

2016 Second Extraordinary Session

HOUSE BILL NO. 36

BY REPRESENTATIVE JAMES

TAX/SALES-USE, STATE: Provides with respect to the applicability of certain exclusions and exemptions from state sales and use taxes (Item #16)

1 AN ACT

2 To amend and reenact R.S. 47:301(10)(c)(ii)(bb), 302(V)(introductory paragraph) as enacted
3 by Act No. 25 of the 2016 First Extraordinary Session of the Louisiana Legislature,
4 and R.S. 47:321.1(F)(introductory paragraph) and to enact R.S. 47:302(AA) and
5 321.1(F)(66), relative to state sales and use taxes; to provide with respect to the
6 effectiveness of exemptions and exclusions for sales of certain tangible personal
7 property and services; to provide for definitions; to provide for effectiveness; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:301(10)(c)(ii)(bb), 302(V)(introductory paragraph) as enacted by
11 Act No. 25 of the 2016 First Extraordinary Session of the Legislature, and R.S.
12 47:321.1(F)(introductory paragraph) are hereby amended and reenacted and R.S.
13 47:302(AA) and 321.1(F)(66) are hereby enacted to read as follows:

14 §301. Definitions

15 As used in this Chapter the following words, terms, and phrases have the
16 meaning ascribed to them in this Section, unless the context clearly indicates a
17 different meaning:

18 * * *
19 (10)
20 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (c)

2 * * *

3 (ii)

4 * * *

5 (bb) The term "sale at retail" does not include an isolated or occasional sale
6 of tangible personal property by a person not engaged in such business. "Isolated or
7 occasional sale" shall include the following:

8 (I) Six or fewer separate sales of taxable items at retail during a 12-month
9 period by a person who does not habitually engage, or hold himself out as engaging,
10 in the business of selling taxable items at retail.

11 (II) The sale of the entire operating assets of a business, or of a separate
12 division, branch, or identifiable segment of a business.

13 (III) The sale of tangible personal property by an individual if the property
14 was originally bought by the individual or a member of the individual's family for
15 the personal use of the individual or the individual's family.

16 (IV) The sale of tangible personal property by an individual if the individual
17 is not required to be registered as a dealer under this Chapter.

18 (V) The sale of tangible personal property by an individual if the individual
19 does not employ an auctioneer, broker, or factor, other than an online auction, to sell
20 the property.

21 (VI) The sale of tangible personal property by an individual if the total
22 receipts from sales of the individual's tangible personal property in a calendar year
23 do not exceed three thousand dollars.

24 (VII) Sales of aircraft, boats, mobile homes, or motor vehicles in this state
25 of a class or type required to be registered, licensed, titled, or documented in this
26 state or by the United States Government shall not be isolated or occasional sales,
27 except as provided in R.S. 47:6001.

28 * * *

1 §302. Imposition of tax

2 * * *

3 V. Notwithstanding any other provision of law to the contrary, including but
4 not limited to any contrary provisions of this Chapter, for the period April 1, 2016
5 through July 1, 2018, ~~the following~~ there shall be no exclusions and exemptions to
6 the tax levied pursuant to the provisions of this Section ~~shall be the exclusive list of~~
7 ~~allowable~~ except for exemptions and exclusions: for sales or purchases of the
8 following items and for those items enumerated in Subsection AA of this Section:

9 * * *

10 AA. Notwithstanding any other provision of this Section to the contrary,
11 beginning July 1, 2016, the following specific exclusions and exemptions to the tax
12 levied pursuant to the provisions of this Section:

13 (1) Sales of room rentals by a camp or retreat facility owned by a nonprofit
14 organization as provided in R.S. 47:301(6)(b).

15 (2) Sales of room rentals by a homeless shelter as provided in R.S.
16 47:301(6)(c).

17 (3) Sales, leases, and rentals of tangible personal property and sales of
18 services necessary to operate free hospitals as provided in R.S. 47:301(7)(e), (10)(p),
19 and (18)(c).

20 (4) Sales, leases, or rentals of tangible personal property to Boys State of
21 Louisiana, Inc. and Girls State of Louisiana, Inc. as provided in R.S. 47:301(7)(g)
22 and (10)(r).

