Louisiana State Tax Reporter, ¶60-580, Louisiana, Nonprofit Organizations, Private Schools, and Churches

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Annotations

An exemption from state and local sales and use tax is allowed on sales occurring at events sponsored by nonprofit domestic, civic, educational, historical, charitable, fraternal, or religious organizations. However, most nonprofit organizations, including private schools and churches, must pay sales tax on their purchases like other consumers. They are also subject to sales tax on sales made by them in connection with regularly conducted activities that compete with other businesses, such as bookstores, restaurants, gift shops, or flea markets. (Sec. 47:305.13, La R.S.; Sec. 47:305.14, La R.S.; Sec. 47:305.18, La R.S.)

COMMENT

Exclusions for churches, synagogues, and the Society of the Little Sisters of the Poor barred.

—The U.S. District Court for the Eastern District of Louisiana issued a preliminary injunction that bars the Louisiana Department of Revenue from enforcing two exclusions from state sales tax. Under the exclusions, churches and synagogues are excluded from paying the state sales tax on purchases of bibles, song books, and literature used for religious instruction classes, and the Society of the Little Sisters of the Poor is excluded from paying the tax on all purchases. Until the injunction is lifted, however, the exclusions cannot be claimed and churches, synagogues, and the Society of the Little Sisters of the Poor are required to pay the state sales or use tax on all their purchases. As a result of the injunction, these organizations are not authorized to present, and selling dealers are not authorized to accept, exemption certificates in lieu of the sales or use tax on any taxable purchase. (Revenue Information Bulletin No. 06-022, Louisiana Department of Revenue, May 5, 2006, ¶201-945; R-1002 Exemption Table, Taxable Rate of Transactions for Exemptions and Exclusions, Louisiana Department of Revenue, August 2011)

See ¶60-420 Government Transactions, for a discussion of exemptions that are available for volunteer fire departments.

Exempt status.—An organization that has been denied exempt status by the Department may appeal the ruling to the Louisiana Board of Tax Appeals. Any organization that endorses a candidate for political office or otherwise is involved in political activities will not be eligible for an exemption. (Sec. 47:305.14(C), La R.S.)

Annual exemption certificate.—A nonprofit organization seeking a sales and use tax exemption for sales occurring at events sponsored by it must obtain an exemption certificate from the Department of Revenue on an annual basis. (Sec. 47:305.14(C), La R.S.)

•Make It Right Foundation

Effective July 1, 2012, a Louisiana state and local sales and use tax exemption is applicable to the sale of construction materials to the Make It Right Foundation when such materials are intended for use in the construction of new residential dwellings in Louisiana. The foundation was founded to build affordable, green, high design homes in place of those devastated by Hurricanes Katrina and Rita in the Lower Ninth Ward of New Orleans. (Sec. 47:305.59, La R.S.; Sec. 47:305.70, La R.S.)

•Fore!Kids Foundation
A Louisiana state and local sales and use tax exemption is applicable to the purchase, use, or rental of materials, services, property, and supplies by the Fore!Kids Foundation. The primary purpose of the foundation is to fund children’s service organizations from monies raised from golfing events. The foundation hosts several charitable golf tournaments. (Sec. 47:305.68, La R.S.; Sec. 47:337.9D(31), La R.S.; Revenue Information Bulletin No. 12-005, Louisiana Department of Revenue, January 4, 2012, ¶202-413)

**Louisiana heritage, culture, crafts, art, food, and music events**

A Louisiana sales and use tax exemption is provided for events sponsored by a domestic nonprofit organization that is exempt under IRC §501(c)(3) when the event provides Louisiana heritage, culture, crafts, art, food, and music and the sponsor has contracted for production management and financing services for the event. Such services constitute necessary expenses of the sponsor for purposes of the event. (Sec. 47:305.14, La R.S.; Revenue Information Bulletin No. 12-003, Louisiana Department of Revenue, January 4, 2012, ¶202-411)

This exemption is applicable only to:

1. the sales of tangible personal property and admission charges for, outside gate admissions to, or parking fees associated with an event when the sales, charges, and fees are payable to or for the benefit of the event sponsor; and
2. an event that transpires over a minimum of seven days but not more than 12 days and has a five-year annual average attendance of at least 300,000 over the duration of the event.

