Repeal of Advance State Sales Tax Collection

GUIDELINES FOR MEMBERS
OF THE
BEER INDUSTRY LEAGUE OF LOUISIANA

The state law that required wholesalers to charge and collect state "sales taxes" on items (known as Tangible Personal Property or TPP in sales tax law) (e.g., beer) for resale by "retail dealers" who were not otherwise exempt from paying state "advance sales taxes" has been repealed effective January 1, 2009. This means "wholesalers" no longer have to charge and collect any state sales taxes on any item (e.g., beer) for resale by any "retail dealer" beginning January 1, 2009. The state Department of Revenue (DOR) has issued some guidelines related to the administration of this new law. After reviewing the guidelines and receiving additional clarification from the state Department of Revenue, we developed the following guidelines for members of the Beer Industry League of Louisiana (BILL).

1. **Beginning January 1, 2009, you no longer have to charge and collect state sales taxes for any items (e.g., beer) sold for resale to ANY bona fide retail dealer.** The guidelines (the letters sent to wholesalers and retail dealers regarding the new state law) issued by the state Department of Revenue indicate that a retail dealer must provide a properly completed and executed *Louisiana Resale Certificate* to wholesalers before wholesalers can exempt a bona fide retail dealer from the state sales taxes. This is not accurate. It is not necessary that a retail dealer produce the *Louisiana Resale Certificate* before a wholesaler can exempt the retail dealer from state sales taxes. However, as explained below, the *Louisiana Resale Certificate* does provide a "defense" to a wholesaler if that wholesaler exempts someone who is subsequently deemed by the state Department of Revenue to NOT be a retail dealer buying items for resale and, therefore, not eligible for exemption from paying state sales taxes.

2. **Even though the law takes effect January 1, 2009, the state Department of Revenue has created a transition period beginning January 1, 2009, and ending June 30, 2009.** During this transition period, retail dealers will be able to continue receiving a credit on their sales tax returns for "advance sales taxes" they pay during the "transition period." But, beginning July 1, 2009, they will no longer be able to claim and receive a credit on their sales tax return for "advance sales taxes" paid to a wholesaler. Instead, the wholesaler will have to provide a refund for any "advance sales taxes" collected by and paid to the wholesaler. The best way to avoid having to provide a refund to a retail dealer after June 30, 2009, is to not collect the state sales taxes on items (e.g., beer) sold for resale to a retail dealer. For all "advance sales taxes" collected from and paid by a retail dealer prior to June 30, 2009, the retail dealer will receive a credit from the state Department of Revenue, as they have done in the past. Wholesalers will not have to pay refunds for state sales taxes collected by a wholesaler up until June 30, 2009.

3. ***Louisiana Resale Certificate.*** The *Louisiana Resale Certificate* is a form created by the state Department of Revenue to be completed by the retail dealer and provided to the wholesaler in order to "prove" to the wholesaler that the retail dealer is exempt from paying state sales taxes on items (e.g., beer) sold to the retail dealer for resale by the retail dealer. It is a very simple form that the retail dealer is supposed to complete and sign. The retail dealer then provides the completed form to the wholesaler. The form is not filed with the Department of Revenue. It is only provided to the wholesaler and only has to be provided once. The form (R-1042) can be accessed on the Department of Revenue's website at www.revenue.louisiana.gov. On the homepage at the top click the "Tax Forms" link. Under the heading "Business" click the "Sales Tax" link. Then select the "2008" link. Then select "Exemption Certificates." At that point, find Form R-1042 (Louisiana Resale Certificate). Form R-1042 is also attached to the email sent with these guidelines as a .PDF document.

   Wholesalers should keep the completed *Louisiana Resale Certificate* on file at their offices.