23 (5) Sales by nonprofit entities that sell donated goods as provided in R.S.
24 47:301(8)(f).

25 (6) Isolated or occasional sales of tangible personal property by a person not
26 engaged in such business as provided in R.S. 47:301(10)(c)(ii)(bb).

27 (7) Sales of human tissue transplants as provided in R.S. 47:301(10)(d).

28 (8) Sales of food items by a youth-serving organization chartered by the
29 United States Congress as provided in R.S. 47:301(10)(h).

1 (9) Sales and donations of tangible personal property by food banks as
2 provided in R.S. 47:301(10)(j) and (18)(a)(i).

3 (10) Sales or purchases of fire-fighting equipment by volunteer fire
4 departments as provided in R.S. 47:301(10)(o).

5 (11) Sales to, and leases, rentals, and use of educational materials and
6 equipment used for classroom instruction by parochial and private elementary and
7 secondary schools that comply with the court order from the Dodd Brumfield
8 decision and Section 501(c)(3) of the Internal Revenue Code as provided in R.S.
9 47:301(7)(f), (10)(q)(ii), and (18)(e)(ii).

10 (12) Sales by parochial and private elementary and secondary schools that
11 comply with the court order from the Dodd Brumfield decision and Section 501(c)(3)
12 of the Internal Revenue Code as provided in R.S. 47:301(10)(q)(i) and (18)(e)(i).

13 (13) Sales of admissions to athletic and entertainment events for elementary
14 and secondary schools and membership fees or dues of nonprofit, civic associations
15 as provided in R.S. 47:301(14)(b)(i).

16 (14) Sales or use of materials used directly in the collection of blood as
17 provided in R.S. 47:301(16)(j).

18 (15) Sales or use of apheresis kits and Leuko reduction filters as provided in
19 R.S. 47:301(16)(k).

20 (16) Sales or use of orthotic devices, prosthetic devices, and wheelchairs
21 prescribed by physicians, optometrists, or licensed chiropractors for personal use as
22 provided in R.S. 47:305(D)(1)(k).

23 (17) Sales or use of ostomy, colostomy, and ileostomy devices and
24 equipment as provided in R.S. 47:305(D)(1)(l).

25 (18) Sales or use of adaptive driving equipment and motor vehicle
26 modifications prescribed for personal use as provided in R.S. 47:305(D)(1)(u).

27 (19) Sales of meals by educational institutions, medical facilities, mental
28 institutions, and occasional meals furnished by educational, religious, or medical
29 organizations as provided in R.S. 47:305(D)(2).

1 exclusions and exemptions shall be allowable for purposes of the tax levied pursuant
2 to the provisions of this Section:

3 (a) Sales of room rentals by a camp or retreat facility owned by a nonprofit
4 organization as provided in R.S. 47:301(6)(b).

5 (b) Sales of room rentals by a homeless shelter as provided in R.S.
6 47:301(6)(c).

7 (c) Sales, leases, or rentals of tangible personal property to Boys State of
8 Louisiana, Inc. and Girls State of Louisiana, Inc. as provided in R.S. 47:301(7)(g)
9 and (10)(r).

10 (d) Sales or purchases of fire-fighting equipment by volunteer fire
11 departments as provided in R.S. 47:301(10)(o).

12 (e) Sales to, and leases, rentals, and use of educational materials and
13 equipment used for classroom instruction by parochial and private elementary and
14 secondary schools that comply with the court order from the Dodd Brumfield
15 decision and Section 501(c)(3) of the Internal Revenue Code as provided in R.S.
16 47:301(7)(f), (10)(q)(ii), and (18)(e)(ii).

17 (f) Sales by parochial and private elementary and secondary schools that
18 comply with the court order from the Dodd Brumfield decision and Section 501(c)(3)
19 of the Internal Revenue Code as provided in R.S. 47:301(10)(q)(i) and (18)(e)(i).

20 (g) Sales of admission charges to athletic and entertainment events for
21 elementary and secondary schools and membership fees or dues of nonprofit, civic
22 associations as provided in R.S. 47:301(14)(b)(i).

