

2017 Regular Session

HOUSE BILL NO. 559

BY REPRESENTATIVE BROADWATER

TAX/SALES-USE, STATE: Repeals the state sales and use tax exclusion for manufacturing machinery and equipment and the exemption for business utilities and provides a refund of the state sales and use tax collected on certain manufacturing machinery and equipment and industrial utilities

1 AN ACT

2 To amend and reenact R.S. 47:305(D)(1)(b), (c), (d), (g), and (h), and 305.51(A), to enact
3 R.S. 47:315.6 and 315.7, and to repeal R.S. 47:301(3)(i)(i), (13)(k), and (28)(a),
4 relative to the state sales and use taxes; to repeal the exemption for state sales and
5 use tax on certain business utilities and manufacturing machinery and equipment; to
6 provide a refund for the state sales and use tax paid on certain business utilities and
7 manufacturing machinery and equipment; 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. 47:305(D)(1)(b), (c), (d), (g), and (h), and 305.51(A) are hereby
11 amended and reenacted and R.S. 47:315.6 and 315.7 are hereby enacted to read as follows:

12 §305. Exclusions and exemptions from the tax

13 * * *

14 D.(1) The sale at retail, the use, the consumption, the distribution, and the
15 storage to be used or consumed in the taxing jurisdiction of the following tangible
16 personal property is hereby specifically exempted from the tax imposed by taxing
17 authorities, except as otherwise provided in this Paragraph:

18 * * *

1 (b) Steam is exempt solely from the sales and use taxes imposed by a local
2 political subdivision.

3 (c) Water (not including mineral water or carbonated water or any water put
4 in bottles, jugs, or containers, all of which are not exempted) is exempt solely from
5 the sales and use taxes imposed by a local political subdivision.

6 (d) Electric power or energy and any materials or energy sources used to fuel
7 the generation of electric power for resale or used by an industrial manufacturing
8 plant for self-consumption or cogeneration are exempt solely from the sales and use
9 taxes imposed by a local political subdivision.

10 * * *

11 (g) Natural gas is exempt solely from the sales and use taxes imposed by a
12 local political subdivision.

13 (h) All energy sources when used for boiler fuel except refinery gas are
14 exempt solely from the sales and use taxes imposed by a local political subdivision.

15 * * *

16 §305.51. Exemption; utilities used by steelworks and blast furnaces

17 A. The sales and use tax imposed by ~~the state of Louisiana or any of its~~ local
18 political subdivisions shall not apply to sales or purchases of utilities used by
19 steelworks, blast furnaces, coke ovens, or rolling mills with more than one hundred
20 twenty-five full-time employees, which are classified by the Louisiana Workforce
21 Commission within Sector 331111 of the North American Industry Classification
22 System as it existed in 2002. However, this exemption shall not apply to utilities
23 used in and around the production of coke in oil refineries and the use of coke in oil
24 refineries and other chemical processes.

25 * * *

26 §315.6. Sales tax refund; sales, leases, and rentals of manufacturing machinery and
27 equipment

28 A. Manufacturer, as defined in Subsection E of this Section, who has paid
29 sales, use, and lease or rental taxes, levied by the state or a political subdivision

1 whose boundaries are coterminous with those of the state, upon the sale, lease, or
2 rental of machinery and equipment when such machinery and equipment as defined
3 in Subsection E of this Section, is used by the manufacturer in a plant facility
4 predominately and directly in the actual manufacturing for agricultural purposes or
5 the actual manufacturing process of an item of tangible personal property, which is
6 for ultimate sale to another and not for internal use, at one or more fixed locations
7 within Louisiana, shall be entitled to a refund of the amount of tax paid on such
8 property, provided the person claiming the refund has been certified as a
9 manufacturer, as defined in Subsection E of this Section, by the secretary of the
10 Department of Revenue.

11 B. No refund shall be made under the provisions of this Section unless a
12 claim for refund covering the amount of sales, use, lease or rental tax paid is filed on
13 or before the thirty-first day of December of the year in which the tax became due
14 or after one year from the date the tax was paid, whichever is the later.