In addition, the terms "sale at retail" and "sales of services" do not include such events. (Sec. 47:305.14, La R.S.; (Sec. 47:301(10)(hh) and (14)(k), La R.S.; Revenue Information Bulletin No. 12-003, Louisiana Department of Revenue, January 4, 2012, ¶202-411)

**Parish councils on aging**

A Louisiana sales and use tax exemption is applicable to parish councils on aging located within the state. "Parish councils on aging" are defined as the 64 nonprofit domestic corporations domiciled in each parish, dedicated to delivering state-approved services directly to senior citizens, and administered and supervised by the Office of Elderly Affairs of the governor's office. (Sec. 47:305.66, La R.S.; Revenue Information Bulletin No. 12-006, Louisiana Department of Revenue, January 4, 2012, ¶202-414)

**Nonprofit economic development corporations**

The Louisiana sales and use taxability of certain sales, lease, and rental transactions conducted by nonprofit economic development corporations (EDCs) in which property is subsequently transferred to for-profit corporations as part of economic development projects is analyzed by the Louisiana Department of Revenue. Of primary concern in such an analysis is whether the EDC is held liable for the consequential transaction taxes when transactions are not taxed to the ultimate user of the property, either due to a specific exemption attributed to the product or an exemption attributed to an activity. This analysis is also relevant in transactions in which property is acquired for the use of a public entity through an EDC. Economic development corporations can be created to facilitate the public/private partnership for private development, and as a private entity, the EDC can transact outside of the public bidding process to avoid the limitations imposed on that process. (Sec. 47:301(10)(a), La R.S.; Revenue Ruling No. 09-001, Louisiana Department of Revenue, September 15, 2009, ¶202-247)

**Temporary housing for the homeless**

A Louisiana state and local sales and use tax exclusion is enacted for a temporary lodging facility operated by a nonprofit organization, as described, provided the facility is devoted exclusively to the temporary housing of certain homeless persons for periods no longer than 30 days. In order to be eligible, the housing must be offered to homeless transient persons whom the nonprofit determines to be financially unable to obtain lodging, as
defined, and the lodging charge to such persons can be no more than $20 per day. (Sec. 47:301(6)(c), La R.S.; Revenue Information Bulletin No. 09-037, Louisiana Department of Revenue, October 16, 2009, ¶202-268)

•Food items purchased by certain schools

The terms "retail sale" or "sale at retail" do not include the purchase of food items: (1) for school lunch or breakfast programs by nonpublic elementary or secondary schools that participate in the National School Lunch and School Breakfast programs; or (2) by nonprofit corporations that serve such students and participate in the national programs. As such, those purchases are excluded from the collection of sales and use taxes. (Sec. 47:301(10)(dd), La R.S.)

•Construction materials sold to Habitat for Humanity or Fuller Center for Housing

Sales of construction materials to Habitat for Humanity affiliates or Fuller Center for Housing covenant partners, located in Louisiana are exempt from state and local sales and use taxes when such materials are intended for use in constructing new residential dwellings in Louisiana. (Sec. 47:305.59, La R.S.)

•Employment or training of persons with workplace disabilities or disadvantages

A qualified charitable institution that submits an application to the Secretary of the Department of Revenue shall receive an exemption in the form of a restricted refund of the Louisiana sales and use tax that the institution has collected on the sale of donated tangible personal property or items made from such donated property. The refund must be used exclusively in Louisiana for land acquisition, capital construction or equipment, or related debt service, and/or job training, job placement, employment or other related community services and support program costs. (Sec. 47:315.5, La R.S.)

