

2016 First Extraordinary Session

HOUSE BILL NO. 64

BY REPRESENTATIVE MONTOUCET

TAX/SALES-USE, ST-EXEMPT: Provides for the extent of the state sales and use tax exemption for business utilities (Items #9 and 36)

1 AN ACT

2 To amend and reenact R.S. 47:301(10)(x), 305(D)(1)(a) through (d), (g), and (h), and  
3 305.51(A), to enact R.S. 47:305.72, and to repeal R.S. 47:301(3)(j), (10)(c)(i)(bb)  
4 and (ii)(aa), (n), (z), and (bb), (13)(m), and 18(l), relative to state sales and use  
5 taxes; to provide with respect to the definitions used for the administration of the  
6 taxes; to provide for an exemption for certain utilities consumed by businesses; to  
7 provide for effectiveness; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:301(10)(x), 305(D)(1)(a) through (d), (g), and (h), and 305.51(A)  
10 are hereby amended and reenacted and R.S. 47:305.72 is hereby enacted to read as follows:

11 §301. Definitions

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

15 \* \* \*

16 (10)

17 \* \* \*

18 (x) For purposes of the sales and use tax imposed by the state or any political  
19 subdivision whose boundaries are coterminous with those of the state, the terms  
20 "retail sale" or "sale at retail" shall not include the ~~following~~:

1           ~~(i) The~~ sale or purchase by a ~~person~~ consumer of any fuel or gas, including  
2 but not limited to butane and propane for residential use by that consumer.

3           ~~(ii) Beginning July 1, 2008, the sale or purchase by any person of butane and~~  
4 ~~propane.~~

5   \*       \*       \*

6           §305. Exclusions and exemptions from the tax

7   \*       \*       \*

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

12           (a) Gasoline as provided in Article VII, Section 27(A) of the Constitution of  
13 Louisiana.

14           (b) Steam. For purposes of state taxes, the exemption is limited to the extent  
15 provided in R.S. 47:305.75.

16           (c) Water ~~(not including~~ as provided in Article VII, Section 2.2(A) of the  
17 Constitution of Louisiana. For purposes of state taxes, the exemption is limited to  
18 the extent provided in R.S. 47:305.75. For purposes of this Subparagraph, "water"  
19 shall not mean mineral water or carbonated water or any water put in bottles, jugs,  
20 or containers, ~~all of which are not exempted).~~

21           (d) Electric power or energy and any materials or energy sources used to fuel  
22 the generation of electric power for resale or used by an industrial manufacturing  
23 plant for self-consumption or cogeneration. For purposes of state taxes, the  
24 exemption is limited to the extent provided in R.S. 47:305.75.

25   \*       \*       \*

26           (g) Natural gas as provided in Article VII, Section 27(A) of the Constitution  
27 of Louisiana. For purposes of state taxes, the exemption is limited to the extent  
28 provided in R.S. 47:305.75.

1 (h) All energy sources when used for boiler fuel except refinery gas. For  
2 purposes of state taxes, the exemption is limited to the extent provided in R.S.  
3 47:305.75.

4 \* \* \*

5 §305.51. Exemption; utilities used by steelworks and blast furnaces

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

14 \* \* \*

15 §305.72. Exclusions and exemptions; business utilities

16 A. There shall be an exemption from state sales and use taxes for the  
17 purchase and use of business utilities. The extent of the exemption shall be subject  
18 to the price of natural gas as determined by the method established in Subsection C  
19 of this Section.

20 B. As used in this Section, the following words and phrases shall have the  
21 following meanings:

22 (1) "Alternative substance used as fuel" means petroleum coke, landfill gas,  
23 reclaimed or waste oil, unblended biodiesel, or tire-derived fuel. "Alternative  
24 substance used as fuel" does not mean oil, natural gas, any product of oil or natural  
25 gas, coal, lignite, refinery gas, nuclear fuel, or electricity.

26 (2) "Business utilities" means and includes any of the following:

27 (a) Steam.

28 (b) Water, excluding mineral and carbonated water and any other water  
29 contained in a bottle or other receptacle.

1           (c) Electric power or energy and any materials or energy sources used to fuel  
2           the generation of electric power for resale or electric power used by an industrial  
3           manufacturing plant for self-consumption or cogeneration.

4           (d) Natural gas.

5           (e) All energy sources including pelletized paper waste used for boiler fuel  
6           except refinery gas.

7           (f) Butane.

8           (g) Propane.

