Regular Session, 2013

HOUSE BILL NO. 714

BY REPRESENTATIVE STOKES

TAX/SALES & USE: Provides for the taxability of the sale, use, consumption, distribution, or storage of tangible personal property and the sale of services

AN ACT

To amend and reenact R.S. 4:168 and 227, R.S. 32:707(A), R.S. 47:301, 301.1(B)(2), (D), and (E), 302(D), 303(E)(1) and (F), 304(A), 305, 305.6, 305.7, 305.9, 305.11, 305.16, 305.17, 305.19, 305.20(A), 305.28, 305.41, 305.43(A), (B), and (E), 305.44(A)(introductory paragraph), 305.49, 305.50(F), 305.57(A), 305.59, 305.61, 305.62(B)(1), 305.64(A)(1) and (B), 305.65, 305.68, 305.70, 306(A)(3), and 6001(A) and to repeal R.S. 47:305.18, 305.20(C), 305.26, 305.33, 305.40, 305.42, 305.54, 305.56, 305.58, 305.60, 305.64(C), 305.66, 315.2, 315.3, 315.5, 306.1, and Section 4 of Act No. 386 of the 1990 Regular Session of the Legislature, relative to state sales and use taxes; to provide for the taxability of certain sales and other transactions involving certain tangible personal property and services; to provide with respect to exclusions, exemptions, and other special tax treatment; to provide with respect to the collection of tax; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 4:168 and 227 are hereby amended and reenacted to read as follows:

§168. License fees, commissions, and taxes of this Part in lieu of all other such taxes

The license fees, commissions, and taxes imposed in this Part are in lieu of all other such licenses, sales, excise and occupational taxes ~~to the state~~ or to any parish, city, town, or other political subdivision thereof.

* * *

§227. License fees, commissions, and taxes of this Part in lieu of all other such taxes

The license fees, commissions, and taxes imposed upon an off track wagering facility in this Part are in lieu of all other such licenses, sales, excise, and occupational taxes ~~to the state~~ or to any parish, city, town, municipality, or other political subdivision thereof.

Section 2. R.S. 32:707(A) is hereby amended and reenacted to read as follows:

§707. Application for certificates of title; exception; salvage title; antique vehicles; reconstructed title

A. Any purchaser of a vehicle, other than a mobile home, as defined by R.S. 9:1149.2(3), shall file an application for a new certificate of title within five days after the delivery of a previously issued certificate of title for such vehicle, or within five days of the delivery of the vehicle, if a certificate of title has not been previously issued. However, dealers need not apply for certificates of title for any vehicle acquired for stock purposes, if upon reselling such vehicle, the dealer complies with the requirements of R.S. 32:705. ~~A purchaser of a mobile home, as defined by R.S. 9:1149.2(3), shall apply for a new certificate of title on or before the twentieth day of the month following the month of delivery of the home~~.

* * *

Section 3. R.S. 47:301, 301.1(B)(2), (D), and (E), 302(D), 303(E)(1) and (F), 304(A), 305, 305.6, 305.7, 305.9, 305.11, 305.16, 305.17, 305.19, 305.20(A), 305.28, 305.41, 305.43(A), (B), and (E), 305.44(A)(introductory paragraph), 305.49, 305.50(F), 305.57(A), 305.59, 305.61, 305.62(B)(1), 305.64(A)(1) and (B), 305.65, 305.68, 305.70, 306(A)(3), and 6001(A) are hereby amended and reenacted to read as follows:

§301. Definitions

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

(1) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect. The term "business" shall not be construed to include the occasional and isolated sales by a person who does not hold himself out as engaged in business.

(2) "Collector" shall mean and include (a) the secretary of the Department of Revenue for the state of Louisiana and includes his duly authorized assistants, when used in reference to a sales and use tax levied by the state, or (b) the individual or entity designated as collector of the appropriate single sales and use tax collection office, and his duly authorized assistants, of any political subdivision authorized under the constitution and laws of the state of Louisiana to levy and collect a sales and use tax, except a statewide political subdivision, when used in reference to a sales and use tax levied by such political subdivision.

(3)(a) "Cost price" means the actual cost of the articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service cost, ~~except those service costs for installing the articles of tangible personal property if such cost is separately billed to the customer at the time of installation,~~ transportation charges, or any other expenses whatsoever, or the reasonable market value of the tangible personal property at the time it becomes susceptible to the use tax, whichever is less.

(b) In the case of tangible personal property which has acquired a tax situs in a taxing jurisdiction and is thereafter transported outside the taxing jurisdiction for repairs performed outside the taxing jurisdiction and is thereafter returned to the taxing jurisdiction, the cost price shall be deemed to be the actual cost of any parts and/or materials used in performing such repairs, if applicable labor charges are separately stated on the invoice. If the applicable labor charges are not separately stated on the invoice, it shall be presumed that the cost price is the total charge reflected on the invoice.

(c) "Cost price" solely for purposes of sales and use tax imposed by a political subdivision shall not include the supplying and installation of board roads to oil field operators if the installation charges are separately billed to the customer at the time of installation.

(d)(i) ~~In~~ Solely for purposes of sales and use tax imposed by a political subdivision, in the case of interchangeable components located in Louisiana, a taxpayer may elect to determine the cost price of such components as follows:

(aa) The taxpayer shall send to the ~~secretary~~ political subdivision a written notice of the calendar month selected by the taxpayer as the first month for the determination of cost price under this Paragraph (the "First Month"). The taxpayer may select any month. The taxpayer shall send to the ~~secretary~~ political subdivision notice of an election to designate a First Month on the first day of the designated First Month, or ninety days from July 1, 1990, whichever is later.

(bb) For the First Month and each month thereafter, cost price shall be based and use tax shall be paid only on one-sixtieth of the aggregate cost price of the interchangeable components deployed and earning revenue within Louisiana during the month, without regard to any credit or other consideration for Louisiana state, political subdivision, or school board use tax previously paid on such interchangeable components.

(cc) Any election made under this Paragraph shall be irrevocable for a period of sixty consecutive months inclusive of the First Month. If at any time after the sixty-month period the taxpayer revokes its election, no credit or other consideration for use taxes paid pursuant thereto shall be applied to any use tax liability arising after such revocation.

(ii)(aa) For purposes of this Paragraph, "interchangeable component" means a component that is used or stored for use in measurement-while-drilling instruments or systems manufactured or assembled by the taxpayer, which measurement-while-drilling instruments or systems collectively generate eighty percent or more of their annual revenue from their use outside of the state.

(bb) "Measurement-while-drilling instruments or systems" means instruments or systems which measure information from a downhole location in a borehole, transmit the information to the surface during the process of drilling the borehole using a wireless technique, and receive and decode the information on the surface.

(iii) The method for determining cost price of interchangeable components provided for in this Paragraph shall apply to any use taxes imposed by a local political subdivision ~~or school board~~. For purposes of that application, the words "political subdivision" ~~or "school board" as the case may be~~, shall be substituted for the words "Louisiana" or "State" in each instance where those words appear in this Paragraph and an appropriate official of the local political subdivision or school board shall be designated to receive the notices required by this Paragraph.

(e) "Cost price" shall not include any amount designated as a cash discount or a rebate by a vendor or manufacturer of any new vehicle subject to the motor vehicle license tax. For purposes of this Paragraph "rebate" means any amount offered by the vendor or manufacturer as a deduction from the listed retail price of the vehicle.

(f) The "cost price" of refinery gas shall be fifty-two cents per thousand cubic feet multiplied by a fraction the numerator of which shall be the posted price for a barrel of West Texas Intermediate Crude Oil on December first of the preceding calendar year and the denominator of which shall be twenty-nine dollars, and provided further that such cost price shall be the maximum value placed upon refinery gas by the state and by any political subdivision under any authority or grant of power to levy and collect use taxes.

(g) "Cost price", for purposes of the use tax imposed by the state and its political subdivisions, shall exclude any amount that a manufacturer pays directly to a dealer of the manufacturer's product for the purpose of reducing and that actually results in an equivalent reduction in the retail "cost price" of that product. This exclusion shall not apply to the value of the coupons that dealers accept from purchasers as part payment of the "sales price" and that are redeemable by the dealers through manufacturers or their agents. The value of such coupons is deemed to be part of the "cost price" of the product purchased through the use of the coupons.

(h)(i) For purposes of a publishing business which distributes its news publications at no cost to readers and pays unrelated third parties to print such news publications, the term "cost price" shall mean only the lesser of the following costs:

(aa) The printing cost paid to unrelated third parties to print such news publications~~, less any itemized freight charges for shipping the news publications from the printer to the publishing business and any itemized charges for paper and ink~~.

(bb) Payments to a dealer or distributor as consideration for distribution of the news publications.

(ii) The definition of "cost price" provided for in this Subparagraph shall be applicable to taxes levied by all tax authorities in the state.

(i)(i) For purposes of the imposition of the use tax levied by the state and any political subdivision whose boundaries are coterminous with those of the state, the cost price of machinery and equipment used by a manufacturer in a plant facility predominately and directly in the actual manufacturing for agricultural purposes or the actual manufacturing process of an item of tangible personal property, which is for ultimate sale to another and not for internal use, at one or more fixed locations within Louisiana, shall be reduced as follows:

(aa) For the period ending on June 30, 2005, the cost price shall be reduced by five percent.

(bb) For the period beginning July 1, 2005, and ending on June 30, 2006, the cost price shall be reduced by nineteen percent.

(cc) For the period beginning July 1, 2006, and ending on June 30, 2007, the cost price shall be reduced by thirty-five percent.

(dd) For the period beginning July 1, 2007, and ending on June 30, 2008, the cost price shall be reduced by fifty-four percent.

(ee) For the period beginning July 1, 2008, and ending on June 30, 2009, the cost price shall be reduced by sixty-eight percent.

(ff) For all periods beginning on or after July 1, 2009, the cost price shall be reduced by one hundred percent.