   As noted above, a wholesaler is NOT required to obtain the *Louisiana Resale Certificate* from a retail dealer in order to exempt that retail dealer from paying state sales taxes on items (e.g., beer) sold for resale. However, if a wholesaler sells items (e.g., beer) to a retail dealer and it is later discovered that the retail dealer was not a retail dealer who purchases items for resale, then the wholesaler may be required to pay the sales taxes to the state ***unless*** the wholesaler can produce a properly completed and executed *Louisiana Resale Certificate* from that retail dealer. The existence of the *Louisiana Resale Certificate* serves as a "defense" to an attempt by the state Department of Revenue to collect state sales taxes from a wholesaler who did not charge and collect such state sales taxes when they were otherwise suppose to (i.e., selling to someone who was not buying for resale). This is not an issue for members of the BILL because we are only authorized to sell to licensed retail dealers who are purchasing items (e.g., beer) for resale, as a matter of law. That is why we feel comfortable advising the members of the BILL that it is not necessary to obtain the *Louisiana Resale Certificate* from retail dealers before exempting them from state sales taxes. In any event, out of an abundance of caution, you may want to collect these *Louisiana Resale Certificates* from your retail dealers over the next few months. But, again, it is legal to cease the collection of state sales taxes from ALL retail dealers purchasing items for resale beginning January 1, 2009. The existence or nonexistence of the *Louisiana Resale Certificate* does not determine whether you are in compliance with the new state law; it is the sale of items (e.g., beer) to a retail dealer who is or is not purchasing for resale that determines compliance with the new state law. In other words, if you sell to a retail dealer who is in fact purchasing items (e.g., beer) for resale but has not provided you with the *Louisiana Resale Certificate*, you are in compliance with the new state law.

4. **Additional Protection for the Wholesaler.** As a form of additional protection, BILL members may want to consider adding language similar to the following to the bottom of their invoices: ***"I, the purchaser, certify that all materials, goods, merchandise, and services purchased from the seller named on this Invoice are for resale as tangible personal property, either in the same form as purchased or to be added as a recognizable, identifiable, and beneficial***

component of a new product. I further certify that all tax-exempt purchases will be resold in the normal course of business. I understand that if I use any of the items other than for resale, I must pay sales tax at the time of use. If this purchase is later found to be subject to tax, I, the purchaser, assume full liability for the tax." This language is essentially the language found on the *Louisiana Resale Certificate.* The Invoice (and the above certification) would be signed at the time of delivery. While this certification may NOT serve as the same "defense" that the *Louisiana Resale Certificate* itself serves, it certainly would be compelling since it is the same language provided by the state Department of Revenue.

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§306. Returns and payment of tax; penalty for absorption

A. General provisions. (1)(a) Except as hereafter provided, the taxes levied hereunder shall be due and shall be payable monthly. For the purpose of ascertaining the amount of tax payable, all dealers shall transmit, on or before the twentieth day of the month following the month in which this tax becomes effective, to the secretary of revenue, upon forms prescribed, prepared, and furnished by him, returns showing the gross sales, purchases, gross proceeds from lease or rental, gross payments for lease or rental, gross proceeds derived from sales of services, or gross payments for services, as the case may be, arising from all taxable transactions during the preceding calendar month. Thereafter, like returns shall be prepared and transmitted to the secretary by all dealers on or before the twentieth day of each month for the preceding calendar month. These returns shall show any further information the secretary may require to enable him to correctly compute and collect the tax levied. Every dealer, at the time of making the return required hereunder, shall compute and remit to the secretary the required tax due for the preceding calendar month, and failure to so remit such tax shall cause said tax to become delinquent.

(b) However, whenever the taxes due hereunder from a dealer average less than five hundred dollars per month, the taxes hereunder shall be due and payable quarterly by the dealer, and the return required from the dealer for the quarter shall be filed on or before the twentieth day of the first month of the next succeeding quarter. The secretary shall provide by regulation for the period and method of determining, under this proviso, the average taxes due from a dealer. Any dealer who is required to file his sales tax return on a quarterly basis, as provided above, may file his returns and pay the tax on a monthly basis after first having received written approval from the secretary to do so. Application to file monthly must be furnished to the secretary in writing and will set forth complete justification for the shorter reporting period.