15 C. Requests for refunds of state sales and use tax pursuant to this Section
16 shall be processed by the Department of Revenue as follows:

17 (1.) A properly completed refund request shall be submitted to the
18 Department of Revenue on forms provided by the Department of Revenue. For
19 purposes of this Section, a properly completed refund request shall mean a refund
20 request that includes the general information required on the face of the request, is
21 signed, and includes a copy of each invoice and all required schedules. The request
22 shall be submitted electronically unless the secretary of the Department of Revenue
23 grants permission to submit the request in an alternate form. A copy the taxpayer's
24 approved certification for the Manufacturing Machinery and Equipment shall be
25 included.

26 (2) Within sixty days of the receipt of a properly completed refund request,
27 the Department of Revenue shall refund approximately seventy-five percent of the
28 total amount of the requested refund. Within sixty days after the date of the issuance
29 of the first refund, the Department of Revenue shall issue the remainder of the

1 amount of the refund. The Department of Revenue shall audit the refund request
2 within three months of the receipt of a properly filed refund request. During such
3 three-month period, the Department of Revenue shall disallow items determined to
4 be ineligible for refund. The Department of Revenue shall refund the remaining
5 twenty-five percent of the amount claimed on the refund request less any amounts
6 properly disallowed during the three-month audit period. The Department of
7 Revenue shall make such refund from the current collections of the taxes collected
8 pursuant to Chapter 2, Chapter 2-A, or Chapter 2-B of Subtitle II of Title 47 of the
9 Louisiana Revised Statutes of 1950, as amended. Any sales and use tax refund issued
10 shall be subject to subsequent audit by the Department of Revenue, and any refund
11 amount determined to be in excess of that which should have been allowed shall be
12 subject to collection by the Department of Revenue.

13 D. Any local political subdivision may provide for a refund of the local sales
14 and use taxes levied on upon the sale, lease, or rental of machinery and equipment
15 as provided for in this Section.

16 E. For purposes of this Section, the following definitions shall apply:

17 (1) "Machinery and equipment" means tangible personal property or other
18 property that is eligible for depreciation for federal income tax purposes and that is
19 used as an integral part in the manufacturing of tangible personal property for sale.
20 "Machinery and equipment" shall also mean tangible personal property or other
21 property that is eligible for depreciation for federal income tax purposes and that is
22 used as an integral part of the production, processing, and storing of food and fiber
23 or of timber.

24 (a) Machinery and equipment, for purposes of this Section, also includes but
25 is not limited to the following:

26 (i) Computers and software that are an integral part of the machinery and
27 equipment used directly in the manufacturing process.

28 (ii) Machinery and equipment necessary to control pollution at a plant
29 facility where pollution is produced by the manufacturing operation.

1 (iii) Machinery and equipment used to test or measure raw materials, the
2 property undergoing manufacturing or the finished product, when such test or
3 measurement is a necessary part of the manufacturing process.

4 (iv) Machinery and equipment used by an industrial manufacturing plant to
5 generate electric power for self consumption or cogeneration.

6 (v) Machinery and equipment used primarily to produce a news publication
7 whether it is ultimately sold at retail or for resale or at no cost. Such machinery and
8 equipment shall include but not be limited to all machinery and equipment used
9 primarily in composing, creating, and other prepress operations, electronic
10 transmission of pages from prepress to press, pressroom operations, and mailroom
11 operations and assembly activities. The term "news publication" shall mean any
12 publication issued daily or regularly at average intervals not exceeding three months,
13 which contains reports of varied character, such as political, social, cultural, sports,
14 moral, religious, or subjects of general public interest, and advertising supplements
15 and any other printed matter ultimately distributed with or a part of such
16 publications.

17 (vi) Machinery and equipment used by a manufacturer in a plant facility
18 predominately and directly in the actual manufacturing for agricultural purposes,
19 including, but not limited to rubber tired farm tractors, cane harvesters, cane loaders,
20 cotton pickers, combines, haybalers, attachments and sprayers, clippers, cultivators,
21 discs, plows, and spreaders.

22 (b) Machinery and equipment, for purposes of this Section, does not include
23 any of the following:

24 (i) A building and its structural components, unless the building or structural
25 component is so closely related to the machinery and equipment that it houses or
26 supports that the building or structural component can be expected to be replaced
27 when the machinery and equipment are replaced.

28 (ii) Heating, ventilation, and air-conditioning systems, unless their
29 installation is necessary to meet the requirements of the manufacturing process, even

1 though the system may provide incidental comfort to employees or serve, to an
2 insubstantial degree, nonproduction activities.

3 (iii) Tangible personal property used to transport raw materials or
4 manufactured goods prior to the beginning of the manufacturing process or after the
5 manufacturing process is complete.

