

GREEN SHEET REDIGEST

HB 673

2017 Regular Session

Stokes

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

**TAX/SALES & USE: Provides with respect to the exclusions and exemptions applicable to sales and use taxes.**

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DIGEST

Present law establishes a wide variety of exclusions and exemptions from the sales and use taxes imposed by the state and other taxing authorities.

Proposed law changes numerous provisions concerning exclusions and exemptions as follows.

Present law establishes the following exemptions and exclusions from sales and use taxes imposed by the state, but permanently suspends applicability of the exemptions and exclusions for purposes of the state sales and use tax imposed under R.S. 47:321.

- (1) Nonprofit electric cooperative.
- (2) Vessels leased for use offshore.
- (3) Gasohol.
- (4) Pharmaceutical samples for distribution without charge to physicians, dentists, clinics, or hospitals.
- (5) Catalogs distributed, or intended for distribution in La., without charge.
- (6) Gasoline not subject to the tax on motor fuels.
- (7) Adaptive driving equipment.
- (8) Wood pellets used for boiler fuel.

Proposed law changes present law by making the exclusions and exemptions applicable for all state tax levies.

Present law establishes a sales and use tax exemption for purchases by parimutuel racetracks and off-track watering facilities.

Proposed law repeals present law.

Present law establishes a sales and use tax exemption for the purchase of materials, supplies, vehicles, and equipment by a public trust.

Proposed law repeals present law.

Present law provides that for purposes of state sales and use taxes, the sale of tangible personal property to a dealer who purchases the property for resale through coin-operated vending machines shall be considered a "sale at retail" and be subject to tax. The subsequent resale of the property by the dealer through coin-operated vending machines shall not be considered a "sale at retail".

Present law provides that for purposes of sales and use taxes imposed by local taxing authorities "sale at retail" shall include the sale of tangible personal property by a dealer through coin-operated vending machines.

Proposed law changes present law by providing that for purposes of taxes imposed by all taxing authorities "sale at retail" shall include the sale of tangible personal property by a dealer through a kiosk or coin-operated vending machine.

Present law excludes from sales and use taxes imposed by all taxing authorities isolated or occasional sales made by a person not engaged in the business of selling at retail.

Proposed law retains present law and establishes a definition for "isolated or occasional sale" as follows:

- (1) Six or fewer separate sales of taxable items at retail during a twelve-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 all of the 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 pursuant to this Chapter.
- (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 at a sheriff's sale or tax sale due to foreclosure on the property or the sale by an obligee of tangible personal property acquired by the obligee by foreclosure or otherwise in full or partial satisfaction of an obligation.

Present law establishes state sales and use tax exemptions for the following:

- (1) Sale of livestock, poultry, and other farm products directly by the farm that produced them.
- (2) Use of livestock, poultry, and other farm products by the farmer that produced them.

Proposed law changes present law by converting the exemptions to exclusions.

Present law establishes the following sales and use tax exclusions:

- (1) Admissions to athletic entertainment events of schools, colleges and universities.
- (2) Activities involved in a contract with the U.S. Navy concerning Navy vessels.
- (3) Sales, purchases, and leases by a parochial or private schools.
- (4) Sale of school lunch by a parochial or private school.
- (5) Lease or rental of a motor vehicle by a motor vehicle dealer for purposes of a warranty agreement.
- (6) Repair services associated with a motor vehicle warranty.
- (7) Human tissue transplants.

- (8) Food items sold by youth organizations.
- (9) Purchases by volunteer and public fire departments.
- (10) Free telephone directories.
- (11) Sales by the Military Department.
- (12) Sales by a thrift shop located at a military installation.
- (13) Membership fees or dues for certain nonprofit clubs or organizations.
- (14) Certain sales of sleeping rooms at certain camp and retreat facilities.
- (15) Pharmaceuticals administered to livestock.
- (16) Materials used by a blood bank or nonprofit blood collection center, to include aphaeresis kits and leuko reduction filters.
- (17) Custom computer software.

Proposed law changes present law by converting the exclusions to exemptions.

Present law defines "custom software" for purposes of sales and use taxes imposed by all taxing authorities and establishes a state sales and use tax exemption for the sale of custom software.

Proposed law changes present law by adding a definition for "pre-written software" and by extending applicability of the exemption to the taxes imposed by any taxing authority.

Present law establishes an exemption from sales and use tax for advertising services.

Proposed law repeals present law.

Present law establishes an exemption for amounts paid by a motion picture theater for motion picture film rental.

Proposed law repeals present law.

Present law provides for the definition of "sales price" and excludes from "sales price" the value of an article of tangible personal property that is traded in on the purchase of another article of tangible personal property.