(c) Whenever the taxes due to the state or any single tax collector are from the state acting as a dealer through any department, agency, board, commission, or other state entity, the taxes shall be due and payable annually, and the return shall be filed and tax paid on or before the twentieth day of the month following the end of the state's fiscal year. However, if the accumulated sales taxes due hereunder to the state or any single tax collector equal or exceed five hundred dollars by the last day of any calendar month prior to the close of the state's fiscal year, the taxes shall be due and payable and the return shall be filed and the tax paid on or before the twentieth day of the calendar month following the calendar month during which the five hundred dollar threshold is exceeded.

(d) In addition to the provisions of this Section requiring monthly or quarterly filing of returns, dealers liable for the sales and use taxes of political subdivisions may file letter returns and remit such political subdivision taxes pursuant to R.S. 33:2720.1.

(2)(a) Gross proceeds from rentals or leases shall be reported and the tax shall be paid with respect thereto, in accordance with rules and regulations for reporting as established by the collector following the month in which the payment for the lease or rental is actually collected by lessor.

(b) Notwithstanding any other provisions of law to the contrary, lessors of property to be used offshore as provided for in R.S. 47:301(4)(d)(ii) shall not be required to collect or otherwise pay rental taxes on the gross proceeds from such leases and rentals.

(3)(a) For the purpose of compensating the dealer in accounting for and remitting the tax levied by this Chapter, each dealer shall be allowed one and one-tenth percent of the amount of tax due and accounted for and remitted to the secretary in the form of a deduction in submitting his report and paying the amount due by him, provided the amount of any credit claimed for taxes already paid to a wholesaler shall not be deducted in computing the commission allowed the dealer hereunder. This compensation shall be allowed only if the payment of the dealer is timely paid.

(b) Municipalities are hereby authorized to pay compensation to their sales tax dealers in any amounts designated by the governing body of the municipality.

(4) The collector, for good cause, may extend, for not to exceed thirty days, the time for making

any returns required under the provisions of this Chapter.

(5) For the purpose of collecting and remitting to the state the tax imposed by this Chapter, the dealer is hereby declared to be the agent of the state.

(6) In making their returns to the secretary, dealers who have paid advance sales tax on purchases of tangible personal property for resale during periods when R.S. 47:306(B) was effective shall deduct from the total tax collected by them upon the retail sale of the commodity the amount of tax paid by them to manufacturers, wholesalers, jobbers and suppliers during the period reported, provided tax paid invoices evidencing the payment are retained by the dealer claiming the refund or credit. If the amount so paid during any reporting period amounts to more than the tax collected by him for the period reported, the excess so paid shall be allowed as refund or credit against the tax collected by the dealer during the succeeding period or periods.

(7) The state, and any parish, municipality, school board, and any other tax authority which levies a sales and use tax is hereby prohibited from requiring manufacturers, wholesalers, jobbers, suppliers, or any other taxpayer to collect such sales tax in advance from dealers to whom they sell for the purpose of resale.

B, C. Repealed by Acts 2007, No. 393, §3, eff. Jan. 1, 2009.

D. Registration by nonresident prime contractor. (1) Prior to commencing work on any construction contract which in the aggregate exceeds three thousand dollars, any nonresident prime contractor, as defined in R.S. 47:9(A)(2), shall:

(a) Register the contract with the Department of Revenue in accordance with the provisions of R.S. 47:9(A)(1) and obtain a certificate in a form to be determined by the secretary, which certificate shall identify the construction project registered and recite the total amount of the contract.

(b) File with the department a surety bond or a blanket surety bond for all contracts, sufficient to cover all taxes due on the contract or contracts, in accordance with the provisions of R.S. 47:9(B)(1).

(c) Register the contract with the central collection agency for local sales and use taxes of the parish in which the contract is to be performed. The central collection agency shall issue a certificate in a form determined by the secretary, following the requirements in Subparagraph (a) of this Paragraph, certifying that all requirements for surety bonds established by local ordinances applicable to the location of the project have been met.

