1996 Regular Session of the Louisiana Legislature provides limited sales and use tax exclusions, (Louisiana Revised Statute 47:301(7)(f), 47:301(10)(q), and 47:301(18)(e)) effective July 1, 1997, for certain purchases, leases, rentals, and sales made by approved parochial and private elementary and secondary schools. Before claiming the exclusions provided by Act 15, schools must receive an exemption certificate from the Revenue Division.
- B. Under this act, approved private and parochial elementary and secondary schools can make tax-free purchases, leases, or rentals of books, workbooks, computers, computer software, films, videos, and audio tapes to be used for classroom instruction. In addition, these schools, their students, administrators, teachers, and other employees can sell tangible personal property without collecting sales or use tax on the sales, provided that the net proceeds, after the deduction of reasonable and necessary expenses associated with the sales, are used solely and exclusively to support the school, its programs, or curricula. The act specifically provides that the exclusion from the collection of the sales tax on sales shall not be construed to allow tax-free sales to students or their families by promoters or regular commercial dealers through the use of schools, school faculty, or school facilities.
- C. To be approved for these exclusions, the schools must comply with the court order from the **Brumfield vs. Dodd** decision and Section 501(c)(3) of the *United States Internal Revenue Code*.

Rule 116. Manufacturers' Coupons

- A. When a customer presents a manufacturer's coupon to a retail dealer, which is redeemable by the retail dealer for the amount stated on the coupon, the sales tax should be charged on the "sales price" before the deduction of the coupon discount. In this case, the total "sales price" is not reduced by the acceptance of the coupon. The dealer receives a portion of the "sales price" by payment from the retail customer and the remaining portion of the "sales price" from the manufacturer through the seller's redemption of the coupon.
- B. The sales tax treatment of manufacturers' coupons is contrasted with the sales tax treatment of coupons that are issued by retail dealers, when the coupons are not redeemable by the retail dealers after their allowance of discounts to their customers. When a retailer redeems a coupon that the retailer has issued, the retailer has lowered the "sales price" of the property or services. In such cases, the sales tax is calculated on the reduced amount after the allowance of the coupon discount.

Rule 117. Cellular Telephones

- A. Sales of cellular telephone equipment and repairs of cellular telephones are subject to sales tax. Cellular telephone service charges (air-time) are not subject to sales tax.
- B. Cellular telephones sold for less than fair market value or given away with the condition that the customer subscribe to cellular services for a specified period of time, are subject to use tax based on the cost price of the cellular phone. Credit will be given for local sales/use tax paid on the sale of the telephone.

Rule 118. Medicare and Medicaid Transactions

- A. Sales of medical devices and equipment to individuals qualifying for Medicare are considered retail sales subject to 3% local sales tax. These sales are not considered sales to the Federal Government. The Medicare program acts as an insurance company, making payments for medical devices or equipment to the individuals as a reimbursement or directly to the vendor on the individual's behalf. This applies to all medical expenses covered by Medicare, not just medical services and equipment. These medical expenses are exempt from the Sewer Improvement tax, the Street Improvement tax, and the Educational Facilities Improvement District tax.

- B. According to Act 60 of the 2001 Legislative Session, effective July 1, 2001, the sale, lease or rental of tangible personal property covered under the provision of Medicare is excluded from local sales and use tax.
- C. Medical devices, equipment, and drugs purchased by individuals qualified by the Medicaid Program are exempt from all local sales taxes. These transactions are considered sales to the State of Louisiana and are exempt from local sales tax.

Rule 119. Lottery Sales not Subject to Tax

- A. Sales of Louisiana state lottery tickets are not subject to the local sales tax.
- B. Receipts from the sale of lottery tickets should not be included in the gross receipts reported or in the deductions from the sales taken on sales tax returns. Proceeds from lottery sales should be segregated by the retailer from other sales proceeds and remitted directly to the Louisiana Lottery Corporation.
- C. Purchases by the Louisiana Lottery Corporation are not subject to local sales and use tax. The Lottery Corporation is considered an agency of the State and is exempt from local sales tax.

Rule 120. Classification of Property - Movable vs. Immovable

- A. This regulation is intended to be a guideline for classifying property as either movable or immovable and is based on a guideline issued by the Louisiana Department of Revenue. The sale and repair of tangible personal property (movable property) is taxable; therefore, it is important to classify the property correctly to determine whether a transaction involving the property would be taxable or non-taxable.
- B. When determining whether property is movable or immovable, the Civil Code and past court decisions should be examined. The Courts have consistently used the Civil Code in connection with the sales tax law. The link was established through the definition of tangible personal property in the sales tax law and the definition of corporeal movable property in the Civil Code. Corporeal movable property is defined by Article 471 of the Civil Code as:

“Corporeal movables are things, whether animate or inanimate, that normally move or can be moved from one place to another.”