Proposed law changes present law to update references to property that is traded in and adding the requirement that the trade-in occur at the same time and place as the sale at retail.

Present law provides that for purposes of sales and use taxes imposed by all taxing authorities, any cellular, PCS, or wireless telephone used in connection with the sale or use of mobile telecommunications services, the term "sales price" shall mean and include the greater of the amount of money actually received by the dealer from the purchaser for each such telephone, or 25% of the dealer's cost for the telephone.

Proposed law changes present law by changing the condition for determining "sales price" based on the cost of the telephone to the dealer from 25% to 100% of the cost.

Present law defines "news publication" as any printed periodical that appears at regular intervals, contains reports of a varied character, such as political, social, cultural, sports, moral, religious, or other subjects of general public interest.

Proposed law changes present law by adding to the definition concerning types of content and intervals of publication.

Present law establishes an exemption from sales and use taxes imposed by any taxing authority for feed for the purpose of sustaining animals for commercial, business, or agricultural purposes. Present law defines "commercial", "business", and "agricultural" uses. Further, present law, permanently suspends applicability of the exemption for purposes of the state sales and use tax imposed under R.S. 47:321.

Proposed law changes present law by repealing the definition of "business use", including race horses in the definition of "commercial use", and by extending the exemption to all state sales and use tax levies.

Present law establishes an exemption from state sales and use taxes for storm shutter devices. Present law provides for an optional exemption from taxes imposed by local taxing authorities.

Proposed law repeals present law.

Present law establishes an exemption for the purchase by television and radio broadcasters of digital conversion equipment mandated by federal law. Present law provides for an optional exemption from taxes imposed by local taxing authorities.

Proposed law repeals present law.

Present law establishes an exemption from sales and use taxes imposed by any taxing authority for all energy sources used for boiler fuel, and permanently suspends applicability of the exemption for purposes of the state sales and use tax imposed under R.S. 47:321.

Present law establishes an exclusion from sales and use taxes imposed by any taxing authority for pelletized paper waste used for boiler fuel.

Proposed law changes present law by adding the exclusion for pelletized paper waste into the exemption for energy sources for boiler fuel and by extending the applicability of the exemption to all state sales and use tax levies.

Present law establishes an exemption from sales and use taxes imposed by the state for the purchase of orthotics, including prescription eyeglasses, contact lenses, prosthetic devices, and wheelchairs and wheelchair lifts.

Proposed law retains present law and adds hearing aids, and augmentative communication devices to the list of exempt items.

Present law contains three different exemptions concerning admissions to and sales of parking and tangible personal property at an event sponsored by a nonprofit organization (R.S. 47:305.13, 305.14(A)(1)(a), and 305.18), with duplicate provisions.

Proposed law consolidates the three very similar exemptions into one exemption which includes the content of the previous three exemptions.

Present law establishes an exemption from taxes imposed by all taxing authorities for raw materials used in a printing process, to include a variety of types of equipment and chemical supplies. Present law permanently suspends applicability of the exemption for purposes of the state sales and use tax imposed under R.S. 47:321.

Proposed law changes present law by establishing two separate exemptions, one for a commercial printer and one for a printer of a news publication.

Proposed law regarding a commercial printer, limits the exemption to sale or use of materials purchased for the purpose of inclusion into tangible personal property to be sold at retail by the printer and extends applicability to all state sales and use tax levies.

Proposed law regarding a printer of a news publication, retains the provisions of present law but converts such provisions into a new exemption for "mass communication industries".

Present law establishes an exclusion from sales and use taxes imposed by any taxing authority for the sale of newspapers.

Proposed law changes present law by converting the exclusion for newspapers to an exemption and includes that exemption in a new exemption for "mass communication industries".

Present law establishes an exemption from state use taxes for the use of motor vehicles subject to the vehicle registration tax previously purchased in another state by active duty military personnel stationed in La.

Proposed law changes present law by extending the exemption to the use taxes imposed by any taxing authority.

Present law establishes an exemption from state sales and use taxes for purchases by a council on aging.

Proposed law changes present law by extending the applicability of the exemption to the taxes imposed by any taxing authority and by including cooperative purchasing organizations comprised of councils on aging.

Present law provides for exemptions only for taxes imposed by a taxing authority in Caddo Parish for the sale of vaso-endothelial growth factor and complex biologics.

Proposed law repeals present law.

Present law authorizes any taxing authority in Plaquemines Parish to adopt any state sales and use tax exemption.

Proposed law repeals present law.

Present law establishes exemptions from state sales and use tax for certain sales of admissions to and tangible personal property and services sold at an event occurring at a *state-owned domed stadium facility, a state-owned baseball facility, or a locally or university-owned domed stadium facility* (R.S. 39:467).