(2)(a) No state entity, including but not limited to the office of state fire marshal, code enforcement and building safety or local governing authority charged with the responsibility of issuing any permit, license, or certificate necessary for the lawful commencement of any construction contract subject to the provisions of this Subsection, shall issue such permit, license, or certificate until sufficient proof of possession of the certificates obtained as provided in this Subsection for that project is shown by the applicant.

(b) Any person failing to execute any bond herein provided before beginning the performance of any contract shall be denied the right to perform such contract until he complies with such requirements. The secretary of the Department of Revenue shall have the right to enjoin the performance of the contract until a satisfactory bond is executed and filed, and the secretary may also impose a penalty for commencing of two hundred dollars or two percent of the construction contract, whichever is greater.

(3) Within thirty days of the completion and acceptance of the contract project, the prime contractor shall submit to the department, on a form provided or approved by the department, a complete and accurate accounting of all state sales and use taxes which became due as a result of the contract. In the event that there are additional taxes due, they shall be submitted with the accounting.

(4) The secretary of the Department of Revenue shall promulgate such rules and regulations and may have printed such forms as are necessary to effectuate the provisions of this Subsection.

(5) Nothing herein shall be construed so as to affect the licensing requirements of R.S. 47:341 et seq.

E. Payment of tax by a licensed vehicle dealer. Notwithstanding any other provision of law to the contrary, including the provisions of Subsection A of this Section, every vehicle dealer licensed pursuant to Title 32 of the Louisiana Revised Statutes of 1950 who sells a vehicle at retail shall remit all taxes collected pursuant to R.S. 47:303(B) no later than forty days from the date of sale or ten days from receipt by the licensed vehicle dealer of the title to any vehicle accepted in trade, if the title is received by the dealer in excess of thirty days from the date of sale provided that the deadline for the submission of taxes cannot be extended under this provision beyond the ninetieth day from the date of the sale. Any licensed vehicle dealer claiming under this provision an extension for the remittance of taxes beyond the fortieth day from the date of vehicle sale shall document, through a means satisfactory to the vehicle commissioner, the actual date that the dealer received title to the vehicle accepted in trade. The secretary, for good cause shown, may extend the time for remitting the taxes for these licensed vehicle dealers for a period not to exceed ninety days.

Acts 1990, No. 388, §1, eff. Aug. 1, 1990; Acts 1991, No. 173, §1, eff. July 2, 1991; Acts 1991, No. 709, §1, eff. July 1, 1991; Acts 1993, No. 893, §1, eff. July 1, 1993; Acts 1994, No. 8, §1, eff. June 7, 1994; Acts 1995, No. 284, §1, eff. July 1, 1995; Acts 1995, No. 1186, §1; Acts 1996, 1st Ex. Sess., No. 32, §1; Acts 1997, No. 787, §1; Acts 1997, No. 1187, §2; Acts 1998, No. 24, §1, eff. June 24, 1998; Acts 1998, No. 50, §1, eff. July 1, 1998; Acts 1998, No. 62, §1, eff. Jan. 1, 1999; Acts 2001, No. 7, §1, eff. July 1, 2001; Acts 2001, No. 68, §1, eff. Jan. 1, 2001; Acts 2001, No. 215, §1, eff. July 1, 2001; Acts 2002, 1st Ex. Sess., No. 98, §1, eff. April 18, 2002; Acts 2002, 1st Ex. Sess., No. 99, §1, eff. April 18, 2002; Acts 2003, No. 43, §1, eff. July 1, 2003; Acts 2006, No. 457, §1, eff. June 15, 2006; Acts 2007, No. 393, §1, eff. Jan. 1, 2008; Acts 2007, No. 393, §§2, 3, eff. Jan. 1, 2009; Acts 2008, No. 707, §1.