(ii) For purposes of this Subparagraph, the following definitions shall apply:

(aa) "Machinery and equipment" means tangible personal property or other property that is eligible for depreciation for federal income tax purposes and that is used as an integral part in the manufacturing of tangible personal property for sale. "Machinery and equipment" shall also mean tangible personal property or other property that is eligible for depreciation for federal income tax purposes and that is used as an integral part of the production, processing, and storing of food and fiber or of timber.

(I) Machinery and equipment, for purposes of this Subparagraph, also includes but is not limited to the following:

(aaa) Computers and software that are an integral part of the machinery and equipment used directly in the manufacturing process.

(bbb) Machinery and equipment necessary to control pollution at a plant facility where pollution is produced by the manufacturing operation.

(ccc) Machinery and equipment used to test or measure raw materials, the property undergoing manufacturing or the finished product, when such test or measurement is a necessary part of the manufacturing process.

(ddd) Machinery and equipment used by an industrial manufacturing plant to generate electric power for self consumption or cogeneration.

(eee) Machinery and equipment used primarily to produce a news publication whether it is ultimately sold at retail or for resale or at no cost. Such machinery and equipment shall include but not be limited to all machinery and equipment used primarily in composing, creating, and other prepress operations, electronic transmission of pages from prepress to press, pressroom operations, and mailroom operations and assembly activities. The term "news publication" shall mean any publication issued daily or regularly at average intervals not exceeding three months, which contains reports of varied character, such as political, social, cultural, sports, moral, religious, or subjects of general public interest, and advertising supplements and any other printed matter ultimately distributed with or a part of such publications.

(II) Machinery and equipment, for purposes of this Subparagraph, does not include any of the following:

(aaa) A building and its structural components, unless the building or structural component is so closely related to the machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment are replaced.

(bbb) Heating, ventilation, and air-conditioning systems, unless their installation is necessary to meet the requirements of the manufacturing process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities.

(ccc) Tangible personal property used to transport raw materials or manufactured goods prior to the beginning of the manufacturing process or after the manufacturing process is complete.

(ddd) Tangible personal property used to store raw materials or manufactured goods prior to the beginning of the manufacturing process or after the manufacturing process is complete.

(bb) "Manufacturer" means:

(I) A person whose principal activity is manufacturing, as defined in this Subparagraph, and who is assigned by the Louisiana Workforce Commission a North American Industrial Classification System code within the agricultural, forestry, fishing, and hunting Sector 11, the manufacturing Sectors 31-33, the information Sector 511110 as they existed in 2002, or industry code 423930 as a recyclable material merchant wholesaler engaged in manufacturing activities, which must include shredding facilities, as determined by the secretary of the Department of Revenue.

(II) A person whose principal activity is manufacturing and who is not required to register with the Louisiana Workforce Commission for purposes of unemployment insurance, but who would be assigned a North American Industrial Classification System code within the agricultural, forestry, fishing, and hunting Sector 11, the manufacturing Sectors 31-33, the information Sector 511110 as they existed in 2002, as determined by the Louisiana Department of Revenue from federal income tax data, if he were required to register with the Louisiana Workforce Commission for purposes of unemployment insurance.

(cc) "Manufacturing" means putting raw materials through a series of steps that brings about a change in their composition or physical nature in order to make a new and different item of tangible personal property that will be sold to another. Manufacturing begins at the point at which raw materials reach the first machine or piece of equipment involved in changing the form of the material and ends at the point at which manufacturing has altered the material to its completed form. Placing materials into containers, packages, or wrapping in which they are sold to the ultimate consumer is part of this manufacturing process. Manufacturing, for purposes of this Subparagraph, does not include any of the following:

(I) Repackaging or redistributing.

(II) The cooking or preparing of food products by a retailer in the regular course of retail trade.

(III) The storage of tangible personal property.

(IV) The delivery of tangible personal property to or from the plant.

(V) The delivery of tangible personal property to or from storage within the plant.

(VI) Actions such as sorting, packaging, or shrink wrapping the final material for ease of transporting and shipping.

(dd) "Manufacturing for agricultural purposes" means the production, processing, and storing of food and fiber and the production, processing, and storing of timber.

(ee) "Plant facility" means a facility, at one or more locations, in which manufacturing, referred to in Sectors 11 and 31-33 of the North American Industrial Classification ~~system~~ <u>System</u> as of 2002, of a product of tangible personal property takes place.

(ff) "Used directly" means used in the actual process of manufacturing or manufacturing for agricultural purposes.

(iii) No person shall be entitled to purchase, use, lease, or rent machinery or equipment as defined herein without payment of the tax imposed by R.S. 47:302, 321, and 331 before receiving a certificate of exclusion from the secretary of the Department of Revenue certifying that he is a manufacturer as defined herein.

(iv) The secretary of the Department of Revenue is hereby authorized to adopt rules and regulations in order to administer the exclusion provided for in this Subparagraph.

(j) For the purpose of the sales and use taxes imposed by the state or any political subdivision whose boundaries are coterminous with those of the state, the "cost price" of electric power or energy, or natural gas for the period beginning July 1, 2007, and thereafter, purchased or used by paper or wood products manufacturing facilities shall not include any of such cost.

(k)(i) For purposes of the imposition of the sales and use tax levied ~~by the state or~~ any political subdivision whose boundaries are coterminous with those of the state, the tax on the cost price of tangible property consumed in the manufacturing process, such as fuses, belts, felts, wires, conveyor belts, lubricants, and motor oils and the tax on the cost price of repairs and maintenance of manufacturing machinery and equipment shall be reduced as follows:

(aa) For the period beginning July 1, 2010, and ending on June 30, 2011, the state sales and use tax on the cost price shall be reduced by twenty-five percent.

(bb) For the period beginning July 1, 2011, and ending June 30, 2012, the state sales and use tax on the cost price shall be reduced by fifty percent.

(cc) For the period beginning July 1, 2012, and ending June 30, 2013, the state sales and use tax on the cost price shall be reduced by seventy-five percent.

(dd) For all periods beginning on and after July 1, 2013, the state sales and use tax on the cost price shall be reduced by one hundred percent.

(ii) For purposes of this Subparagraph, "manufacturer" means a person whose principal activity is manufacturing and who is assigned an industry group designation by the United States Census of 3211 through 3222 or 113310 pursuant to the North American Industry Classification System of 2007.

(4) "Dealer" includes every person who manufactures or produces tangible personal property for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in a taxing jurisdiction. "Dealer" is further defined to mean:

(a) Every person who imports, or causes to be imported, tangible personal property from any other state, foreign country, or other taxing jurisdiction for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in a taxing jurisdiction.

(b) Every person who sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, or consumption, or distribution, or storage to be used or consumed in the taxing jurisdiction, tangible personal property as defined herein.

(c) Any person who has sold at retail, or used, or consumed, or distributed, or stored for use or consumption in the taxing jurisdiction, tangible personal property and who cannot prove that the tax levied by this Chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of said tangible personal property.

(d)(i) Any person who leases or rents tangible personal property for a consideration, permitting the use or possession of the said property without transferring title thereto.

(ii) However, a person who leases or rents tangible personal property to customers who provide information to such person that they will use the property only offshore beyond the territorial limits of the state shall not be included in the term "dealer" for purposes of the collection of the rental or lease tax of the state, statewide political subdivisions, and other political subdivisions on such lease or rental contracts. For purposes of this Item, "use" means the operational or functional use of the property and not other uses related to its possession such as transportation, maintenance, and repair. It is the intention of this Item that the customers of such persons shall remit any tax due on the lease or rental of such property directly to the state and local taxing bodies to whom they are due.

(e) Any person who is the lessee or rentee of tangible personal property and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto.

(f) Any person, who sells or furnishes any of the services subject to tax under this Chapter.

(g) Any person, as used in this act, who purchases or receives any of the services subject to tax under this Chapter.

(h) Any person engaging in business in the taxing jurisdiction. "Engaging in business in the taxing jurisdiction" means and includes any of the following methods of transacting business: maintaining directly, indirectly, or through a subsidiary, an office, distribution house, sales house, warehouse, or other place of business or by having an agent, salesman, or solicitor operating within the taxing jurisdiction under the authority of the seller or its subsidiary irrespective of whether such place of business, agent, salesman, or solicitor is located in such taxing jurisdiction permanently or temporarily or whether such seller or subsidiary is qualified to do business in such taxing jurisdiction, or any person who makes deliveries of tangible personal property into the taxing jurisdiction other than by a common or contract carrier.

(i) Any person who sells at retail any tangible personal property to a vending machine operator for resale through coin-operated vending machines.

(j) Any person who makes deliveries of tangible personal property into the taxing jurisdiction in a vehicle owned or operated by said person.

(k) The term "dealer" shall not include lessors of railroad rolling stock used either for freight or passenger purposes. However, the term "dealer" shall include lessees, other than a railway company or railroad corporation, of such property and such lessees shall be responsible for the collection and payment of all state and local sales and use taxes.

(l) Every person who engages in regular or systematic solicitation of a consumer market in the taxing jurisdiction by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(5) "Gross sales" means the sum total of all retail sales of tangible personal property, without any deduction whatsoever of any kind or character except as provided in this Chapter.

(6)(a) "Hotel" means and includes any establishment engaged in the business of furnishing sleeping rooms, cottages, or cabins to transient guests, where such establishment consists of six or more sleeping rooms, cottages, or cabins at a single business location.

(b) For purposes of the sales and use taxes of all tax authorities in this state, the term "hotel" as defined herein shall not include camp and retreat facilities owned and operated by nonprofit organizations exempt from federal income tax under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3) of the Internal Revenue Code provided that the net revenue derived from the organizations's property is devoted wholly to the nonprofit organization's purposes. However, for purposes of this Paragraph, the term "hotel" shall include camp and retreat facilities which shall sell rooms or other accommodations to transient guests who are not attending a function of such nonprofit organization that owns and operates the camp and retreat facilities or a function of another nonprofit organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3) of the Internal Revenue Code. It is the intention of the legislature to tax the furnishing of rooms to those who merely purchase lodging at such facilities.