Proposed law changes present law by re-designating it as R.S. 47:305.73, and by repealing the exemption for events occurring at a *locally or university-owned domed stadium facility*.

Present law authorizes optional sales and use tax exemptions for purposes of state and local taxes for certain sales of admissions, tangible personal property, and services at an event occurring at a *facility that is owned and operated by or for the state, or any of its agencies, boards, or commissions, or by any political subdivision, or on the publicly-owned property on which the facility is located*. (R.S. 39:468).

Present law does not apply to events occurring at a *state-owned domed stadium facility, a state-owned baseball facility, or a locally or university-owned domed stadium facility*.

Proposed law changes present law by re-designating it as R.S. 47:305.74, and by adding an optional exemption for sales at an event occurring at a *locally or university-owned domed stadium facility*.

Present law establishes an exemption from the sales and use taxes imposed by any taxing authority for sales of admissions, tangible personal property, and parking services occurring at an event sponsored by a domestic nonprofit organization if the event provides La. heritage, culture, crafts, art, food, and music that transpires over a minimum of seven but not more than twelve days with a five-year annual average attendance of at least 300,000 over the duration of the event.

Present law provides that the exemption shall not apply to any event intended to yield a profit to the promoter or to any individual contracted to provide services or equipment, or both, for the event.

Proposed law changes present law by limiting the exemption for sales at an event sponsored by a domestic nonprofit organization if the event provides La. heritage, culture, crafts, art, food, and music to one-half of the cost price of admission. Further, proposed law removes the restriction that no individual contracted to provide services or equipment for the event shall make a profit on the contract.

Present law establishes a sales and use tax exclusion for the sale of platinum, gold, or silver bullion, and numismatic coins.

Proposed law changes present law by converting the exclusion to an exemption and by limiting the exemption to sales of investment grade platinum, gold, or silver bullion.

Present law establishes an exemption for the sale of admission tickets to performances at a little theater.

Proposed law repeals present law.

Present law establishes the following exemptions and exclusions for specific nonprofit organizations:

- (1) Food banks.
- (2) Nonprofit entities that sell donated goods.
- (3) Sickle cell disease organizations.
- (4) Boys State of La., Inc. and Girls State of La., Inc.
- (5) Fore!kids Foundation.
- (6) Toys to be donated.
- (7) Ducks Unlimited and Bass Life.
- (8) Organizations dedicated to the conservation of fish and migratory waterfowl.
- (9) Construction materials used by certain nonprofit retirement centers.
- (10) Literacy organizations.
- (11) Admissions to musical, dance, and drama performances.

Proposed law repeals present law.

Present law provides for the following exemptions for purposes of specific providers of charitable residential housing construction:

- (1) St. Bernard Project, Inc.
- (2) Hands on New Orleans and Rebuilding Together New Orleans.
- (3) Make it Right Foundation.
- (4) Habitat for Humanity.
- (5) Fuller Center for Housing.

Proposed law repeals present law and establishes a new sales and use tax exemption applicable to all taxing authorities for sales or use of construction materials purchased by a nonprofit organization which are intended for the following purposes: construction of new residential dwellings to be donated or sold at below market rates by a nonprofit organization established for that purpose or rehabilitation and renovation of residential dwellings that were damaged in a natural disaster which will be donated or sold at below market rates by a nonprofit organization established for that purpose.

Present law establishes a state sales and use tax exemption for the purchase of machinery and equipment by a radio station based in La.

Proposed law changes present law by limiting the exemption to only that machinery or equipment necessary to comply with licensing requirements of the Federal Communication Commission, by extending the exemption to purchases by television stations, by extending applicability of the exemption to the taxes imposed by any taxing authority, and by moving the exemption to the newly established "mass communications industries" exemption.

Present law establishes an exemption from all taxes imposed by the state or any other taxing authority for antique airplanes and other aircraft.

Proposed law repeals present law concerning sales and use taxes.

Present law provides with regard to sales returned to a dealer for a credit or refund of tax associated with a bad debt.

Proposed law retains present law and specifies that only an amount equal to the amount of tax remitted may be claimed as a credit or refund.

Present law establishes sales and use tax exclusions from state sales and use taxes for the following purposes:

- (1) Purchases and leases by a regionally accredited institution of higher education.
- (2) Pollution control devices.
- (3) First \$50,000 in value of new farm equipment used in poultry production.
- (4) Consumables and services used by wood and paper product manufacturers.

Proposed law changes present law by converting these exclusions to exemptions.

Present law provides in the Uniform Local Sales and Use Tax law for keywords and mandatory and optional sales and use tax exemptions applicable for taxes imposed by local taxing authorities.