A "qualified charitable institution" is an organization that meets the following criteria:

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<td>—</td>
<td>it has qualified for exemption from federal income taxation under IRC Sec. 501(c)(3);</td>
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<td>its principal place of business is within Louisiana;</td>
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<td>it routinely sells donated tangible personal property or items made from such donated property; and</td>
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<td>it spends at least 75% of its annual revenue on job training, job placement, the direct employment of or other related community services or support programs for, people with workplace disabilities or disadvantages.</td>
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(Sec. 47:315.5, La R.S.)

Qualified charitable institutions must be approved for the exemption prior to being eligible to retain sales tax collected as a restricted refund. The secretary may audit for and examine any refund within four years from the date the application is received and collect any refund that the secretary finds was not issued or used as provided. (Sec. 47:315.5, La R.S.)

•Sickle cell disease organizations

The sale at retail, rental or lease, use, consumption, distribution, and the storage for use or consumption in Louisiana of each item or article of tangible personal property or any taxable service by a nonprofit organization established prior to 1975 that conducts a comprehensive program on sickle cell disease is exempt from Louisiana state and local sales and use taxes. The program conducted by the nonprofit organization must include but not be limited to free education, free testing, free counseling, and free prescriptions, transportation, and food packages for sickle cell patients. A nonprofit organization must obtain an exemption certificate from the Secretary of the Department of Revenue in order to qualify for the exemption. Moreover, an organization may
appeal to the Louisiana Board of Tax Appeals a ruling by the Secretary to deny exempt status and the Board may overrule the Secretary and grant that status. (Sec. 47:305.53, La R.S.; Sec. 47:337.9(D)(27), La R.S.)

• Nonprofits that donate toys

A Louisiana state and local sales and use tax exclusion is provided for the sale of toys to a nonprofit organization exempt from federal taxation pursuant to IRC Sec. 501(c)(3) if the sole purpose of the purchasing organization is to donate toys to minors and the toys are actually donated. The exclusion is inapplicable if the donation is intended to ultimately yield a profit to a promoter of the organization or to any individual contracted to provide services or equipment or both to the organization. Participating nonprofit organizations must obtain a certificate of exclusion from the secretary or the tax collector in order to qualify for the exclusion. (Sec. 47:301(10)(aa), La R.S.)

• Events sponsored by nonprofits

Admission charges for events sponsored by nonprofit organizations are exempt from sales tax when the proceeds are used for the purposes for which the groups were organized. (Sec. 47:305.13, La R.S.) In order to meet the nonprofit requirement, an organization must have no provision for making of dividends or payment of any profits to any organizers or stockholders, and none of the income may inure to the benefit of any shareholder or individual. (Reg. 4413, LAC)

A similar exemption is provided for sales of tangible personal property at, or admission charges and parking fees associated with events sponsored by certain nonprofit organizations when the entire proceeds, except for necessary expenses, are used for educational, charitable, religious, or historical restoration purposes. Effective July 1, 2009, the exemption is amended to specify that the term "necessary expenses" includes fees paid for guest speakers, chair and table rentals, and food and beverage utility related items. (Sec. 47:305.14, La R.S.)

• Camps and retreat facilities

An exclusion from Louisiana state and local sales and use taxes and local hotel occupancy taxes is provided that excludes from the definitions of "hotel" and "places of amusement" camps and retreat facilities owned and operated by certain nonprofit organizations. The organizations must be exempt from federal income taxation under IRC Sec. 501(a) as an organization described in IRC Sec. 501(c)(3) and the net revenue derived from the organization’s property must be wholly devoted to the nonprofit organization’s purposes. See ¶61-730 Local Taxing Jurisdictions. (Sec. 47:301(6), La R.S.)

• Purchases by certain nonprofit entities

An exclusion from Louisiana sales and use taxes levied by the state and any political subdivision whose boundaries are coterminous with those of the state is provided for purchases by nonprofit entities that sell donated goods and spend 75% or more of revenues directly employing or training persons with disabilities or workplace disadvantages. Each nonprofit entity that elects to use this exclusion must apply annually for an exclusion certificate. (Sec. 47:301(8)(f), La R.S.)

• Training for blind persons

Any nonprofit organization that uses public funds for at least 75% of its operational funding and that primarily operates to provide funding for, and training to, blind persons is exempt from sales and use tax. (Sec. 47:305.15(B), La R.S.)