6 (iv) Tangible personal property used to store raw materials or manufactured
7 goods prior to the beginning of the manufacturing process or after the manufacturing
8 process is complete.

9 (2) "Manufacturer" means:

10 (a) A person whose principal activity is manufacturing, as defined in this
11 Subparagraph, and who is assigned by the Louisiana Workforce Commission a North
12 American Industrial Classification System code within the agricultural, forestry,
13 fishing, and hunting Sector 11, the manufacturing Sectors 31-33, the information
14 Sector 511110 as they existed in 2002, or industry code 423930 as a recyclable
15 material merchant wholesaler engaged in manufacturing activities, which must
16 include shredding facilities, as determined by the secretary of the Department of
17 Revenue.

18 (b) A person whose principal activity is manufacturing and who is not
19 required to register with the Louisiana Workforce Commission for purposes of
20 unemployment insurance, but who would be assigned a North American Industrial
21 Classification System code within the agricultural, forestry, fishing, and hunting
22 Sector 11, the manufacturing Sectors 31-33, the information Sector 511110 as they
23 existed in 2002, as determined by the Louisiana Department of Revenue from federal
24 income tax data, if he were required to register with the Louisiana Workforce
25 Commission for purposes of unemployment insurance.

26 (3) "Manufacturing" means putting raw materials through a series of steps
27 that brings about a change in their composition or physical nature in order to make
28 a new and different item of tangible personal property that will be sold to another.
29 Manufacturing begins at the point at which raw materials reach the first machine or

1 piece of equipment involved in changing the form of the material and ends at the
2 point at which manufacturing has altered the material to its completed form. Placing
3 materials into containers, packages, or wrapping in which they are sold to the
4 ultimate consumer is part of this manufacturing process. Manufacturing, for
5 purposes of this Subparagraph, does not include any of the following:

6 (a) Repackaging or redistributing.

7 (b) The cooking or preparing of food products by a retailer in the regular
8 course of retail trade.

9 (c) The storage of tangible personal property.

10 (d) The delivery of tangible personal property to or from the plant.

11 (e) The delivery of tangible personal property to or from storage within the
12 plant.

13 (f) Actions such as sorting, packaging, or shrink wrapping the final material
14 for ease of transporting and shipping.

15 (4) "Manufacturing for agricultural purposes" means the production,
16 processing, and storing of food and fiber and the production, processing, and storing
17 of timber.

18 (5) "Plant facility" means a facility, at one or more locations, in which
19 manufacturing, referred to in Sectors 11 and 31-33 of the North American Industrial
20 Classification system as of 2002, of a product of tangible personal property takes
21 place.

22 (6) "Used directly" means used in the actual process of manufacturing or
23 manufacturing for agricultural purposes.

24 §315.7. Sales tax refund; utilities used in the manufacturing process

25 A. A manufacturer who has been assigned a North American Industrial
26 Classification System code within the manufacturing Sectors 31-33 by the Louisiana
27 Workforce Commission and who has paid sales and use tax levied by the state upon
28 the sale at retail, the use, the consumption, the distribution, and the storage to be used
29 or consumed in the taxing jurisdiction upon sales of steam, water, electric power or

1 energy, natural gas, and all energy sources used by the manufacturer in a plant
2 facility predominately and directly in the actual manufacturing process of an item of
3 tangible personal property, may receive a refund of the state sales and use tax paid
4 on the sales or purchases of steam, water, electric power or energy, natural gas, or
5 energy sources in the following amounts:

6 (1) The full amount paid for the tax levied under R.S. 47:302.

7 (2) One-half of the amount paid for the tax levied under R.S. 47:321.

8 (3) The full amount paid for the tax levied under R.S. 47:321.1 until its
9 expiration, after which the amounts in Paragraphs (1) and (2) shall be the only
10 amounts allowed.

11 B. A properly completed refund request shall be submitted to the Department
12 of Revenue on forms provided by the Department of Revenue. For purposes of this
13 Section, a properly completed refund request shall mean a refund request that
14 includes the general information required on the face of the request, is signed, and
15 includes a copy of each invoice and all required schedules. The request shall be
16 submitted electronically unless the secretary of the Department of Revenue grants
17 permission to submit the request in an alternate form. A copy of the taxpayer's
18 approved certification for the Manufacturing Machinery and Equipment shall also
19 be included.