(c) ~~For~~ <u>Solely for</u> purposes of ~~the~~ sales and use taxes ~~of all tax authorities in this state~~ <u>imposed by a political subdivision</u>, the term "hotel", as defined herein, shall not include a temporary lodging facility which is operated by a nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code, provided that the facility is devoted exclusively to the temporary housing, for periods no longer than thirty days' duration, of homeless transient persons whom the organization determines to be financially incapable of engaging lodging at a facility defined by Subparagraph (a) of this Paragraph, and further provided that the lodging charge to such persons is no greater than twenty dollars per day.

(7)(a) "Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter, for a consideration, without transfer of the title of such property. For the purpose of the leasing or renting of automobiles, "lease" means the leasing of automobiles and the possession or use thereof by the lessee, for a consideration, without the transfer of the title of such property for a one hundred eighty-day period or more. "Rental" means the renting of automobiles and the possession or use thereof by the renter, for a consideration, without the transfer of the title of such property for a period less than one hundred eighty days.

(b) ~~The~~ Solely for purposes of sales and use taxes imposed by a political subdivision the term "lease or rental", however, as herein defined, shall not mean or include the lease or rental made for the purposes of re-lease or re-rental of casing tools and pipe, drill pipe, tubing, compressors, tanks, pumps, power units, other drilling or related equipment used in connection with the operating, drilling, completion, or reworking of oil, gas, sulphur, or other mineral wells.

(c) The term "lease or rental", as herein defined shall not mean or include a lease or rental of property to be used in performance of a contract with the United States Department of the Navy for construction or overhaul of U.S. Naval vessels.

(d) ~~The~~ Solely for purposes of sales and use taxes imposed by a political subdivision the term "lease or rental", as herein defined, shall not mean the lease or rental of airplanes or airplane equipment by a commuter airline domiciled in Louisiana.

(e) ~~For purposes of state and political subdivision sales and use tax the~~ The term "lease or rental", as herein defined, shall not mean the lease or rental of items, including but not limited to supplies and equipment, which are reasonably necessary for the operation of free hospitals.

(f) ~~For purposes of state and political subdivision sales and use tax,~~ Solely for purposes of sales and use tax imposed by a political subdivision, the term "lease or rental" shall not mean the lease or rental of educational materials or equipment used for classroom instruction by approved parochial and private elementary and secondary schools which comply with the court order from the Dodd Brumfield decision and Section 501(c)(3) of the Internal Revenue Code, limited to books, workbooks, computers, computer software, films, videos, and audio tapes.

(g) ~~For purposes of state and political subdivision sales and use tax,~~ Solely for purposes of sales and use tax imposed by a political subdivision, the term "lease or rental" shall not mean the lease or rental of tangible personal property to Boys State of Louisiana, Inc. and Girls State of Louisiana, Inc. which is used by such organizations for their educational and public service programs for youth.

(h) ~~For purposes of state and political subdivision sales and use tax,~~ Solely for purposes of sales and use taxes imposed by a political subdivision, the term "lease or rental" shall not mean or include the lease or rental of motor vehicles by licensed motor vehicle dealers, as defined in R.S. 32:1252(14), or vehicle manufacturers, as defined in R.S. 32:1252(11), for their use in furnishing such leased or rented motor vehicles to their customers in performance of their obligations under warranty agreements associated with the purchase of a motor vehicle or when the applicable warranty has lapsed and the leased or rented motor vehicle is provided to the customer at no charge.

(i) ~~For~~ Solely for purposes of sales and use taxes ~~levied and~~ imposed by ~~local governmental subdivisions, school boards, and other political subdivisions whose boundaries are not coterminous with those of the state~~ a political subdivision, "lease or rental" by a person shall not mean or include the lease or rental of tangible personal property if such lease or rental is made under the provisions of Medicare.

(j) ~~Solely for purposes of the sales and use tax levied by the state or any political subdivision whose boundaries are coterminous with those of the state~~ Solely for purposes of sales and use taxes imposed by a political subdivision, the term "lease or rental" shall not include the lease or rental in this state of manufacturing machinery and equipment used or consumed in this state to manufacture, produce, or extract unblended biodiesel.

(k)(i) ~~For~~ Solely for purposes of any sales, use, or lease tax ~~levied by the state or~~ imposed by any political subdivision ~~of the state~~, the term "lease or rental" shall not include the lease or rental of a crane and related equipment with an operator.

(ii) Notwithstanding the provisions of Item (i) of this Subparagraph, cranes leased or rented with an operator are subject to the provisions of the sales and use tax law upon first use in Louisiana.

(l)(i) ~~For purposes of the sales and use tax levied by all tax authorities in this state, the~~ <u>The</u> term "lease or rental" shall not apply to leases or rentals of pallets which are used in packaging products produced by a manufacturer.

(ii) For purposes of this Subparagraph, the term "manufacturer" shall mean a person whose primary activity is manufacturing and who is assigned by the Louisiana Workforce Commission a North American Industrial Classification System code within the manufacturing ~~sectors~~ <u>Sectors</u> 31-33 as they existed in 2002.

(8)(a) "Person", except as provided in Subparagraph (c), includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any parish, city and parish, municipality, district or other political subdivision thereof or any board, agency, instrumentality, or other group or combination acting as a unit, and the plural as well as the singular number.

(b) ~~Solely for purposes of the payment of state sales or use tax on the lease or rental or the purchase of tangible personal property or services, "person" shall not include a regionally accredited independent institution of higher education which is a member of the Louisiana Association of Independent Colleges and Universities, if such lease or rental or purchase is directly related to the educational mission of such institution. However, the term "person" shall include such institution for purposes of the payment of tax on sales by such institution if the sales are not otherwise exempt.~~

~~(c)~~(i) ~~For purposes of the payment of the state sales and use tax and the sales and use tax levied by any political subdivision,~~ <u>The term</u> "person" shall not include this state, any parish, city and parish, municipality, district, or other political subdivision thereof, or any agency, board, commission, or instrumentality of this state or its political subdivisions.

(ii) Upon request by any political subdivision for an exemption identification number, the Department of Revenue shall issue such number. The secretary may promulgate rules and regulations in accordance with the Administrative Procedure Act to carry out the provisions of this Item.

~~(d)~~(c)(i) For purposes of the payment of ~~the state sales and use tax and~~ the sales and use tax levied by any political subdivision, the term "person" shall not include a church or synagogue that is recognized by the United States Internal Revenue Service as entitled to exemption under Section 501(c)(3) of the United States Internal Revenue Code.

(ii) ~~The secretary of the Department of Revenue shall promulgate rules and regulations defining the terms "church" and "synagogue" for purposes of this exclusion. The definitions shall be consistent with the criteria established by the U.S. Internal Revenue Service in identifying organizations that qualify for church status for federal income tax purposes.~~

~~(iii)~~ No church or synagogue shall claim exemption or exclusion from the ~~state sales and use tax or the~~ sales and use tax levied by any political subdivision before having obtained a certificate of authorization from the secretary of the Department of Revenue. ~~The secretary shall develop applications for such certificates.~~ The certificates shall be issued without charge to the institutions that qualify.

~~(iv)~~(iii) The exclusion from the sales and use tax authorized by this Subparagraph shall apply only to purchases of bibles, song books, or literature used for religious instruction classes.

~~(e)~~(d)(i) For purposes of the payment of the state sales and use tax and the sales and use tax levied by any political subdivision, the term "person" shall not include the Society of the Little Sisters of the Poor.

(ii) ~~The secretary of the Department of Revenue shall promulgate rules and regulations for purposes of this exclusion. The definitions shall be consistent with the criteria established by the U.S. Internal Revenue Service in identifying tax-exempt status for federal income tax purposes.~~

~~(iii)~~ No member of the Society of the Little Sisters of the Poor shall claim exemption or exclusion from ~~the state sales and use tax or~~ the sales and use tax levied by any political subdivision before having obtained a certificate of authorization from the secretary of the Department of Revenue. The secretary shall develop applications for such certificates. The certificates shall be issued without charge to the entities which qualify.

~~(f)~~(e)(i) For purposes of the payment of sales and use tax levied by this state and any political subdivision whose boundaries are coterminous with those of the state, the term "person" shall not include a nonprofit entity which sells donated goods and spends seventy-five percent or more of its revenues on directly employing or training for employment persons with disabilities or workplace disadvantages.

(ii) The secretary shall promulgate rules and regulations for the use of exclusion certificates for purposes of implementation of this Subparagraph. Each nonprofit entity electing to utilize the exclusion provided for in this Subparagraph shall apply for an exclusion certificate annually. Any exclusion certificate granted by the Department of Revenue shall be effective for a one-year period.

(iii) The secretary shall provide forms for nonprofit entities to request an exclusion certificate.

(9) "Purchaser" means and includes any person who acquires or receives any tangible personal property, or the privilege of using any tangible personal property, or receives any services pursuant to a transaction subject to tax under this Chapter.

(10)(a)(i) Solely for the purposes of the imposition of the state sales and use tax, "retail sale" or "sale at retail" means a sale to a consumer or to any other person for any purpose other than for resale as tangible personal property, or for the lease of automobiles in an arm's length transaction, and shall mean and include all such transactions as the secretary, upon investigation, finds to be in lieu of sales; provided that sales for resale or for lease of automobiles in an arm's length transaction must be made in strict compliance with the rules and regulations. Any dealer making a sale for resale or for the lease of automobiles, which is not in strict compliance with the rules and regulations, shall himself be liable for and pay the tax.

(ii) Solely for purposes of ~~the imposition of the~~ sales and use tax ~~levied~~ imposed by a political subdivision ~~or school board~~, "retail sale" or "sale at retail" shall mean a sale to a consumer or to any other person for any purpose other than for resale in the form of tangible personal property, or resale of those services defined in Paragraph (14) of this Section provided the retail sale of the service is subject to sales tax in this state, and shall mean and include all such transactions as the collector, upon investigation, finds to be in lieu of sales; provided that sales for resale be made in strict compliance with the rules and regulations. Any dealer making a sale for resale, which is not in strict compliance with the rules and regulations shall himself be liable for and pay the tax. A local collector shall accept a resale certificate issued by the Department of Revenue, provided the taxpayer includes the parish of its principal place of business and local sales tax account number on the state certificate. However, in the case of an intra-parish transaction from dealer to dealer, the collector may require that the local exemption certificate be used in lieu of the state certificate. The department shall accommodate the inclusion of such information on its resale certificate for such purposes.