Proposed law repeals or revises present law for the authority for mandatory or optional exemptions from local taxes to correspond with changes in proposed law regarding exclusions and exemptions for purposes of the state sales and use tax base.

Effective July 1, 2018.

(Amends R.S. 4:168 and 227, R.S. 12:425, R.S. 47:301(7)(b), (10)(b) and (c)(ii), 13(a) and (h), (14)(b), (23), and (24)(intro. para.), (a), and (b), 302(A)(intro. para), 305(A)(4)(a) and (b) and (D)(1)(a), (h), (i), (k)(i), and (u), 305.14(A)(1)-(4), 305.19, 305.28(A), 305.44(A)(intro. para.), 305.47, 305.48, 305.49, 305.50(E)(2), 305.66(A), 315(B)(4), 315.5(A), 321(H)(1), 337.9(C)(1), (4), and (13), and (D)(9), (10) and (21), and 6001(A); adds R.S. 47:301(10)(ii) and (18)(q), 305.24, 305.73, 305.99, and 315(B)(5); Repeals R.S. 38:2212.4(C), R.S. 39:467 and 468, R.S. 47:301(3)(g), (j), and (k), (4)(i) and (k), (6)(b), (7)(c), (e)-(h), and (l), (8)(b) and (d)-(f), (10)(c)(i)(bb), (d), (h)-(j), (l), (n)-(r), (t), (z)-(hh), (13)(c), (e), (l), and (m), (14)(h), and (k), (16)(b)(ii), (c), (f), (h), (i)-(k), and (p), and (18)(c), (e), (f), (h), and (m) -(p), 302(D) and (S), 305(A)(1), (B), and (F), 305.2, 305.6, 305.7, 305.9, 305.13, 305.14(A)(5),

305.18, 305.26, 305.30, 305.33, 305.40-305.43, 305.44(B), 305.45, 305.51, 305.52, 305.53, 305.57(C), 305.59, 305.60, 305.61, 305.65, 305.67-305.71, 321(I), 331(Q), 337.9(B), (C)(23), (D)(3), (4), (6), (9), (10), (18), (19), and (26)-(33), 337.10(C), (E), (G), (K), and (M), and 6003.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Technical revisions.
2. Add applicability for all state sales and use tax levies for the exemption for materials used by commercial printers.
3. Add changes to the exemption for repairs and fabrication of rail rolling stock to consolidate all sales and use tax exemptions concerning rail rolling stock.
4. Delete changes to the sales and use tax exemption for original artwork sold within a cultural district.
5. Add applicability for all state sales and use tax levies for the exemption for telephone directories.
6. Delete changes to the local optional sales and use tax exemption for digital conversion equipment mandated for television broadcasters to conform with other provisions of the original bill.

The Committee Amendments Proposed by House Committee on Appropriations to the engrossed bill:

1. Delete provisions concerning the following exclusions and exemptions from proposed law:
  - a. Manufacturing machinery and equipment.
  - b. Machinery and equipment used for purposes of unblended biodiesel.
  - c. Machinery and equipment used by a motor vehicle manufacturer.
  - d. Machinery and equipment used by a glass container manufacturer.
  - e. Machinery and equipment used by a utility company regulated by the city of New Orleans.
  - f. Machinery and equipment used to perform tooling in a compression mold process.
2. Delete specific timing and other requirements concerning sales and use tax refunds established in proposed law.
3. Add applicability for the exemption for nonprofit entities to include tangible personal property bought with revenues of the entity.
4. Make technical revisions.

The House Floor Amendments to the reengrossed bill:

1. Delete provisions concerning the exemption for sales of materials and services involved in a lump sum, unit price, fixed fee, or guaranteed maximum price contract entered into at least 90 days before the imposition of a new tax.
2. Delete provisions establishing a new exemption for nonprofit entities.
3. Delete provisions concerning lease of oilfield drilling equipment.



4. Delete provisions concerning machinery and equipment used to produce a news publication.
5. Delete provisions which convert the following exclusions to refunds, and provide instead that they be established as exemptions:
  - a. The first \$50,000 of farm equipment used in poultry production.
  - b. Purchase by a regionally accredited institution of higher education.
  - c. Purchases of consumables and services by sawmills, logging companies, and paper product manufacturers.
  - d. Purchase of pollution control devices and systems necessary for compliance with federal law.

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the re-reengrossed bill

1. Retain exclusion for rentals and leases of certain oilfield property for re-lease and re-rental.
2. Retain exclusion for repairs, renovations, or conversions of drilling rigs.
3. Add clarification regarding trade-in value.
4. Expands exemption for newspapers to include newspapers and other new publications.
5. Make technical changes.