- C. The Civil Code places property into several different categories. Articles 463, 465, and 466 are the most helpful.
1. Component Parts of Tracts of Land - Article 463:

“Buildings, other constructions permanently attached to the ground, standing timber, and unharvested crops or ungathered fruits of trees, are component parts of a tract of land when they belong to the owner of the ground.”
 2. Things Incorporated into an Immovable - Article 465:

“Things incorporated into a tract of land, a building, or other construction, so as to become an integral part of it, such as building materials, are its component parts.”
 3. Component Parts of Buildings or Other Constructions - Article 466:

“Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical or other installations, are its component parts.”

“Things are considered permanently attached if they cannot be removed without substantial damage to themselves or to the immovable to which they are attached.”
- D. Although these Articles give some factors to be considered in the determination of immovable and movable property, it is impossible to give a complete listing. The Courts have provided guidance in the interpretation of these Civil Code Articles in their decisions.
- E. Definitions: The following definitions are helpful, for purposes of taxation, in determining whether property is immovable or movable:
1. **Permanent** - property is placed in its final position and intended to stay in that position for the remainder of its useful life.
 2. **Substantial Damage** - immovable property or attached property is no longer functional as originally intended or must be repaired in order to function as originally intended.
 3. Factors that indicate permanence:

- a. The property is not intended to be removed from the building or other structure to which it is attached during its useful life. This would be evidenced by affixing the property with permanent fasteners that will cause substantial damage to either the immovable or the property being attached to the immovable when the property is removed.
 - b. Attached property will be incapable of functioning in its intended capacity if removed.
 - c. The property will be expected to remain with the immovable if title to the immovable is transferred to another party.
 - d. Property is a permanent part of the electrical, cooling, heating, or plumbing systems.
4. Factors that indicate impermanence:
- a. The property is expected to be removed and replaced as technology changes.
 - b. The property is not permanently affixed to a building or other structure.
 - c. The property may be removed without substantial damage to it or the immovable.
 - d. If removed, the property will have a value that is consistent with its original function allowing for normal depreciation.
 - e. The property is subject to a chattel mortgage.
- F. Court Introduced Concepts. The Courts have added certain concepts to be considered in the determination of the classification of property.
1. Societal Expectations - Residential

In Equibank, a Pennsylvania Banking Corporation, Plaintiff-Appellant vs. United States of America Internal Revenue Service, Defendant-Appellee, 749 F.2d 1176 (5th Cir. 1985), the Court was asked to decide if the crystal chandeliers in a mansion in New Orleans were component parts of the residence. The Court agreed that the chandeliers were component parts of the residence. The Court introduced the concept of “societal expectations.” It was stated in the decision

that when a light switch is turned on, “people expect to have the lights go on.” The Court also talked about the difference between items that are merely plugged into a wall and items “permanently” attached to the wiring.

Following is a listing of items the Court considered to fall into the “permanently” attached category: “built-in stoves or ovens, wall and ceiling electric heaters, central heating and air conditioning, heat pumps, electrical hot water heaters, built-in public address and alarm systems, overhead fans, interior physically attached light fixtures, exterior lighting, automatic garage door controls, and like electrical equipment.” The Court held that society expects these items to be immovable.

2. Societal Expectations - Commercial

The concept of societal expectations was applied to a commercial setting in Jay Hyman, et al., Plaintiff-Appellant vs. Richard Franklin Ross, et al. Defendant-Appellee, 643 So.2d 256 (La. App. 2nd Cir. 1994). The Court reasoned that the first paragraph of Article 466 uses the word permanent in an illustrative way and “facility of removal is immaterial.” Therefore, because the property in question was expected to be included with this type of structure, they were considered immovable.

3. Adaptation of Civil Code to New Technology

The Courts have reconsidered the concepts of movable and immovable in light of new technology. In Beckham, et al. vs. Hibernia National Bank, 665 So.2d 706 (La. App. 2nd Cir. 1995), a modular building was determined to be a movable piece of property. The Court used Article 466 of the Civil Code to determine whether the building was permanently attached to the land. The Court determined that substantial damage was not done in the removal of the building.

G. Examples

1. In applying the policy, it may be necessary to break down different components of the property being attached to an immovable. For example, a telephone system contains components that are immovable, such as wiring within the walls of the building, and movable components, such as the telephones themselves. The telephones are designed to be easily moved and replaced; thus, they are property classified as movable property.

2. Another example would be computer systems used to control networks or processes within a business. These systems may be connected in a similar manner as the telephone handset and receiver. The components, which may be plugged into the system, include monitors, personal computers, servers, and other freestanding components. Because the components are specifically designed to be replaced or removed without damage to the immovable or the other components of the network, they are movable property.

Rule 121. Tire Disposal Fee

On January 20, 1992, retail dealers of new tires began adding a two dollar waste tire disposal fee to the selling price of each new tire sold. This fee should not be included as part of the selling price for sales tax purposes.

