

**Revenue Ruling
No. 01- 006
October 10, 2001
Sales and Use Tax**

Repair Services to Movables Rendered by Diving Service Companies Are Sales Taxable

The purpose of this Revenue Ruling is to inform diving service companies and their customers that sales taxes are collectible and payable on some transactions, depending upon the facts surrounding each transaction.

The Louisiana sales tax statute, at Revised Statute 47:302(C), 321(C), and 331(C) levies the sales tax on all sales of services, as defined in the law. La. R.S. 47:301(14)(g) defines taxable services to include the furnishing of repairs to tangible personal property. Repairs to tangible personal property are taxable, regardless of who renders the repairs. Accordingly, repairs to tangible personal property performed in Louisiana by diving service companies are taxable.

La. R.S. 47:301(14)(g) provides, in pertinent part, as follows:

“(14) ‘Sales of services’ means and includes the following:

(g) (i) The furnishing of repairs to tangible personal property, including but not restricted to the repair and servicing of automobiles and other vehicles, electrical and mechanical appliances and equipment, watches, jewelry, refrigerators, radios, shoes, and office appliances and equipment. Charges for the furnishing of repairs to tangible personal property may be excluded from sales of services, as defined in this Subparagraph, when the repaired property is delivered to the customer in another state either by common carrier or the repair dealer's own vehicle, however, as to aircraft, delivery may be by the best available means. This exclusion shall not apply to sales and use taxes levied by any parish, municipality or school board. However, any parish, municipality or school board may apply the exclusion as defined in this Subparagraph to sales or use taxes levied by any such parish, municipality, or school board. Offshore areas shall not be considered another state for the purpose of this Subparagraph.

(ii) For the purposes of this Subparagraph, tangible personal property shall include machinery, appliances, and equipment which have been declared immovable by declaration under the provisions of Article 467 of the Louisiana Civil Code, and things which have been separated from land, buildings, or other constructions permanently attached to the ground or their component parts as defined in Article 466 of the Civil Code.”

Section 61:I.4301(C)(i-iii) of the Louisiana Administrative Code provides additionally with respect to the taxation of repairs to tangible personal property, as follows:

A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is issued under Section 61:III.101(C) of the Louisiana Administrative Code to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.

“i. R.S. 47:301(14)(g)(i) includes as sales of services the furnishing of repairs to tangible personal property. By clear illustration in the statute, both repair and routine servicing of all kinds of tangible personal property are included as taxable services. All repairs performed within Louisiana on tangible personal property are taxable sales of services except for repaired property which is returned to a customer located in another state by common carrier or by the repair dealer's vehicle. The charge for repairs to property returned to a customer's location in the offshore area are taxable regardless of the mode of transportation. Repair services performed outside the state of Louisiana to property which is normally or permanently located here except for its removal for repair, would not be taxable under this provision. However, if property is shipped outside the state for repairs, any additions made thereto may subject the property to the use tax imposed by R.S. 47:302 (A)(2) upon its return to the state. If personnel normally attached to a repair installation within the state go outside the state, for instance, to a location offshore which is clearly outside the limits of the state of Louisiana to perform repairs, those repairs are not taxable under this Chapter.

i. Prepaid repairs such as maintenance contracts and other similar transactions are included in sales of services under this Paragraph, if the tangible personal property to which they apply is located in Louisiana and the agreement calls for any necessary repairs to be performed at the location of the property.

ii. R.S. 47:301(14)(g)(ii) provides that tangible personal property, for purposes of sales of services, shall include machinery, appliances, and equipment which have been declared immovable under the provisions of Article 467 of the Louisiana Civil Code. It also includes things incorporate into land, buildings, or other construction, which have been separated from the land, buildings, or other construction. Similarly, the component parts of buildings and other construction, as defined by Article 466 of the Louisiana Civil Code, are movable property when they are separated from the building or other construction, and repairs thereto are includible in taxable sales of services.”

Diving service companies are responsible for the collection and remittance of the Louisiana state and local sales tax on charges for repair services that are rendered in Louisiana to tangible personal property. In order for a transaction to be taxable, the service must constitute a “repair”, the thing being repaired must be “tangible personal property”, and there must be no statutory or constitutional exemption to bar the taxation of the transaction. Services that do not constitute repairs are not subject to the sales tax. The sales tax is not collectible by the service provider on charges for repair services to real or immovable property. In the case of repairs to immovable property, the service provider is required to pay the sales or use tax on tangible personal property that he/she uses in making the repair.

Black's Law Dictionary (6th Edition, 1990, page 1298) defines the word "repair," which appears in both the state sales tax statute and most local sales tax ordinances, as follows: "To mend, remedy, restore, renovate. To restore to a sound or good state after decay, injury, dilapidation, or partial destruction."

The commentary following this definition states: "The word 'repair' contemplates an existing structure or thing which has become imperfect, and means to supply in the original existing structure that which is lost or destroyed, and thereby restore it to the condition in which it originally existed, or as near as may be."

The Louisiana Supreme Court has held, in accordance with the general property law of Louisiana, that the term "tangible personal property" as used in a taxing statute or ordinance, is the same as "corporeal movable property" as used in the Civil Code [*City of New Orleans v. Baumer Foods, Inc.*, 532 So 2d 1381, (La. 1988)]. Ships, vessels, barges, and boats of whatever size constitute tangible personal property. Buildings, including permanent drilling platforms mounted on the ocean floor, constitute real or immovable property.

Unless an individual ship, vessel, barge, or boat is engaged exclusively in interstate coastwise commerce, so as to be exempt from taxation on repairs under the provisions of Revised Statutes Title 47, Section 305.1(B), the tax must be collected on any repair services rendered to ships, vessels, barges, or boats. Taxable repair services commonly provided by diving service companies include, but are not limited to, patching holes in the hulls of vessels and removing rope and cable from engine propellers.

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