

First Extraordinary Session, 2005

HOUSE BILL NO. 42

BY REPRESENTATIVES MONTGOMERY, ARNOLD, ALARIO, BALDONE, DARTEZ, DEWITT, DORSEY, FARRAR, FAUCHEUX, HAMMETT, HEATON, HILL, KENNEY, LABRUZZO, ODINET, SALTER, SCALISE, JANE SMITH, TOWNSEND, ALEXANDER, ANSARDI, BADON, BARROW, BAYLOR, BEARD, BOWLER, BRUCE, BRUNEAU, BURRELL, K. CARTER, R. CARTER, CAZAYOUX, CRANE, CRAVINS, CROWE, CURTIS, DAMICO, DANIEL, DOERGE, DOVE, DOWNS, DURAND, ERDEY, FRITH, GALLOT, GEYMANN, GLOVER, GRAY, GREENE, E. GUILLORY, M. GUILLORY, HARRIS, HEBERT, HONEY, HOPKINS, HUNTER, HUTTER, JACKSON, JEFFERSON, JOHNS, KATZ, KENNARD, KLECKLEY, LAFONTA, LANCASTER, MARCHAND, MARTINY, MCDONALD, MCVEA, MORRELL, MORRISH, PIERRE, PINAC, PITRE, M. POWELL, T. POWELL, QUEZAIRE, RICHMOND, RITCHIE, ROBIDEAUX, SCHNEIDER, SMILEY, GARY SMITH, JACK SMITH, JOHN SMITH, ST. GERMAIN, STRAIN, THOMPSON, TRAHAN, TRICHE, TUCKER, WADDELL, WALKER, WALSWORTH, WHITE, WOOTON, AND WRIGHT AND SENATORS HEITMEIER, HINES, MOUNT, MARIONNEAUX, NEVERS, AND SCHEDLER

1 AN ACT

2 To enact R.S. 47:305.54, relative to the state sales and use tax; to enact the 2005 Louisiana  
3 Sales Tax Holiday Act; to provide that the state sales and use tax shall not apply to  
4 consumer purchases of tangible personal property on a certain date from certain  
5 selling dealers; to provide restrictions on the types and cost of purchases that are  
6 eligible for exemption; to provide for an effective date; and to provide for related  
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:305.54 is hereby enacted to read as follows:

10 §305.54. Exemption; 2005 Louisiana Sales Tax Holiday Act

11 A. This Act shall be known as the 2005 Louisiana Sales Tax Holiday Act.

12 B.(1) Notwithstanding any other provisions of law to the contrary, the sales  
13 tax levied by the state of Louisiana and its political subdivisions whose boundaries  
14 are coterminous with those of the state shall not apply to the first two thousand five  
15 hundred dollars of the sales price or cost price of any consumer purchases of tangible  
16 personal property that occur on December 16, 17, and 18, 2005.

1           (2) For purposes of this Act, "consumer purchases" shall mean purchases of  
2           items of tangible personal property, other than vehicles subject to license and title.  
3           Consumer purchases shall not include the purchase of meals furnished for  
4           consumption on the premises where purchased, including to-go orders.

5           C. This provision will apply if and only if on December 16, 17, and 18, 2005,  
6           one of the following occur:

7           (1) Title to or possession of an item of tangible personal property is  
8           transferred from a selling dealer to a purchaser.

9           (2) A customer selects an eligible item from the selling dealer's inventory for  
10          layaway that is physically set aside in the selling dealer's inventory for future  
11          delivery to that customer.

12          (3) The customer makes final payment and withdraws an item from layaway  
13          that might have been placed before December 16, 17, and 18, 2005.

14          (4) The customer orders and pays for an eligible item and the selling dealer  
15          accepts the order for immediate shipment, even if delivery is made after December  
16          16, 17, and 18, 2005, provided that the customer has not requested delayed shipment.

17          D. Eligible items that customers purchase on December 16, 17, and 18, 2005,  
18          with "rain checks" will qualify for exemption, regardless of when the "rain checks"  
19          were issued. However, issuance of "rain checks" during the exemption period will  
20          not qualify items for exemption if the otherwise eligible items are actually purchased  
21          after December 18, 2005.

22          E.(1) When a customer purchases an eligible item on December 16, 17, and  
23          18, 2005, and exchanges the item without additional cash consideration after  
24          December 18, 2005, for an essentially identical item of different size, color, or other  
25          failure, no additional tax is due.

26          (2) When a customer after December 18, 2005, returns an eligible item that  
27          was purchased on December 16, 17, and 18, 2005, and receives credit on the  
28          purchase of a different item, the appropriate sales tax is due on the purchase of the  
29          new item.

1           F. Articles that are normally sold as a unit must continue to be sold in that  
2           manner and cannot be priced separately in order to bring the individual items below  
3           the two thousand five hundred dollar eligibility threshold. Items that are advertised  
4           as "buy one, get one free" or "buy one, get one at a reduced price" cannot be  
5           averaged in order for both items to fall under the two thousand five hundred dollar  
6           eligibility threshold.

7           G. For a sixty-day period after December 18, 2005, when a customer returns  
8           an item that would qualify for an exemption, no credit or refunds of sales tax shall  
9           be given unless the customer provides a receipt or invoice that shows that the state  
10          sales tax was paid, or the retailer has sufficient documentation that shows that the tax  
11          was paid on the specific item. This sixty-day period is not intended to change a  
12          dealer's policy concerning the time period during which returns will be accepted.

13          H.(1) Notwithstanding any other provision of law to the contrary, the sales  
14          tax levied by the state of Louisiana and its political subdivisions whose boundaries  
15          are coterminous with those of the state shall not apply to the first two thousand five  
16          hundred dollars of the sales price or cost price of any purchases of tangible personal  
17          property by businesses located in a Hurricane Katrina or Hurricane Rita Federal  
18          Emergency Management Agency Individual Assistance Area that occur on  
19          December 16, 17, and 18, 2005.

20          (2) This Subsection shall only apply to purchases of tangible personal  
21          property that will replace property damaged, destroyed, or lost as a result of the  
22          conditions created by Hurricane Katrina or Hurricane Rita.

23          (3) No business shall be entitled to purchase tangible personal property under  
24          this Section without the payment of tax before applying for and receiving from the  
25          secretary of the Department of Revenue a Sales Tax Holiday Exemption Certificate.

26          (4) The secretary of the Department of Revenue shall issue Sales Tax  
27          Holiday Exemption Certificates to business applicants that meet all of the following  
28          criteria:

29          (a) The business is located in a Hurricane Katrina or Hurricane Rita Federal  
30          Emergency Management Agency Individual Assistance Area.

1                    (b) The business had property that was damaged, destroyed, or lost as a  
2                    result of the conditions created by Hurricane Katrina or Rita.

3                    Section 2. The secretary of the Department of Revenue is authorized to adopt and  
4 promulgate rules for the administration of the provisions of this Act.

5                    Section 3. This Act shall become effective upon signature by the governor or, if not  
6 signed by the governor, upon expiration of the time for bills to become law without signature  
7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
8 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
9 effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_