23 (h) Sales or use of orthotic devices, prosthetic devices, and wheelchairs
24 prescribed by physicians, optometrists, or licensed chiropractors for personal use as
25 provided in R.S. 47:305(D)(1)(k).

26 (i) Sales or use of ostomy, colostomy, and ileostomy devices and equipment
27 as provided in R.S. 47:305(D)(1)(l).

28 (j) Sales or use of adaptive driving equipment and motor vehicle
29 modifications prescribed for personal use as provided in R.S. 47:305(D)(1)(u).

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 36 Original

2016 Second Extraordinary Session

James

Abstract: Adds various exemptions and exclusions to the list of state sales and use tax exemptions and exclusions to be given effect beginning July 1, 2016.

Present law establishes a variety of state sales and use tax exclusions and exemptions.

Present law suspends numerous exemptions and exclusions from the state sales and use tax (R.S. 47:302, 321, 321.1, and 331) for two different periods of time, both occurring between April 1, 2016 and June 30, 2018.

Present law provides that the suspension of certain exemptions and exclusions for purposes of two of the tax levies, R.S. 47:321 and 331, expires June 30, 2016. The suspension with respect to the other two tax levies, R.S. 47:302 and 321.1 remains effective through June 30, 2018.

Present law provides an exclusion for isolated or occasional sales of tangible personal property by a person not engaged in such business.

Proposed law retains present law but defines the following as isolated or occasional sales:

- (1) Six or fewer separate sales of taxable items at retail during a 12-month period by a person who does not habitually engage, or hold himself out as engaging, in the business of selling taxable items at retail.
- (2) The sale of the entire operating assets of a business, or of a separate division, branch, or identifiable segment of a business.
- (3) The sale of tangible personal property by an individual if the property was originally bought by the individual or a member of the individual's family for the personal use of the individual or the individual's family.
- (4) The sale of tangible personal property by an individual if the individual is not required to be registered as a dealer.
- (5) The sale of tangible personal property by an individual if the individual does not employ an auctioneer, broker, or factor, other than an online auction, to sell the property.
- (6) The sale of tangible personal property by an individual if the total receipts from sales of the individual's tangible personal property in a calendar year do not exceed \$3,000.
- (7) Sales of aircraft, boats, mobile homes, or motor vehicles in this state of a class or type required to be registered, licensed, titled, or documented in this state or by the U.S. govt. shall not be isolated or occasional sales, except as provided in R.S. 47:6001.

Proposed law changes present law for purposes of exemptions and exclusions to the state sales and use taxes imposed under R.S. 47:302, beginning July 1, 2016, by adding the

following exemptions and exclusions to the list of exemptions and exclusions that remain in effect through June 30, 2018.

- (1) Sales of room rentals by a camp or retreat facility owned by a nonprofit organization.
- (2) Sales of room rentals by a homeless shelter.
- (3) Sales, leases, and rentals of tangible personal property and sales of services by hospitals necessary to operate free hospitals.
- (4) Sales, leases, or rentals to Boys State of La., Inc. and Girls State of La., Inc.
- (5) Sales by nonprofit entities that sell donated goods.
- (6) Isolated or occasional sales of tangible personal property by a person not engaged in such business.
- (7) Sales of human tissue transplants.
- (8) Sales of food items by a youth organization chartered by the U. S. congress.
- (9) Sales and donations of tangible personal property by food banks.
- (10) Sales or purchases of fire-fighting equipment by volunteer fire departments.
- (11) Sales to, and leases, rentals, and use of educational materials and equipment used for classroom instruction by parochial and private elementary and secondary schools that comply with the court order from the Dodd Brumfield decision and Section 501(c)(3) of the Internal Revenue Code.
- (12) Sales by parochial and private elementary and secondary schools that comply with the court order from the Dodd Brumfield decision and Section 501(c)(3) of the Internal Revenue Code.
- (13) Sales of admission charges to athletic and entertainment events for elementary and secondary schools and membership fees or dues of nonprofit, civic associations.
- (14) Sales or use of materials used directly in the collection of blood.
- (15) Sales or use of apheresis kits and Leuko reduction filters.
- (16) Sales or use of orthotic devices, prosthetic devices, and wheelchairs prescribed by physicians, optometrists, or licensed chiropractors for personal use.
- (17) Sales or use of ostomy, colostomy, and ileostomy devices and equipment.
- (18) Sales or use of adaptive driving equipment and motor vehicle modifications prescribed for personal use.
- (19) Sales or use of meals by educational institutions, medical facilities, mental institutions, and occasional meals furnished by educational, religious, or medical organizations.
- (20) Purchases or rentals of kidney dialysis machines, parts, materials, and supplies for home use under a physician's prescription.
- (21) Sales of admissions to entertainment events by Little Theater organizations.