(iii) "Retail sale" or "sale at retail" for purposes of sales and use taxes imposed by the state on transactions involving the sale for rental of automobiles which take place on or after January 1, 1991, and by political subdivisions on such transactions on or after July 1, 1996, and state sales and use taxes imposed on transactions involving the lease or rental of tangible personal property other than automobiles which take place on or after July 1, 1991, means a sale to a consumer or to any other person for any purpose other than for resale as tangible personal property, or for lease or rental in an arm's length transaction in the form of tangible personal property, and shall mean and include all such transactions as the secretary, upon investigation, finds to be in lieu of sales; provided that sales for resale or for lease or rental in an arm's length transaction must be made in strict compliance with the rules and regulations. Any dealer making a sale for resale or for lease or rental, which is not in strict compliance with the rules and regulations, shall himself be liable for and pay the tax. ~~For purposes of the imposition of the tax imposed by any political subdivision of the state, for the period beginning on July 1, 1999, and ending on June~~

~~30, 2000, the term "retail sale" or "sale at retail" shall not include one-fourth of the sales price of any tangible personal property which is sold in order to be leased or rented in an arm's length transaction in the form of tangible personal property. For purposes of the imposition of the tax imposed by any political subdivision of the state, for the period beginning on July 1, 2000, and ending on June 30, 2001, the term "retail sale" or "sale at retail" shall not include one-half of the sales price of any tangible personal property which is sold in order to be leased or rented in an arm's length transaction in the form of tangible personal property. For purposes of the imposition of the tax imposed by any political subdivision of the state, for the period beginning on July 1, 2001, and ending on June 30, 2002, the term "retail sale" or "sale at retail" shall not include three-fourths of the sales price of any tangible personal property which is sold in order to be leased or rented in an arm's length transaction in the form of tangible personal property. Beginning July 1, 2002, for the purposes of imposition of the tax levied by any~~ <u>For purposes of sales and use taxes imposed by a</u> political subdivision ~~of the state~~, the term "retail sale" or "sale at retail" shall not include the sale of any tangible personal property which is sold in order to be leased or rented in an arm's length transaction in the form of tangible personal property.

(iv) "Retail sale" or "sale at retail", for purposes of sales and use taxes imposed by the state on transactions involving the sale for rental of automobiles which take place prior to January 1, 1991, and by political subdivisions on such transactions prior to July 1, 1996, and imposed on transactions involving the lease or rental of tangible personal property other than autos which take place prior to July 1, 1991, and for purposes of local sales and use taxes levied by political subdivisions except for transactions involving the sale for rental of automobiles on or after July 1, 1996, means a sale to a consumer or to any other person for any purpose other than for resale in the form of tangible personal property, and shall mean and include all such transactions as the secretary, upon investigation, finds to be in lieu of sales; provided that sales for resale must be made in strict compliance with the rules and regulations. Any dealer making a sale for resale, which is not in strict compliance with the rules and regulations, shall himself be liable for and pay the tax. However, contrary provisions of law notwithstanding, any political subdivision may, by ordinance, adopt the definition of "retail sale" or "sale at retail" provided in Item (iii) of this Subparagraph for purposes of the imposition of its sales and use tax.

(v) A "retail sale" or "sale at retail" of a sale of a service as set forth in Chapter 2-F of Subtitle II of this Title includes the sale for resale of a sale of a service. The provisions of this Section do not apply to sales of services as defined in R.S. 47:301(a)(14).

(vi) Solely for purposes of the payment of state sales and use tax, until January 1, 2007, the term "sale at retail" shall not include purchases made in connection with the filming or production of a motion picture by a motion picture production company which has been relieved from the payment of state sales and use tax under the provisions of Chapter 12 of Subtitle II of this Title, also known as the "Louisiana Motion Picture Incentive Act". This exclusion shall be retroactively revoked if it is determined that a motion picture production company that has been relieved from payment of state sales and use tax under Chapter 12 failed to meet the conditions of such relief.

(b)~~(i) Solely for purposes of the sales and use tax levied by the state, the sale of tangible personal property to a dealer who purchases said property for resale through coin-operated vending machines shall be considered a "sale at retail", subject to such tax. The subsequent resale of the property by the dealer through coin-operated vending machines shall not be considered a "sale at retail".~~

~~(ii)~~ Solely for purposes of the sales and use tax ~~levied~~ imposed by a political ~~subdivisions~~ subdivision, the term "sale at retail" shall include the sale of tangible personal property by a dealer through coin-operated vending machines.

(c)(i)(aa) The term "sale at retail" does not include sale of materials for further processing into articles of tangible personal property for sale at retail.

(bb) Solely for purposes of the sales and use tax levied by the state, natural gas when used in the production of iron in the process known as the "direct reduced iron process" is not a catalyst and is recognized by the legislature to be a material for further processing into an article of tangible personal property for sale at retail.

(ii)(aa) Solely for purposes of the sales and use tax levied by the state, the term "sale at retail" does not include sales of electricity for chlor-alkali manufacturing processes.

(bb) The term "sale at retail" does not include an isolated or occasional sale of tangible personal property by a person not engaged in such business.

(d) The term "sale at retail" does not include the sale of any human tissue transplants, which shall be defined to include all human organs, bone, skin, cornea, blood, or blood products transplanted from one individual into another recipient individual.

(e) The term "sale at retail" does not include the sale of raw agricultural commodities, including but not limited to feed, seed, and fertilizer, to be utilized in preparing, finishing, manufacturing, or producing crops or animals for market. The Department of Agriculture and Forestry shall develop and promulgate guidelines to determine who meets this definition. Any person meeting such guidelines shall receive a certificate from the Department of Agriculture and Forestry indicating that such person is eligible to purchase such items without paying tax thereon. The guidelines promulgated pursuant to this Paragraph shall not become effective prior to January 1, 1995.

(f) Notwithstanding any other law to the contrary, <u>solely</u> for purposes of the imposition of the sales and use tax of ~~any~~ <u>a</u> political subdivision, the sale of a vehicle subject to the Vehicle Registration License Tax Law (R.S. 47:451 et seq.) shall be deemed to be a "retail sale" or a "sale at retail":

(i) In the political subdivision of the principal residence of the purchaser if the vehicle is purchased for private use, or

(ii) In the political subdivision of the principal location of the business if the vehicle is purchased for commercial use, unless the vehicle purchased for commercial use is assigned, garaged, and used outside of such political subdivision, in which case the sale shall be deemed a "retail sale" or a "sale at retail" in the political subdivision where the vehicle is assigned, garaged, and used.

(g) The term "retail sale" does not include a sale of corporeal movable property which is intended for future sale to the United States government or its agencies, when title to such property is transferred to the United States government or its agencies prior to the incorporation of that property into a final product.

(h) The term "sale at retail" does not include the sale of food items by youth serving organizations chartered by congress.

(i) ~~The~~ Solely for purposes of sales and use tax imposed by a political subdivision, the term "sale at retail" does not include the purchase of a new school bus or a used school bus which is less than five years old by an independent operator, when such bus is to be used exclusively in a public school system. ~~This exclusion shall apply to all sales and use taxes levied by any local political subdivision.~~

(j) The term "sale at retail" does not include the sale of tangible personal property to food banks, as defined in R.S. 9:2799.

(k) ~~The~~ Solely for purposes of sales and use tax imposed by a political subdivision, the term "sale at retail" shall not include the sale of airplanes or airplane equipment or parts to a commuter airline domiciled in Louisiana.

(l) ~~Solely for purposes of the state sales and use tax, the term "sale at retail" shall not include the sale of a pollution control device or system. Pollution control device or system~~ The term "pollution control device or system" shall mean any tangible personal property approved by the ~~Department of Revenue and the~~ Department of Environmental Quality and sold or leased and used or intended for the purpose of eliminating, preventing, treating, or reducing the volume or toxicity or potential hazards of industrial pollution of air, water, groundwater, noise, solid waste, or hazardous waste in the state of Louisiana. For the purposes of any sales and use tax levied by a political subdivision, the term "sale at retail" shall include the sale of a pollution control device or system. In order to qualify, the pollution control device or system must demonstrate either: a net decrease in the volume or toxicity or potential hazards of pollution as a result of the installation of the device or system; or that installation is necessary to comply with federal or state environmental laws or regulations.

(m) ~~The~~ Solely for purposes of sales and use taxes imposed by a political subdivision, the term "sale at retail" shall not include the sales of Louisiana manufactured or assembled passenger aircraft with a capacity in excess of fifty persons, if, after all transportation, including transportation by the purchaser, has been completed, the aircraft is ultimately received by the purchaser outside of Louisiana.

(n) For purposes of sales and use taxes imposed or levied by the state or any political subdivision thereof, the term "sale at retail" shall not include the sales of pelletized paper waste when purchased for use as combustible fuel by an electric utility or in an industrial manufacturing, processing, compounding, reuse, or production process, including the generation of electricity or process steam, at a fixed location in this state. However, such sale shall not be excluded unless the purchaser has signed a certificate stating that the fuel purchased is for the exclusive use designated herein. For purposes of this Subparagraph, "pelletized paper waste" means pellets produced from discarded waste paper that has been diverted or removed from solid waste which is not marketable for recycling and which is wetted, extruded, shredded, or formulated into compact pellets of various sizes for use as a supplemental fuel in a permitted boiler.

(o) ~~For the purposes of sales and use taxes imposed or levied by the state or any local governmental subdivision or school board, the~~ The term "sale at retail" shall not include the sale or purchase of equipment used in fire fighting by bona fide volunteer and public fire departments.