20 C. A request for refund shall be filed no more than once a quarter for the
21 quarters ending on the thirtieth day of April, the thirty-first day of July, the thirty-
22 first day of October, and the thirty-first day of January. Within sixty days of the
23 receipt of properly submitted refund request, the Department of Revenue shall refund
24 the amount requested.

25 D. For the purposes of this Section, the terms "manufacturing", "plant
26 facility", and "used directly" shall have the same meaning as set forth in R.S.
27 47:315.6(E).

28 E. The secretary is authorized to prescribe forms and regulations for use in
29 carrying out the provisions of this Section.

1 Section 2. R.S. 47:301(3)(i)(i), (13)(k), and (28)(a) are hereby repealed in their
2 entirety.

3 Section 3. This Act shall become effective on July 1, 2017; if vetoed by the governor
4 and subsequently approved by the legislature, this Act shall become effective on July 1,
5 2017, or on the day following such approval by the legislature, whichever is later.

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 559 Original

2017 Regular Session

Broadwater

Abstract: Repeals the state sales and use tax exclusion for manufacturing machinery and equipment and the exemption for business utilities and authorizes a refund for manufacturing machinery and equipment and certain industrial utilities.

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

Present law authorizes a state sales and use tax exclusion for sales, use, lease or rental of manufacturing machinery and equipment and provides for definitions.

Proposed law repeals present law.

Present law authorizes a state sales and use tax exemption for the sale at retail, the use, the consumption, the distribution, and the storage for business utilities, including steam, water, electric power or energy, natural gas, and all energy sources when used for boiler fuel, except refinery gas.

Proposed law repeals present law.

Present law authorizes a state and local sales and use tax exemption for the sales or purchases of utilities used by steelworks, blast furnaces, coke ovens, or certain rolling mills.

Proposed law repeals present law with respect to the state sales and use tax exemption, leaving the exemption in place for local sales and use tax.

Proposed law establishes a refund for the state sales and use tax paid on manufacturing machinery and equipment. Further requires of the following:

- (1) The person claiming the refund to be certified as a manufacturer by the secretary of the Dept. of Revenue.
- (2) The claim for the refund to be filed on or before Dec. 31st of the year the tax became due or after one year from the date the tax was paid.
- (3) The refund request includes all of the general information required on the face of the request and a copy of each invoice and all required schedules and is signed.

Proposed law requires the Dept. of Revenue (DOR) to refund approximately 75% of the total amount of the refund within 60 days of receipt of a properly completed refund request and the remainder within 60 days after the date of issuance of the first refund. Prior to issuing

the remainder, DOR is required to audit the refund request and deduct any disallowed amounts from the remainder.

Proposed law authorizes local political subdivisions to provide for the same refund as the state.

Proposed law defines terms to mean the same as in the present law exclusion that is being repealed by proposed law, as follows:

- (1) Machinery and equipment
- (2) Manufacturer
- (3) Manufacturing
- (4) Manufacturing for agricultural purposes
- (5) Plant facility
- (6) Used directly

Proposed law authorizes the DOR secretary to prescribe forms and regulations to administer the refund.

Proposed law establishes a refund for the state sales and use tax paid on the sale at retail, the use, the consumption, the distribution, and the storage of steam, water, electric power or energy, natural gas, and all energy sources used by manufacturers with a NAICS code within Sectors 31-33.

Proposed law allows a refund amount as follows:

- (1) 100% of the amount of the tax paid pursuant to R.S. 47:302.
- (2) 50% of the amount of the tax paid pursuant to R.S. 47:321.
- (3) 100% of the amount of the tax paid pursuant to R.S. 47:321.1 until its expiration.

Proposed law requires all of the following:

- (1) The person claiming the refund to be certified as a manufacturer by the secretary of the Dept. of Revenue.
- (2) The claim for the refund to be filed not more than quarterly.
- (3) The refund request includes all of the general information required on the face of the request and a copy of each invoice and all required schedules and is signed.

Proposed law require DOR to refund the amount requested within 60 days of receipt of the request.

Proposed law authorizes the secretary to prescribe forms and regulations to administer the refund.

Effective July 1, 2017.

(Amends R.S. 47:305(D)(1)(b), (c), (d), (g), and (h), and 305.51(A); Adds R.S. 47:315.6 and 315.7; Repeals R.S. 47:301(3)(i)(i), (13)(k), and (28)(a))