PART E. RETURNS

§337.18. Returns and payment of tax; penalty for absorption

A. General provisions. (1)(a) Except as hereafter provided, the taxes levied by the local ordinance shall be due and shall be payable monthly on the first day of the month. For the purpose of ascertaining the amount of tax payable, all dealers shall transmit, on or before the twentieth day of the month following the month in which this tax becomes effective, to the collector, upon forms prescribed, prepared, and furnished by him, except as provided in R.S. 47:337.22 and 337.23, returns showing the gross sales, purchases, gross proceeds from lease or rental, gross payments for lease or rental, gross proceeds derived from sales of services, or gross payments for services, as the case may be, arising from all taxable transactions during the preceding calendar month. Thereafter, like returns shall be prepared and transmitted to the collector by all dealers on or before the twentieth day of each month for the preceding calendar month. These returns shall show any further information the collector may require to enable him to correctly compute and collect the tax levied. Every dealer, at the time of making the return required hereunder, shall compute and remit to the collector the required tax due for the preceding calendar month, and failure to so remit such tax shall cause said tax to become delinquent.

(b)(i) However, whenever the taxes due hereunder from a dealer average less than thirty dollars per month, the taxes hereunder shall be due and payable quarterly on the first day of the month, and the return required from the dealer for the quarter shall be filed on or before the twentieth day of the first month of the next succeeding quarter. The collector shall provide by regulation for the period and method of determining, under this proviso, the average taxes due from a dealer. Any dealer who is required to file his sales tax return on a quarterly basis, as provided above, may file his returns and pay the tax on a monthly basis after first having received written approval from the collector to do so. Application to file monthly must be furnished to the collector in writing and will set forth complete justification for the shorter reporting period.

(ii) When any person or other entity with annual taxable gross receipts from sales of property or services of one hundred fifty thousand dollars or less makes no taxable sales of tangible personal property or services for three calendar months in a parish in which he does not have a business location, such taxpayer shall not be required to file thereafter either monthly or quarterly returns with any political subdivision in the parish until he has more than one such sale in the parish during a three-month period. In lieu of such returns, the taxpayer may send a letter to the collector for the parish on or before the twentieth of the month following the sale, describing the sale, the buyer, and the price, and remitting the tax due.

(c) Whenever the taxes due to a collector are from the state acting as a dealer through any department, agency, board, commission, or other state entity, the taxes shall be due and payable annually, and the return shall be filed and tax paid on or before the twentieth day of the month following the end of the state's fiscal year. However, if the accumulated sales taxes due hereunder to the state or any single tax collector equal or exceed five hundred dollars by the last day of any calendar month prior to the close of the state's fiscal year, the taxes shall be due and payable and the return shall be filed and the tax paid on or before the twentieth day of the calendar month following the calendar month during which the five hundred dollar threshold is exceeded.

(2)(a) Gross proceeds from rentals or leases shall be reported and the tax shall be paid with respect thereto, in accordance with rules and regulations for reporting as established by the collector following the month in which the payment for the lease or rental is actually collected by lessor.

(b) Notwithstanding any other provisions of law to the contrary, lessors of property to be used offshore as provided for in R.S. 47:301(4)(d)(ii) shall not be required to collect or otherwise pay rental taxes on the gross proceeds from such leases and rentals.

(3) For the purpose of compensating the dealer in accounting for and remitting the tax levied by the local ordinance, each dealer shall be allowed compensation at the rate specified in the local

ordinance in the form of a deduction in submitting his report and paying the amount due by him, provided the amount due was not delinquent at the time of payment. The amount of any credit claimed for taxes already paid to a wholesaler, as authorized by Subsection B of this Section, shall not be deducted in computing the compensation allowed the dealer.

(4) The collector, for good cause, may extend, for not to exceed thirty days, the time for making any returns required under the provisions of this Chapter.

(5) For the purpose of collecting and remitting to the taxing authority the tax imposed by the local ordinance, the dealer is hereby declared to be the agent of the taxing authority.