• Festivals and fairs
Admission and parking charges for fairs, festivals, and expositions sponsored by nonprofit organizations are exempt from sales and use tax. (Sec. 47:305.18, La R.S.)

**•Retirement centers**

Nonprofit retirement centers are an exception to the general practice, as discussed above, that nonprofit organizations pay tax on purchases like other consumers. A specific provision exempts from sales and use tax the supplies for the operation of the centers, as well as the materials for their construction. (Sec. 47:305.33, La R.S.)

**•Parochial and private schools**

A state and local sales and use tax exclusion is provided for tangible personal property sold by approved parochial and private elementary and secondary schools that are certified by the Louisiana Department of Education and in compliance with IRC Sec. 501(c)(3), if the money from such sales, less reasonable and necessary expenses associated with the sale, is used solely and exclusively to support the school or its program or curricula. The exclusion also applies to students, administrators, or teachers, or other employees of the school. In addition, the exclusion applies to sales to such schools of educational materials or equipment used for classroom instruction, limited to books, workbooks, computers, computer software, films, videos, and audio tapes. However, the exclusion does not allow tax-free sales to students or their families by promoters or regular commercial dealers through the use of schools, school faculty, or school facilities. (Sec. 47:301(10)(q) and (18)(d), La R.S.; Revenue Information Bulletin No. 09-031, Louisiana Department of Revenue, October 15, 2009, ¶202-262)

In order for this exclusion to be applicable, a school must comply with the court order from the *Dodd v. Brumfield* decision (405 F.Supp. 338) and IRC §501(c)(3). In addition, before claiming the exclusion, a school must apply for and receive a certificate of eligibility from the Louisiana Department of Revenue using Form R-1372. (Revenue Information Bulletin No. 09-031, Louisiana Department of Revenue, October 15, 2009, ¶202-262) **Private post-secondary institutions.**—Purchases of textbooks and course-related software by certain private post-secondary academic degree-granting institutions are excluded from Louisiana state and local sales and use taxes. The institution must (1) be accredited by a national or regional commission recognized by the U.S. Department of Education, (2) be licensed by the Board of Regents, (3) have its main location within Louisiana, and (4) offer only online instruction. Moreover, the following conditions apply (1) the textbooks and the course-related software are physically outside the state when purchased from a vendor outside the state and then imported into the state, (2) the first student use of the textbooks and the software occurs outside the state, and (3) the textbooks and software are provided to the student free of charge. (Sec. 47:301(10)(y) and (18)(k), La R.S.)

See ¶60-420 Government Transactions, for a discussion of public schools.

**•Religious newspapers and literature**

Newspapers published in Louisiana by religious organizations are exempt from sales and use tax provided that the price paid for either the newspaper or a subscription to the newspaper does not exceed the cost to publish the newspaper. (Sec. 47:305.14, La R.S.) See also ¶60-640 Publishing and Broadcasting, for a discussion of the tax treatment of newspapers in general.

Bibles, song books, and literature used for classes in religious instruction that are purchased by churches and synagogues exempt from federal income tax are excluded from Louisiana state and local sales and use tax. A certificate of authorization must be obtained from the secretary of the Department of Revenue and Taxation before claiming the exclusion or exemption. (Sec. 47:301(8)(d), La R.S.)

**•Ducks Unlimited and Bass Life**
Both the purchases and the sales of Ducks Unlimited and Bass Life or any of their chapters are exempt from tax. (Sec. 47:305.41, La R.S.)

• **Boys and Girls State of Louisiana**

Tangible personal property sold or rented to or used by Boys State of Louisiana, Inc. or Girls State of Louisiana, Inc., for use in youth educational and public service programs, is not subject to Louisiana state and local sales and use tax. (Sec. 47:301(7)(f), (10)(q), and (18)(d), La R.S.)

• **Little Sisters of the Poor**

The Society of the Little Sisters of the Poor are not subject to state or local sales and use tax. (Sec. 47:301(8)(d), La R.S.)