(p) For purposes of state and political subdivision sales and use tax, the term "sale at retail" shall not include the sale of items, including but not limited to supplies and equipment, or the sale of services as provided in this Section, which are reasonably necessary for the operation of free hospitals.



CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

(q) ~~For purposes of state and political subdivision sales and use tax~~ <u>Solely for purposes of sales and use taxes imposed by a political subdivision</u>, the term "sale at retail" shall not include:

(i) The sale of tangible personal property by approved parochial and private elementary and secondary schools which comply with the court order from the Dodd Brumfield decision and Section 501(c)(3) of the Internal Revenue Code, or students, administrators, or teachers, or other employees of the school, 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. This exclusion shall not be construed to 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.

(ii) The sale to approved parochial and private elementary and secondary schools which comply with the court order from the Dodd Brumfield decision and Section 501(c)(3) of the Internal Revenue Code of educational materials or equipment used for classroom instruction limited to books, workbooks, computers, computer software, films, videos, and audio tapes.

(r) ~~For purposes of state and political subdivision sales and use tax~~ <u>Solely for purposes of sales and use taxes imposed by a political subdivision</u>, the term "sale at retail" shall not include the sale of tangible personal property to Boys State of Louisiana, Inc. and Girls State of Louisiana, Inc. which is used by such organizations for their educational and public service programs for youth.

(s) The term "sale at retail" or "retail sale", for purposes of sales and use taxes imposed by the state or any political subdivision or other taxing entity, shall not include any charge, fee, money, or other consideration received, given, or paid for the performance of funeral directing services. For purposes of this Subparagraph, "funeral directing services" means the operation of a funeral home, or by way of illustration and not limitation, any service whatsoever connected with the management of funerals, or the supervision of hearses or funeral cars, the cleaning or dressing of dead human bodies for burial, and the performance or supervision of any service or act connected with the management of funerals from time of death until the body or bodies are delivered to the cemetery, crematorium, or other agent for the purpose of disposition. However, such services shall not mean or include the sale, lease, rental, or use of any tangible personal property as those terms are defined in this Section.

(t) ~~For~~ Solely for purposes of sales and use taxes ~~levied~~ imposed by ~~the state or any~~ a political subdivision ~~of the state~~, the term "sale at retail" shall not include the transfer of title to or possession of telephone directories by an advertising company that is not affiliated with a provider of telephone services if the telephone directories will be distributed free of charge to the recipients of the telephone directories.

(u) For purposes of sales and use taxes levied and imposed by local governmental subdivisions, school boards, and other political subdivisions whose boundaries are not coterminous with those of the state, "sale at retail" by a person shall not mean or include the sale of tangible personal property if such sale is made under the provisions of Medicare.

(v) ~~For purposes of the imposition~~ Solely for purposes of sales and use taxes imposed ~~or levied by all taxing authorities in the state~~ by a political subdivision, in the case of the sale or other disposition by a dealer of any cellular, PCS, or wireless telephone, or any electronic accessories that are physically connected with such telephones and personal communication devices used in connection with the sale or use of mobile telecommunications services, the term "retail sale" or "sale at retail" shall mean and include the sale or any other disposition of such cellular, PCS, or wireless telephone, any electronic accessories that are physically connected with such telephones and personal communication devices by the dealer to the purchaser, but shall not mean or include the withdrawal, use, distribution, consumption, storage, donation, or any other disposition of any such cellular, PCS, or wireless telephone, any electronic accessories that are physically connected with such telephones, and personal communication devices by the dealer.

(w) For purposes of the imposition of sales and use taxes imposed or levied by any political subdivision of the state, in the case of the sale or other disposition by a dealer of any cellular telephone, PCS telephone, wireless telephone, or other wireless personal communication device that is used in connection with the sale or use of mobile telecommunications services, or any electronic accessory that is physically connected with any such telephone or personal communication device, the term "retail sale" or "sale at retail" shall mean and include the sale or any other disposition of any such telephone, other personal communication device, or electronic accessory.

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

(i) The sale or purchase by a person of any fuel or gas, including but not limited to butane and propane.

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

(y)(i) Solely for the purposes of sales and use taxes ~~levied by the state or any~~ <u>imposed by a</u> political subdivision ~~whose boundaries are coterminous with those~~ of the state, the term "sale at retail" shall not include the sale of manufacturing machinery and equipment used or consumed in this state to manufacture, produce, or extract unblended biodiesel.

(ii) As used in this Subparagraph, the following words and phrases have the meaning ascribed to them:

(aa) "Manufacturing machinery and equipment" means tangible property used or consumed, or held for use or consumption, as an integral part of a biodiesel manufacturing, production, or extraction facility, process, or item of equipment. Property shall be considered to be an integral part of such biodiesel manufacturing, production, or extraction facility, process, or item of equipment only if such property is used or consumed directly in the manufacturing, production, or extraction process or is part of, physically attached to, or otherwise directly associated with such property. Property, the installation of which is reasonably necessary for the proper installation, operation, maintenance of property which directly results in such manufacturing, production, or extraction shall be considered as directly associated with such property.

(bb) "Unblended biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of the definition provided for in D 6751 of the American Society of Testing and Materials (ATDM D 6751), before such fuel is blended with a petroleum-based diesel fuel.

(z) ~~Solely for the purposes of sales and use taxes levied by the state or any political subdivision whose boundaries are coterminous with those of the state, the term "sale at retail" shall not include the sale of any alternative substance when such alternative substance is used as a fuel by a manufacturer. "Alternative substance" means any substance other than oil and natural gas and any product of oil and natural gas. "Alternative substance" shall include petroleum coke, landfill gas, reclaimed or waste oil, unblended biodiesel, or tire-derived fuel, but not coal, lignite, refinery gas, nuclear fuel, or electricity. "Manufacturer" means a person whose principal activity is manufacturing and who is assigned by the Louisiana Workforce Commission a North American Industrial Classification System code with the agricultural, forestry, fishing, and hunting Sector 11 or the manufacturing Sectors 31-33 as they existed in 2002.~~

~~(aa)~~ (i) For purposes of sales and use taxes imposed or levied by the state or any political subdivision of the state, the term "sale at retail" shall not include the sale of toys to a ~~non-profit~~ <u>nonprofit</u> organization exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code if the sole purpose of the purchasing organization is to donate toys to minors and the toys are, in fact, donated.

(ii) The exclusion provided in this Subparagraph shall not apply 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.

(iii) A certificate of exclusion shall be obtained from the secretary or the tax collector of the political subdivision, under such regulations as he shall prescribe, in order for nonprofit organizations to qualify for the exclusion provided for in this Subparagraph.

~~(bb) For purposes of sales and use taxes imposed or levied by the state, the terms "retail sale" and "sale at retail" shall not include sales of natural gas to be held, used, or consumed in providing natural gas storage services or operating natural gas storage facilities.~~

~~(cc) For~~ <u>(aa) Solely for</u> purposes of the sales and use tax imposed by ~~the state or any~~ <u>a</u> political subdivision ~~of the state~~, the terms "retail sale" or "sale at retail" shall not mean or include the purchase of textbooks and course-related software by a private postsecondary academic degree-granting institution, accredited by a national or regional commission that is recognized by the United States Department of Education and is licensed by the Board of Regents, which institution has its main location within this state and offers only online instruction, when all of the following apply:

(i) The textbooks and course-related software are physically outside of this state when purchased from a vendor outside of this state and then imported into this state.

(ii) The first student use of the textbooks and course-related software occurs outside of this state.

(iii) The textbooks and course-related software are provided to the student free of charge.

~~(dd)~~ <u>(bb)</u> For purposes of sales and use taxes imposed or levied by the state, the terms "retail sale" or "sale at retail" shall not include the purchase of food items for school lunch or breakfast programs by nonpublic elementary or secondary schools which participate in the National School Lunch and School Breakfast programs or the purchase of food items by nonprofit corporations which serve students in nonpublic elementary or secondary schools and which participate in the National School Lunch and School Breakfast programs.

~~(ee)(i) Solely for the purposes of the imposition of the state sales and use tax, the term "retail sale" and "sale at retail" shall not include the sale of any storm shutter device.~~

~~(ii) As used in this Subparagraph, "storm shutter device" means materials and products manufactured, rated, and marketed specifically for the purpose of preventing window damage from storms.~~

~~(iii) The secretary of the Department of Revenue, in consultation with the Department of Insurance, shall promulgate such rules and regulations in accordance with the Administrative Procedure Act as may be necessary to carry out the provisions of this Subparagraph.~~

~~(ff)~~ <u>(cc)</u> For purposes of sales taxes imposed by the state or any political subdivision of the state, the term "retail sale" or "sale at retail" shall not include sales of tangible personal property by the Military Department, state of Louisiana, which occur on an installation or other property owned or operated by the Military Department.

~~(gg)~~ <u>(dd)</u> For purposes of sales and use tax imposed ~~by the state~~ or any political subdivision of the state, the term "sale at retail" shall not include the sale of anthropogenic carbon dioxide for use in a qualified tertiary recovery project approved by the assistant secretary of the office of conservation of the Department of Natural Resources pursuant to R.S. 47:633.4.

~~(hh)~~ <u>(ee)</u> For purposes of sales and use tax imposed ~~by the state,~~ any political subdivision whose boundaries are coterminous with those of the state, or any other political subdivision, the term "sale at retail" shall not include the sale of tangible personal property at an event providing Louisiana heritage, culture, crafts, art, food, and music which is sponsored by a domestic nonprofit organization that is exempt from tax under Section 501(c)(3) of the Internal Revenue Code. The provisions of this Subparagraph shall apply only to an event which transpires over a minimum of seven but not more than twelve days and has a five-year annual average attendance of at least three hundred thousand over the duration of the event. For purposes of determining the five-year annual average attendance, the calculation shall include the total annual attendance for each of the five most recent years. The provisions of this Subparagraph shall apply only to sales by the sponsor of the event.

(11) "Retailer" means and includes every person engaged in the business of making sales at retail or for distribution, or use or consumption, or storage to be used or consumed in this state.