- (22) Sales of admissions to musical performances sponsored by nonprofit organizations.
- (23) Sales of admissions to entertainment events sponsored by domestic nonprofit charitable, religious, and educational organizations.
- (24) Sales of admissions, parking fees, and sales of tangible personal property at events sponsored by domestic, civic, educational, historical, charitable, fraternal, or religious nonprofit organizations.
- (25) Sales of admissions and parking fees at fairs and festivals sponsored by nonprofit organizations.
- (26) Purchases of fishing vessels, supplies, fuels, lubricants, and repairs for the vessels of licensed commercial fisherman.
- (27) Sales of butane, propane, or other liquified petroleum gases for private, residential consumption.

Present law imposes a 1% temporary state sales and use tax (R.S. 47:321.1) for the period from April 1, 2016 through June 30, 2018.

Proposed law changes present law for purposes of exemptions and exclusions to the 1% temporary state sales and use taxes imposed under R.S. 47:321.1 by adding the following exclusions and exemptions to the list of state sales and use tax exemptions and exclusions to be given effect beginning July 1, 2016:

- (1) Sales of room rentals by a camp or retreat facility owned by a nonprofit organization.
- (2) Sales of room rentals by homeless shelters.
- (3) Sales, leases, or rentals to Boys State of La., Inc. and Girls State of La., Inc.
- (4) Sales or purchases of fire-fighting equipment by volunteer fire departments.
- (5) Sales to, and leases, rentals, and use of educational materials and equipment used for classroom instruction by parochial and private elementary and secondary schools that comply with the court order from the Dodd Brumfield decision and Section 501(c)(3) of the Internal Revenue Code.
- (6) Sales by parochial and private elementary and secondary schools that comply with the court order from the Dodd Brumfield decision and Section 501(c)(3) of the Internal Revenue Code.
- (7) Sales of admission charges to athletic and entertainment events for elementary and secondary schools and membership fees or dues of nonprofit, civic associations.
- (8) Sales or use of orthotic devices, prosthetic devices, and wheelchairs prescribed by physicians, optometrists, or licensed chiropractors for personal use.
- (9) Sales or use of ostomy, colostomy, and ileostomy devices and equipment.
- (10) Sales or use of adaptive driving equipment and motor vehicle modifications prescribed for personal use.
- (11) Sales of meals by education institutions, medical facilities, mental institutions, and occasional meals furnished by educational, religious, or medical organizations.

- (12) Purchases or rentals of kidney dialysis machines, parts, materials, and supplies for home use under a physician's prescription.
- (13) Sales of admissions to entertainment events by Little Theater organizations.
- (14) Sales of admissions to musical performances sponsored by nonprofit organizations.
- (15) Sales of admissions to entertainment events sponsored by domestic, nonprofit charitable, religious, and educational organizations.
- (16) Sales of admissions, parking fees, and sales of tangible personal property at events sponsored by domestic, civic, educational, historical, charitable, fraternal, or religious nonprofit organizations.
- (17) Sales of admissions and parking fees at fairs and festivals sponsored by nonprofit organizations.
- (18) Purchases of fishing vessels, supplies, fuels, lubricants, and repairs for the boats of licensed commercial fisherman.
- (19) Sales of butane, propane, or other liquified petroleum gases for private, residential consumption.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:301(10)(c)(ii)(bb), 302(V)(intro. para.) as enacted by Act No. 25 of the 2016 1st E.S., and R.S. 47:321.1(F)(intro.para.); Adds R.S. 47:302(AA) and 321.1(F)(66))