• **Conservation of migratory waterfowl**

Nonprofit organizations dedicated exclusively to the conservation of the migratory waterfowl of the North American continent and to conservation of wetland habitat are exempt on both purchases and sales, provided their fund-raising activities do not compete with regular commercial ventures. (Sec. 47:305.43, La R.S.)

• **Literacy organizations**

Purchases of tangible personal property or taxable services by nonprofit literacy organizations in compliance with IRC Sec. 501(c)(3) and the court order from *Brumfield v. Dodd*, 405 F.Supp. 338 (1975) and 425 F.Supp. 528 (1976), are exempt from Louisiana state and local sales and use tax. In *Brumfield*, the U.S. District Court for the Eastern District of Louisiana ordered the State Board of Elementary and Secondary Education to initiate a certification procedure to determine the eligibility of all private schools that wanted to receive state assistance. The exemption is limited to books, workbooks, computers, computer software, films, videos, and audio tapes. (Sec. 47:305.14, La R.S.)

• **Colleges and universities**

For purposes of payment of the state sales or use tax on the lease, rental, or purchase of tangible personal property or services, a regionally accredited member of the Louisiana Association of Independent Colleges and Universities is excluded from the definition of "person," provided that the lease, rental, or purchase is directly related to the educational mission of the institution. Therefore, such leases, rentals, or purchases are not subject to the state sales or use tax. (Sec. 47:301(8)(b), La R.S.)

See ¶60-420 Government Transactions, for a discussion of public schools.

• **Food banks**

Sales of tangible personal property to food banks, as defined, are excluded from the definition of "sale at retail" and are therefore not subject to sales and use tax. In general, "food banks" are defined as certain nonprofit entities that operate as clearinghouses for the purpose of gathering nonmarketable food products and distributing those products to nonprofit agencies with on-premises feeding programs for the needy. (Sec. 47:301(10)(j), La R.S.) Donations of food items to a food bank are excluded from state and local sales taxes. (Sec. 47:301(18)(a)(i) and (ii), La R.S.)

For a discussion of other provisions related to sales of food, see ¶60-390 Food and Grocery Items.

• **Thrift shops**
Sales of property by thrift shops located on military installations are exempt from sales and use tax. (Sec. 47:305.14, La R.S.)

• **Construction contractors**

Construction contractors are subject to tax on purchases of installed materials and certain labor services when performing construction services under a contract with a not-for-profit or public benefit agency. (Sec. 47:302, La R.S.; *Revenue Information Bulletin No. 04-011*, Louisiana Department of Revenue, April 20, 2004, ¶201-730). See ¶60-330 Construction, for a discussion of construction services.

• **Application of exemptions to local taxes**

The exemption provided by Sec. 47:305.13 for admission charges to events sponsored by nonprofit organizations applies to local taxes because it was granted before 1978 (see ¶61-720 Scope of Local Taxes). The exemption provided by Sec. 47:305.33 for retirement centers does not apply to local taxes because it was granted after 1978. By specific provision, the exemption for fairs and festivals does not apply to local sales and use taxes. (Sec. 47:305.18(D), La R.S.) However, the exemption provided by Sec. 47:305.41 for Ducks Unlimited and by Sec. 47:305.15(B) for organizations training blind persons specifically apply to local taxes. The exemption provided by Sec. 47:305.43 for sales made by organizations dedicated to the conservation of migratory waterfowl does not apply to local sales and use taxes because that exemption was granted after 1978 (see ¶61-720 Scope of Local Taxes). However, the statute specifically provides that the exemption for purchases by such organizations does apply to local taxes. (Sec. 47:305.43(B), La R.S.)

• **Suspension of exemptions**

The state exemptions discussed above for events sponsored by nonprofit organizations, fairs and festivals, retirement centers, Ducks Unlimited, and nonprofit organizations dedicated to the preservation of waterfowl have been suspended through a specified date. However, exemptions provided by Sec. 47:305.14 and Sec. 47:305.15(B) are not suspended (see ¶60-110 Rates).

Annotations