(12) "Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property, for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, preparing or serving, for a consideration, of any tangible personal property, consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

(13)(a) "Sales price" means the total amount for which tangible personal property is sold, less the market value of any article traded in including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise, and includes the cost of materials used, labor or service costs, except costs for financing which shall not exceed the legal interest rate and a service charge not to exceed six percent of the amount financed, and losses; provided that cash discounts allowed and taken on sales shall not be included~~, nor shall the sales price include the amount charged for labor or services rendered in installing, applying, remodeling, or repairing property sold~~.

(b) The term "sales price" shall not include any amount designated as a cash discount or a rebate by the vendor or manufacturer of any new vehicle subject to the motor vehicle license tax. For purposes of this Paragraph "rebate" means any amount offered by a vendor or manufacturer as a deduction from the listed retail price of the vehicle.

(c) "Sales price" shall not include the first fifty thousand dollars of the sale price of new farm equipment used in poultry production.

(d) Notwithstanding any other provision of law to the contrary, for purposes of state and political subdivision sales and use tax, the "sales price" of refinery gas, except for feedstock, not ultimately consumed as an energy source by the person who owns the facility in which the refinery gas is created as provided for in Subparagraph (18)(d) of this Section, but sold to another person, whether at retail or wholesale, shall be fifty-two cents per thousand cubic feet multiplied by a fraction the numerator of which shall be the posted price for a barrel of West Texas Intermediate Crude Oil on December first of the preceding calendar year and the denominator of which shall be twenty-nine dollars, and provided further that such sales price shall be the maximum value placed upon refinery gas by the state and by any political subdivision under any authority or grant of power to levy and collect sales or use taxes, and such sale shall be taxable.

(e) The term "sales price", for purposes of the sales tax imposed by the state and its political subdivisions, shall exclude any amount that a manufacturer pays directly to a dealer of the manufacturer's product for the purpose of reducing and that actually results in an equivalent reduction in the retail "sales price" of that product. This exclusion shall not apply to the value of the manufacturer's coupons that dealers accept from purchasers as part payment of the "sales price" and that are redeemable by the dealers through manufacturers or their agents. The value of such coupons is deemed to be part of the "sales price" of the product purchased through the use of the coupons.

(f) The term "sales price" shall exclude any charge, fee, money, or other consideration received, given, or paid for the performance of funeral directing services as defined in Subparagraph (10)(s) of this Section.

(g) ~~For purposes of the imposition of~~ Solely for purposes of sales and use taxes imposed ~~or levied by all taxing authorities in the state~~ by a political subdivision, in the case of the retail sale by a dealer of any cellular, PCS, or wireless telephone, any electronic accessories that are physically connected with such telephones and personal communications devices used in connection with the sale or use of mobile telecommunications services, as defined in R.S. 47:301(10)(v), the term "sales price" shall mean and include only the amount of money, if any, actually received by the dealer from the purchaser for each such cellular, PCS, or wireless telephone and any electronic accessories that are physically connected with such telephones and personal communication devices, but shall not include (i) any amount received by the dealer from the purchaser for providing mobile telecommunications services, or (ii) any commissions, fees, rebates, or other amounts received by the dealer from any source other than the purchaser as a result of or in connection with the sale of the cellular, PCS, or wireless telephone, any electronic accessories that are physically connected with such telephones and personal communication devices.

(h) For the purpose of the imposition of sales and use tax imposed or levied by all taxing authorities in the state of any cellular, PCS, or wireless telephone used in connection with the sale or use of mobile telecommunications services, as defined in R.S. 47:301(10)(v), after January 1, 2002, the term "sales price" shall mean and include the greater of (i) the amount of money actually received by the dealer from the purchaser for each such telephone, or (ii) twenty-five percent of the cost of such telephone to the dealer, but shall not include any amount received by the dealer from the purchaser for providing mobile telecommunications services or any commissions, fees, rebates, or other amounts received by the dealer from any source other than the purchaser as a result of or in connection with the sale of the telephone.

(i)(i) For purposes of a publishing business which distributes its news publications at no cost to readers and pays unrelated third parties to print such news publications, the term "sales price" shall mean only the lesser of the following costs:

(aa) The printing cost paid to unrelated third parties to print such news publications, less any itemized freight charges for shipping the news publications from the printer to the publishing business and any itemized charges for paper and ink.

(bb) Payments to a dealer or distributor as consideration for distribution of the news publications.

(ii) The definition of "sales price" provided for in this Subparagraph shall be applicable to taxes levied by all tax authorities in the state.

(j) For the purpose of the imposition of sales and use tax imposed or levied by any political subdivision of the state, in the case of any retail sale or sale at retail, of any cellular telephone, PCS telephone, or wireless telephone used in connection with the sale or use of mobile telecommunications services, as defined in R.S. 47:301(10)(w), or any electronic accessory that is physically connected with any such telephone or personal communication device, the term "sales price" shall mean and include the greater of (i) the amount of money, if any, actually received by the dealer from the purchaser at the time of the retail sale or sale at retail by the dealer to the purchaser for each such telephone, personal communication device, or electronic accessory, or (ii) twenty-five percent of the cost of such telephone to the dealer, but shall not include any amount received by the dealer from the purchaser for providing mobile telecommunications services or any commissions, fees, rebates, activation charges, or other amounts received by the dealer from any source other than the purchaser as a result of or in connection with the sale of the telephone.

(k)(i) For purposes of the imposition of the sales tax levied by the state and any political subdivision whose boundaries are coterminous with those of the state, the sales price of machinery and equipment purchased by a manufacturer for use in a plant facility predominately and directly in the actual manufacturing for agricultural purposes or the actual manufacturing process of an item of tangible personal property, which is for ultimate sale to another and not for internal use, at one or more fixed locations within Louisiana shall be ~~reduced as follows~~ <u>zero</u>:

(aa) For the period ending on June 30, 2005, the sales price shall be reduced by five percent.

(bb) For the period beginning July 1, 2005, and ending on June 30, 2006, the sales price shall be reduced by nineteen percent.

(cc) For the period beginning July 1, 2006, and ending on June 30, 2007, the sales price shall be reduced by thirty-five percent.

(dd) For the period beginning July 1, 2007, and ending on June 30, 2008, the sales price shall be reduced by fifty-four percent.

(ee) For the period beginning July 1, 2008, and ending on June 30, 2009, the sales price shall be reduced by sixty-eight percent.

(ff) For all periods beginning on or after July 1, 2009, the sales price shall be reduced by one hundred percent.

(ii) For purposes of this Subparagraph, "machinery and equipment", "manufacturer", "manufacturing", "manufacturing for agricultural purposes","plant facility", and "used directly" shall have the same meaning as defined in R.S. 47:301(3)(i)(ii).

(iii) No person shall be entitled to purchase, use, lease, or rent machinery or equipment as defined herein without payment of the tax imposed by R.S. 47:302, 321, and 331 before receiving a certificate of exclusion from the secretary of the Department of Revenue certifying that he is a manufacturer as defined herein.

(iv) The secretary of the Department of Revenue is hereby authorized to adopt rules and regulations in order to administer the exclusion provided for in this Subparagraph.

(l)~~(i) For purposes of the payment of the state sales and use tax and the sales and use tax levied by any~~ <u>Solely for purposes of sales and use taxes imposed by a</u> political subdivision, the term "sales price" shall not include the price of specialty items sold to members for ~~fund-raising~~ <u>fundraising</u> purposes by nonprofit carnival organizations domiciled within Louisiana and participating in a parade sponsored by a carnival organization.

(ii) ~~The secretary of the Department of Revenue shall promulgate rules and regulations for purposes of this exclusion.~~

~~(iii)~~ No nonprofit carnival organization domiciled within Louisiana and participating in a parade sponsored by a carnival organization shall claim exemption or exclusion from ~~the state sales and use tax or~~ the sales and use tax levied by any political subdivision before having obtained a certificate of authorization. ~~from the secretary of the Department of Revenue. The secretary shall develop applications for such certificates. The certificates shall be issued without charge to the entities which qualify.~~

(m) For purposes of the sales and use tax imposed by the state or any political subdivision whose boundaries are coterminous with those of the state, the "sales price" of electric power or energy, or natural gas for the period beginning July 1, 2007, and thereafter, sold for use by paper or wood products manufacturing facilities shall not include any of such price.

(14) "Sales of services" means and includes the following:

(a) The furnishing of sleeping rooms, cottages, or cabins by hotels.

(b)(i) The sale of admissions to places of amusement, to athletic entertainment other than that of schools, colleges, and universities, and recreational events, and the furnishing, for dues, fees, or other consideration of the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic, or recreational facilities; but the term "sales of services" shall not include membership fees or dues of nonprofit, civic organizations, including by way of illustration and not of limitation the Young Men's Christian Association, the Catholic Youth Organization, and the Young Women's Christian Association.

(ii) ~~Places~~ <u>Solely for purposes of sales and use taxes imposed by a political subdivision, places</u> of amusement shall not include "museums", which are hereby defined as public or private nonprofit institutions which are organized on a permanent basis for essentially educational or aesthetic purposes and which use professional staff to do all of the following:

(aa) Own or use tangible objects, whether animate or inanimate.

(bb) Care for those objects.

(cc) Exhibit them to the public on a regular basis.

(iii) Museums include but are not limited to the following institutions:

(aa) Museums relating to art, history, including historic buildings, natural history, science, and technology.

(bb) Aquariums and zoological parks.

(cc) Botanical gardens and arboretums.

(dd) Nature centers.

(ee) Planetariums.

(iv) For purposes of the sales and use taxes of all tax authorities in the state, the term "places of amusement" as used herein shall not include camp and retreat facilities owned and operated by nonprofit organizations exempt from federal income tax under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3) of the Internal Revenue Code provided that the net revenue derived from the organization's property is devoted wholly to the nonprofit organization's purposes.

(c) The furnishing of storage or parking privileges by auto hotels and parking lots.

(d) The furnishing of printing or overprinting, lithographic, multilith, blue printing, photostating, or other similar services of reproducing written or graphic matter.