Rule 122. Rent-to-Own

There is a special provision for Rent-to-Own businesses that rent/sell non-business furniture and appliances for the home. Louisiana Revised Statute 9:3351-3362 provides that local sales tax on rent-to-own agreements shall be payable in equal monthly installments over the entire term of the agreement. These transactions are considered sales at retail and not lease or rental transactions.

Rule 123. Carpet and Flooring - Sales and Installation

The collection of sales tax on the sale and installation of carpet and flooring can be handled in any one of three ways depending upon the nature of the sales agreement.

1. First, the dealer making the sale can treat such a transaction as a real property contract. Using this method, the dealer furnishes the carpeting, padding, all materials necessary to complete his contract, and installs the carpet for one lump sum price. Title to the carpet does not pass to the customer until after it has been installed and has become immovable. The dealer then charges one lump sum for the entire contract, which includes the taxes he paid on his purchase of the carpet and materials as a cost factor in arriving at the contract price. No additional sales tax is collected on the contract amount from the customer.
2. Second, the dealer can treat the transaction as a retail sale with the obligation to install. Using this method, title to the carpet is considered to pass in its movable state prior to installation. The dealer separates the charges for the carpet and materials from the charge made for installing the carpet. Sales tax is charged on the selling price of the

carpeting and any other tangible personal property, but not on the separately stated installation charge.

3. The third method is a retail sale with the obligation to install in which the dealer cannot determine or does not distinguish the cost of installation from the selling price of the carpeting and other tangible personal property. Again, title to the carpet is considered to pass to the customer in its movable state. Using this method, the total charge is taxable.

Rule 124. Fuels - Gasoline and Diesel Fuel

The Louisiana Constitution Act 7, Section 27, mandates an exemption from state and local sales/use taxes on purchases of gasoline, diesel fuel or special fuels which are subject to excise taxes under Chapter 7 of Subtitle 2 of Title 47.

Rule 125. Pipe Coating, Bending, Galvanizing, Threading, and Wrapping

- A. Charges made for coating, wrapping, threading, and galvanizing of pipe and other property which have not been previously treated by such methods are considered to be fabrications. Fabrications are considered taxable sales and the vendor is required to collect sales tax on the gross proceeds from coating, wrapping, threading, and galvanizing transactions. In addition, drilling holes in pipe is also considered a fabrication of tangible personal property.
- B. The re-coating, re-wrapping, re-threading or re-galvanizing of property that has previously been coated, wrapped, threaded or galvanized is considered to be a taxable repair service. Sales tax is due on the full amount charged for this service, including materials and labor. Taxes are due in the jurisdiction where the repair transaction is performed.
- C. Pipe bending is not considered a taxable service.

Rule 126. By-Product Fuels - Coke-on-Catalyst

Act 29 of 1996 provides an exclusion from state and local sales and use tax for tangible personal property created or derived as a residue or by-product from the processing of raw materials for resale when such items are consumed in the manufacturing process. This residue or by-product

includes coke-on-catalyst and other fuel sources used for non-boiler fuels. The effective date of this Act is July 1, 1996.

Rule 127. Hotel-Motel Occupancy Tax

- A. The terms “hotel” and “motel” shall each mean and include any establishment engaged in the business of furnishing or providing rooms intended or designed for dwelling, lodging or sleeping purposes to transient guests where such establishment consists of two or more guest rooms and does not encompass any hospital, convalescent or nursing home or sanitarium, or any hotel-like facility operated by or in connection with a hospital or medical clinic providing rooms exclusively for patients and their families.
- B. The hotel-motel tax shall not apply to the rent of hotel or motel rooms rented to the same occupant for a period of 30 or more consecutive calendar days, nor shall it apply to hotel or motel rooms on an annual contract basis for consecutive or nonconsecutive days.

Hotel-motel occupancy taxes that are paid during the first 30 days are not refundable.

- C. **Government Employees and Educational Groups** - Government employees and educational groups are not exempt from hotel-motel occupancy tax. However, room charges billed directly to and paid by the Federal Government are not subject to hotel-motel occupancy tax.

Religious Groups - Religious groups are not exempt from hotel-motel occupancy tax.

Charitable Organizations - The only charitable organization that is exempt from hotel-motel occupancy tax is the American Red Cross.

Rule 128. Nexus

- A. A seller must have a minimum connection with the parish, which is labeled “nexus,” before a parish may impose collection duties of the parish sales and use taxes on the seller. A seller has sufficient nexus with the jurisdiction if the seller has a place of business, sales representatives, or an office or warehouse located in the jurisdiction.
- B. Parishes have found nexus to exist where the seller conducted the following activities: regularly made deliveries in his own vehicles in a parish; made installation and repairs of goods in a parish; utilized the state court to repossess goods; enjoyed the benefits of

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parish services, such as police protection and use of the highways; and when performing services in a parish for the benefit of customers.

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