9           (3) "Manufacturer" means a person whose principal activity is manufacturing  
10          and who is assigned by the Louisiana Workforce Commission a North American  
11          Industrial Classification System code within the agricultural, forestry, fishing, and  
12          hunting Sector 11 or the manufacturing Sectors 31-33 as they existed in 2002.

13          C. The extent of the exemption shall be established each calendar year and  
14          shall be based upon the Natural Gas Spot Price at Henry Hub (nominal dollars per  
15          million BTU) as adopted by the Energy Information Administration and published  
16          in the Annual Energy Outlook report. For purchases of business utilities on or after  
17          April 1, 2016, and on or before December 31, 2016, the price of natural gas used for  
18          purposes of the exemption shall be the price published in the February 2016 edition  
19          of the Annual Energy Outlook report. For purchases of business utilities on or after  
20          January 1, 2017, the extent of the exemption shall be based on the price published  
21          in the annual edition of the Annual Energy Outlook report. The amount of the  
22          exemption shall be as follows:

23                 (1) There shall be no exemption if the price of natural gas is six dollars per  
24                 million BTU or less.

25                 (2) The exemption shall be effective and applicable for purposes of the state  
26                 sales and use tax imposed under R.S. 47:331 if the price of natural gas is more than  
27                 six dollars per million BTU and not more than seven dollars per million BTU.

28                 (3) The exemption shall be effective and applicable for purposes of the state  
29                 sales and use taxes imposed under R.S. 47:321 and 331 if the price of natural gas is

1 more than seven dollars per million BTU and not more than eight dollars per million  
2 BTU.

3 (4) The exemption shall be effective and applicable for purposes of the state  
4 sales and use taxes imposed under R.S. 47:302, 321, and 331 if the price of natural  
5 gas is more than eight dollars per million BTU.

6 Section 2. R.S. 47:301(3)(j), (10)(c)(i)(bb) and (ii)(aa), (n), (z), and (bb), (13)(m),  
7 and (18)(l) are hereby repealed in their entirety.

8 Section 3. This Act shall become effective on April 1, 2016.

### 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 64 Original

2016 First Extraordinary Session

Montoucet

**Abstract:** Provides for the extent of state sales and use taxes on business utilities.

Present law imposes a 4% state sales tax on the sale, use, consumption, and storage of tangible personal property.

Present law excludes the following property from the tax base:

- (1) Sales of electricity for chlor-alkali manufacturing processes.
- (2) Pelletized paper waste used as combustible fuel by manufacturers.
- (3) Butane and propane.
- (4) Steam.
- (5) Water, other than mineral water, carbonated water, or water within a bottle or other receptacle.
- (6) Electric power or energy and any materials or energy sources used to fuel the generation of electric power for resale or used by an industrial manufacturing plant for self-consumption or cogeneration.
- (7) Natural gas.
- (8) All energy sources when used for boiler fuel, other than refinery gas.
- (9) Utilities used by steelworks, blast furnaces, coke ovens, or rolling mills.

Proposed law removes the exclusions listed above from the definitions for sales and use tax, and instead provides for a tax exemption for the same property.

Proposed law provides for the extent of the new exemption based on the Natural Gas Spot Price at Henry Hub (nominal dollars per million BTU) adopted by the Energy Information

Administration and published in the Annual Energy Outlook report. For purchases of business utilities on or after April 1, 2016, through December 31, 2016, the price of natural gas used for purposes of the exemption shall be the price published in the February 2016 edition of the Annual Energy Outlook report. For purchases of business utilities on and after January 1, 2017, the price shall be the price published in the Annual Energy Outlook report.

Proposed law establishes the following price thresholds for the extent of the exemption from state sales and use taxes:

- (1) No exemption if the price of natural gas is at or below \$6 per million BTU.
- (2) An exemption from the 1% tax imposed under R.S. 47:331 if the price is above \$6 and at or below \$7 per million BTU.
- (3) An exemption from the 1% tax imposed under R.S. 47:321 and the 1% tax imposed under R.S. 47:331 [total of 2%] if the price is above \$7 and at or below \$8 per million BTU.
- (4) An exemption from the 2% tax imposed under R.S. 47:302, the 1% tax imposed under R.S. 47:321, and the 1% tax imposed under R.S. 47:331 [a total of 4%] if the price is above \$8 per million BTU.

Proposed law specifies that the exclusion for butane and propane is applicable to residential use only.

Effective April 1, 2016.

(Amends R.S. 47:301(10)(x), 305(D)(1)(a)–(d), (g), and (h), and 305.51(A); Adds R.S. 47:305.72; Repeals R.S. 47:301(3)(j), (10)(c)(i)(bb) and (ii)(aa), (n), (z), and (bb), (13)(m), and 18(l))