(6) In making their returns to the collector, dealers who have paid advance sales tax on purchases of tangible personal property for resale during periods when the collection of such tax was required by law shall deduct from the total tax collected by them upon the retail sale of the commodity the amount of tax paid by them to manufacturers, wholesalers, jobbers and suppliers during the period reported, provided tax paid invoices evidencing the payment are retained by the dealer claiming the refund or credit. If the amount so paid during any reporting period amounts to more than the tax collected by him for the period reported, the excess so paid shall be allowed as refund or credit against the tax collected by the dealer during the succeeding period or periods.

B. Collection by wholesalers. (1) Parishes, municipalities, school boards and other tax authorities which levy a sales tax are hereby prohibited from requiring manufacturers, wholesalers, jobbers, suppliers, or any other taxpayer to collect such sales taxes in advance from dealers to whom they sell for the purposes of resale.

(2), (3) Repealed by Acts 2007, No. 393, §3, eff. Jan. 1, 2009.

(4) Absorption of said tax as defined in this Section by any retailer, wholesaler, manufacturer or other supplier shall constitute a misdemeanor and upon conviction shall be punished by a fine of not more than two thousand dollars or by imprisonment in the parish jail for not more than two years.

C. Registration by nonresident prime contractor. (1) Prior to commencing work on any construction contract which in the aggregate exceeds three thousand dollars, any nonresident prime contractor, as defined in R.S. 47:9(A)(2), shall:

(a) Register the contract with the Department of Revenue in accordance with the provisions of R.S. 47:9(A)(1) and obtain a certificate in a form to be determined by the secretary, which certificate shall identify the construction project registered and recite the total amount of the contract.

(b) File with the department a surety bond or a blanket surety bond for all contracts, sufficient to cover all taxes due on the contract or contracts, in accordance with the provisions of R.S. 47:9(B)(1).

(c) Register the contract with the collector of sales and use taxes of the parish in which the contract is to be performed. The collector shall issue a certificate in a form determined by the secretary, following the requirements in Subparagraph (a) of this Paragraph, certifying that all requirements for surety bonds established by R.S. 47:306(D) applicable to the location of the project have been met.

(2)(a) No state entity, including but not limited to the office of the state fire marshal, or local governing authority charged with the responsibility of issuing any permit, license, or certificate necessary for the lawful commencement of any construction contract subject to the provisions of this Subsection, shall issue such permit, license, or certificate until sufficient proof of possession of the certificates obtained as provided in this Subsection for that project is shown by the applicant.

(b) Any person failing to execute any bond herein provided before beginning the performance of any contract shall be denied the right to perform such contract until he complies with such requirements. The secretary of the Department of Revenue shall have the right to enjoin the performance of the contract until a satisfactory bond is executed and filed, and the secretary may also impose a penalty for commencing of two hundred dollars or two percent of the construction contract, whichever is greater.

(3) Within thirty days of the completion and acceptance of the contract project, the prime contractor shall submit to the Department of Revenue, on a form provided or approved by the

department, a complete and accurate accounting of all state sales and use taxes which became due as a result of the contract. In the event that there are additional local taxes due, the contractor shall submit a copy of the accounting and the additional tax due to the taxing authority.

(4) The secretary of the Department of Revenue shall promulgate such rules and regulations and may have printed such forms as are necessary to effectuate the provisions of this Subsection.

(5) Nothing herein shall be construed so as to affect the licensing requirements of R.S. 47:341 et seq.

D. Payment of tax by a licensed vehicle dealer. Notwithstanding any other provision of law to the contrary, including the provisions of Subsection A of this Section, every vehicle dealer licensed pursuant to Title 32 of the Louisiana Revised Statutes of 1950 who sells a vehicle at retail shall remit all taxes collected pursuant to R.S. 47:303(B) no later than forty days from the date of sale. The secretary, for good cause shown, may extend the time for remitting the taxes for these licensed vehicle dealers for a period not to exceed ninety days.

Acts 2003, No. 73, §1, eff. July 1, 2003; Acts 2006, No. 457, §1, eff. June 15, 2006; Acts 2007, No. 393, §§2, 3, eff. Jan. 1, 2009.