(e) The furnishing of laundry, cleaning, pressing and dyeing services, including by way of extension and not of limitation, the cleaning and renovation of clothing, furs, furniture, carpets and rugs, and the furnishing of storage space for clothing, furs, and rugs.

(f) The furnishing of cold storage space, except that space which is furnished pursuant to a bailment arrangement, and the furnishing of the service of preparing tangible personal property for cold storage where such service is incidental to the operation of storage facilities.

(g)(i)(aa) 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.

(bb) For purposes of the sales and use tax levied by the state and by tax authorities in East Feliciana Parish, 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 other parish, municipality, or school board. However, any other 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.

(iii)(aa) For purposes of the sales and use taxes imposed by the state or any of its political subdivisions, sale of services shall not include the labor, or sale of materials, services, and supplies, used for the repairing, renovating, or converting of any drilling rig, or machinery and equipment which are component parts thereof, which is used exclusively for the exploration or development of minerals outside the territorial limits of the state in Outer Continental Shelf waters.

(bb) For the purposes of this Subitem, "drilling rig" means any unit or structure, along with its component parts, which is used primarily for drilling, workover, intervention, or remediation of wells used for exploration or development of minerals and "component parts" means any machinery or equipment necessary for a drilling rig to perform its exclusive function of exploration or development of minerals.

(h) The term "sale of service" shall not include an action performed pursuant to a contract with the United States Department of the Navy for construction or overhaul of U.S. Naval vessels.

(i) Solely for purposes of the sales and use tax levied by the state, the furnishing of telecommunications services for compensation, in accordance with the provisions of R.S. 47:301.1. Local political subdivisions are prohibited from levying a sales and use tax on telecommunications services not in effect on July 1, 1990, provided, however, that the provisions of this Subparagraph shall not be construed to prohibit the levy or collection of any franchise, excise, gross receipts, or similar tax or assessment by any political subdivision of the state as defined in Article VI, Section 44(2) of the Constitution of Louisiana.

(j) Notwithstanding any provision of law to the contrary, for purposes of sales or use taxation by the state or any local political subdivision, the term "sales of services" shall not mean or include any funeral directing services as defined in Subparagraph (10)(s) of this Section. Subject to approval by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs, the state Department of Revenue shall devise a formula for the calculation of the tax.

(k) ~~For~~ Solely for purposes of sales and use tax imposed by ~~the state, any~~ a political subdivision ~~whose boundaries are coterminous with those of the state, or any other political subdivision~~, the term "sales of services" shall not mean or include admission charges for, outside gate admissions to, or parking fees associated with an event providing Louisiana heritage, culture, crafts, art, food, and music which is sponsored by a domestic nonprofit organization that is exempt from tax under Section

501(c)(3) of the Internal Revenue Code. The provisions of this Subparagraph shall apply only to an event which transpires over a minimum of seven but not more than twelve days and has a five-year annual average attendance of at least three hundred thousand over the duration of the event. For purposes of determining the five-year annual average attendance, the calculation shall include the total annual attendance for each of the five most recent years. The provisions of this Subparagraph shall apply only to admission charges for, outside gate admissions to, or parking fees associated with an event when the charges and fees are payable to or for the benefit of the sponsor of the event.

(15) "Storage" means and includes any keeping or retention in the taxing jurisdiction of tangible personal property for use or consumption within the taxing jurisdiction or for any purpose other than for sale at retail in the regular course of business.

(16)(a) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses.

(b) The term "tangible personal property" shall not include:

(i) Stocks, bonds, notes, or other obligations or securities.

(ii) ~~Gold,~~ Solely for purposes of sales and use taxes imposed by a political subdivision, gold, silver, or numismatic coins, or platinum, gold, or silver bullion having a total value of one thousand dollars or more.

(iii) Proprietary geophysical survey information or geophysical data analysis furnished under a restricted use agreement even though transferred in the form of tangible personal property.

(c) ~~The~~ Solely for purposes of sales and use tax imposed by a political subdivision, the term "tangible personal property" shall not include the repair of a vehicle by a licensed motor vehicle dealer which is performed subsequent to the lapse of the applicable warranty on that vehicle and at no charge to the owner of the vehicle. For the purpose of assessing a sales and use tax on this transaction, no valuation shall be assigned to the services performed or the parts used in the repair.

(d)(i) Notwithstanding any provision of law to the contrary and solely for purposes of state sales and use tax, any sale of a prepaid calling service or prepaid wireless calling service, or both, shall be deemed to be the sale of tangible personal property.

(ii) Prepaid calling services and prepaid wireless calling services shall be subject to the tax imposed by this Chapter if the sale takes place in this state. If the customer physically purchases a prepaid calling service or prepaid wireless calling service at the vendor's place of business, the sale is deemed to take place at the vendor's place of business. If the customer does not physically purchase the service at the vendor's place of business, the sale of a prepaid calling service or prepaid wireless calling service is deemed to take place at the first of the following locations that applies to the sale:

(aa) The customer's shipping address, if the sale involves a shipment.

(bb) The customer's billing address.

(cc) Any other address of the customer that is known by the vendor.

(dd) The address of the vendor or, alternatively in the case of a prepaid wireless calling service, the location associated with the mobile telephone number.

(e) The term "tangible personal property" shall not include work products which are written on paper, stored on magnetic or optical media, or transmitted by electronic device, when such work products are created in the normal course of business by any person licensed or regulated by the provisions of Title 37 of the Louisiana Revised Statutes of 1950, unless such work products are duplicated without modification for sale to multiple purchasers. This exclusion shall not apply to work products which consist of the creation, modification, updating, or licensing of computer software.

(f) The term "tangible personal property" shall not include pharmaceuticals administered to livestock used for agricultural purposes, except as otherwise provided in this Subparagraph. Only pharmaceuticals not included in the term "tangible personal property" shall be registered with the Louisiana Department of Agriculture and Forestry. Legend drugs administered to livestock used for agricultural purposes are not required to be registered, but such legend drugs that are not registered shall be "tangible personal property".

(g)(i) Notwithstanding the provisions of R.S. 9:1149.1 et seq., except as otherwise provided in this Subparagraph, the term "tangible personal property" shall not include factory built homes.

(ii) For purposes of this Subparagraph, "factory built home" means a residential structure which is built in a factory in one or more sections and has a chassis or integrated wheel delivery system, which is either:

(aa) A structure built to federal construction standards as defined in Section 5402 of Title 42 of the United States Code.

(bb) A residential structure built to the Louisiana State Uniform Construction Code.

(cc) A manufactured home, modular home, mobile home, or residential mobile home with or without a permanent foundation, which includes plumbing, heating, and electrical systems.

(iii) "Factory built home" shall not include any self-propelled recreational vehicle or travel trailer.

(iv) ~~The~~ <u>Solely for purposes of sales and use taxes imposed by a political subdivision, the</u> term "tangible personal property" as applied to sales and use taxes levied by the state or any other taxing authority in the state shall include a new factory built home, for the initial sale from a dealer to a consumer, but only to the extent that forty-six percent of the retail sales price shall be so considered as "tangible personal property". Thereafter, each subsequent resale of a factory built home shall not be considered as "tangible personal property".

(v) The sales and use taxes due on these transactions shall be paid to the Louisiana Department of Public Safety and Corrections, office of motor vehicles, by the twentieth day of the month following the month of delivery of the factory built home to the consumer, along with any other information requested by the office of motor vehicles.

(h)~~(i) Solely for purposes of the imposition of the sales and use tax levied by the state or any political subdivision whose boundaries are coterminous with those of the state, for the period beginning July 1, 2002, and ending on June 30, 2003, the term "tangible personal property" shall not include one-quarter of the cost price of custom computer software.~~

~~(ii) Solely for purposes of the imposition of the sales and use tax levied by the state or any political subdivision whose boundaries are coterminous with those of the state, for the period beginning July 1, 2003, and ending on June 30, 2004, the term "tangible personal property" shall not include one-half of the cost price of custom computer software.~~

~~(iii) Solely for purposes of the imposition of the sales and use tax levied by the state or any political subdivision whose boundaries are coterminous with those of the state, for the period beginning July 1, 2004, and ending on June 30, 2005, the term "tangible personal property" shall not include three-quarters of the cost price of custom computer software.~~

~~(iv)~~ Solely for purposes of the imposition of the sales and use tax levied by the state or any political subdivision whose boundaries are coterminous with those of the state, for all taxable periods beginning on or after July 1, 2005, <u>and ending on December 31, 2013,</u> the term "tangible personal property" shall not include custom computer software.

~~(i) Solely for purposes of the imposition of the state sales and use tax, the term "tangible personal property" shall not include digital television conversion equipment and digital radio conversion equipment as defined in this Section.~~

~~(i) "Digital television conversion equipment" shall include the following:~~

~~(aa) DTV transmitter and RF system.~~

~~(bb) Transmission line.~~

~~(cc) DTV antenna.~~

~~(dd) Tower.~~

~~(ee) Existing tower structural upgrade.~~

~~(ff) Advanced TV receiver (STL receiver).~~

~~(gg) Decoder (digital to analog converter for NTSC).~~

~~(hh) DTV transmission system test and monitoring.~~

~~(ii) Digital video/audio master control switcher.~~

~~(jj) Analog to digital conversion.~~

~~(kk) High definition up-converters.~~

~~(ll) High definition bypass switcher.~~

~~(mm) Down converters for standard definition.~~

~~(nn) Advanced TV transmitter (STL transmitter).~~

~~(oo) Advanced TV signal encoder.~~

~~(pp) DTV transmission monitoring.~~

~~(qq) High definition digital video switcher and DVE.~~

~~(rr) High definition studio cameras.~~

~~(ss) High definition graphics/graphic generator.~~

~~(tt) High definition video monitoring.~~

~~(uu) Conversion gear.~~

~~(vv) High definition recorder/players, including tape, disk, etc.~~

~~(ww) High definition video/audio signal router.~~

~~(xx) High definition video/audio media server.~~

~~(yy) MPEG or HDTV digital receivers for program content.~~

~~(zz) High definition recorder/players, including tape, disk, etc.~~

~~(aaa) High definition video/audio media server and workstations.~~

~~(bbb) Digital EAS encoder/decoder.~~

~~(ccc) High definition camcorder, including tape, disk, etc.~~

~~(ddd) Advanced TV transmitters, including microwave.~~

~~(ii) "Digital radio conversion equipment" shall include the following:~~

~~(aa) IBOC transmitter.~~

~~(bb) IBOC main channel and IBOC combiner.~~

~~(cc) IBOC compatible antenna.~~

~~(dd) Tower.~~

~~(ee) IBOC coaxial bypass switcher.~~

~~(ff) Digital STL.~~

~~(gg) STL heliax transmission line.~~

~~(hh) STL antenna.~~

~~(ii) Digital console.~~

~~(jj) EAS insertion.~~

~~(kk) AES EBU conversion equipment.~~

~~(ll) IBOL transmission testing and monitoring equipment.~~

~~(mm) Digital processor.~~

~~(iii) The exclusion from state sales and use tax authorized by this Subparagraph shall only apply to the first purchase of each enumerated item by an individual taxpayer who holds a Federal Communications Commission license issued pursuant to 47 CFR Part 73. Individual taxpayers operating under several broadcaster licenses shall be allowed one purchase of each enumerated item per license. Each subsequent purchase of any of the enumerated items by the same taxpayer or license holder shall be subject to sales and use tax.~~

~~(v) Any eligible taxpayer who has purchased any item enumerated in Item (i) or (ii) of this Subparagraph subsequent to January 1, 1999, but prior to the effective date of this Act, shall be entitled to a credit against the state sales and use tax due in any year for an amount equal to state sales and use tax paid on the purchase of the item.~~

~~(vi) Local taxing authorities are hereby authorized to provide an exemption from any local sales and use tax liability to any taxpayers holding a Federal Communications Commission license issued pursuant to 47 CFR Part 73 which has purchased any of the equipment listed in Item (i) or (ii) of this Subparagraph. Local~~

~~taxing authorities are further authorized to provide a credit against any tax liability for the amount of local sales tax paid by taxpayers holding Federal Communications Commission licenses issued pursuant to 47 CFR Part 73 on any equipment listed in Item (i) or (ii) of the Subparagraph purchased subsequent to January 1, 1999, but prior to June 25, 2002.~~

~~(vii) No exclusion from state sales and use tax as authorized in this Subsection shall be allowed after the Federal Communications Commission has issued an order mandating license holders, issued pursuant to 47 CFR Part 73, to discontinue broadcasting their analog signal.~~

~~(viii) The Department of Revenue shall adopt rules and regulations necessary for the implementation of this Act no later than August 1, 2002.~~

~~(j)~~ (i) The term "tangible personal property", for purposes of the payment of sales and use taxes levied by all tax authorities in the state, shall not include materials used directly in the collection, separation, treatment, testing, and storage of blood by nonprofit blood banks and nonprofit blood collection centers.

~~(k)~~ (j) The term "tangible personal property" for purposes of the sales and use taxes imposed by all tax authorities in this state shall not include apheresis kits and leuko reduction filters used by nonprofit blood banks and nonprofit blood collection centers.

~~(l)~~ (k) For purposes of the sales and use tax imposed by the state of Louisiana, by a political subdivision whose boundaries are coterminous with those of the state, or by all political subdivisions of the state and without regard to the nature of the ownership of the ground, tangible personal property shall not include other constructions permanently attached to the ground which shall be treated as immovable property.

~~(m)~~ (l)(i) Notwithstanding any other provision of law to the contrary, for purposes of the sales and use tax levied by the state or any political subdivision whose boundaries are coterminous with those of the state, the term "tangible personal property" shall not include machinery and equipment used by a motor vehicle manufacturer with a North American Industry Classification System (NAICS) Code beginning with 3361, or by a glass container manufacturer with a NAICS Code of 327213. This exclusion shall be subject to the definitions and requirements of Item (3)(i)(ii) of this Section.

(ii) A political subdivision may provide for a sales and use tax exemption for the sales, cost, or lease or rental price of manufacturing machinery and equipment as provided for in this Section, either effective upon adoption or enactment or phased in over a period of time, or effective for a certain period of time or duration, all as set forth in the instrument, resolution, vote, or other affirmative action providing the exemption.

(iii) Notwithstanding any other provision of this Section, tooling in a compression mold process shall be considered manufacturing machinery and equipment for purposes of this Section.

~~(n)~~ <u>(m)</u>(i) For purposes of the imposition of the sales and use tax levied by the state, the term "tangible personal property" shall not include machinery and equipment purchased by the owner of a radio station located within the state that is licensed by the Federal Communications Commission for radio broadcasting, if the owner is either of the following:

(aa) An individual domiciled in the state who owns a business with substantially all of its assets located in the state and substantially all of its payroll paid in the state.

(bb) A business entity with substantially all of its assets located in the state and substantially all of its payroll paid in the state; provided that the business entity is not owned or controlled or is otherwise an affiliate of a multi-state business entity and is not owned or controlled by an individual who is not domiciled in the state.

(ii) "Radio broadcasting" means the sound transmission made via electromagnetic waves for direct sound reception by the general public.

~~(o)~~ <u>(n)</u> (i) For purposes of the imposition of the sales and use tax levied by the state and any political subdivision whose boundaries are coterminous with those of the state, the term "tangible personal property" shall not include machinery and equipment as defined in and subject to the requirements of R.S. 47:301(3)(i)(ii) which is purchased by a utility regulated by the Public Service Commission or the council of the City of New Orleans. For the purposes of this Paragraph, the term "utility" shall mean a person regulated by the Public Service Commission or the council of the City of New Orleans who is assigned a North American Industrial Classification System Code 22111, Electric Power Generation, as it existed in 2002. Such utility shall also be considered a "manufacturer" for purposes of R.S. 47:301(3)(i)(ii).

(ii) For purposes of this Subparagraph, a political subdivision whose boundaries are not coterminous with those of the state may provide for a sales and use tax exclusion for machinery and equipment as defined in and subject to the requirements of R.S. 47:301(3)(i)(ii) which is purchased by a utility regulated by the Public Service Commission or the council of the city of New Orleans.

~~(p)~~ (o) For purposes of sales and use taxes imposed by the state or any of its political subdivisions, the term "tangible personal property" shall not include newspapers.

~~(q)~~ (p) For purposes of sales and use taxes imposed by the state, any statewide taxing authority, or any political subdivision, the term "tangible personal property" shall not include any property that would have been considered immovable property prior to the enactment on July 1, 2008, of Act No. 632 of the 2008 Regular Session of the Legislature.

(q) For purposes of sales and use tax imposed by the state, the term "tangible personal property" includes digital goods.

(i) "Digital goods" means sounds, images, data, facts, or information, or any combination thereof, transferred electronically.

(ii) "Digital goods" also includes the following sales to consumers of digital goods, digital codes, and digital automated services; sales in which the seller has granted the purchaser the right of permanent use; sales in which the seller has granted the purchaser a right of use that is less than permanent; sales in which the purchaser is not obligated to make continued payment as a condition of sale; and sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(iii) A retail sale of digital goods, digital codes, or digital automated services includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(17) "Off-road vehicle" is any vehicle manufactured for off road use which is issued a manufacturer's statement of origin that cannot be issued a registration certificate and license to operate on the public roads of this state because at the time of manufacture the vehicle does not meet the safety requirements prescribed by R.S. 32:1301 through ~~R.S. 32:~~1310. This includes vehicles that are issued a title only by the Vehicle Registration Bureau, Department of Public Safety and Corrections, such as all terrain vehicles and recreational and sport vehicles, but it does not include off road vehicles used for farm purposes, farm equipment, or heavy construction equipment.

(18)(a)(i) Solely for purposes of the imposition of the state sales and use tax, "use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it shall not include the sale at retail of that property in the regular course of business or the donation to a school in the state which meets the definition provided in R.S. 17:236 or to a public or recognized independent institution of higher education in the state of property previously purchased for resale in the regular course of a business. The term "use" shall not include the purchase, the importation, the consumption, the distribution, or the storage of automobiles to be leased in an arm's length transaction, nor shall the term "use" include the donation of food items to a food bank as defined in R.S. 9:2799(B).

(ii) For purposes of the imposition of the sales and use tax levied by a political subdivision or school board, "use" shall mean and include the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it shall not include the sale at retail of that property in the regular course of business or the donation to a school in the state which meets the definition provided in R.S. 17:236 or to a public or recognized independent institution of higher education in the state of property previously purchased for resale in the regular course of a business. The term "use" shall not include the donation of food items to a food bank as defined in R.S. 9:2799(B).

(iii) The term "use", for purposes of sales and use taxes imposed by the state on the use for rental of automobiles which take place on or after January 1, 1991, and by political subdivisions on such use on or after July 1, 1996, and state sales and use taxes imposed on the use for lease or rental of tangible personal property other than automobiles which take place on or after July 1, 1991, shall not include the purchase, the importation, the consumption, the distribution, or the storage of tangible personal property to be leased or rented in an arm's length transaction as tangible personal property. For purposes of the imposition of the tax levied by any political subdivision of the state, for the period beginning July 1, 1999, and ending on June 30, 2000, the term "use" shall not include one-fourth of the cost price of any tangible personal property which is purchased, imported, consumed, distributed, or stored and which is to be leased or rented in an arm's length transaction in the form of tangible personal property. For purposes of the imposition of the tax levied by any political subdivision of the state, for the period beginning July 1, 2000, and ending on June 30, 2001, the term "use" shall not include one-half of the cost price of any tangible personal property which is purchased, imported, consumed, distributed, or stored and which is to be leased or rented in an arm's length transaction in the form of tangible personal property. For purposes of the imposition of the tax levied by any political subdivision of the state, for the period beginning July 1, 2001, and ending on June 30, 2002, the term "use" shall not include three-fourths of the cost price of any tangible personal property which is purchased, imported, consumed, distributed, or stored and which is to be leased or rented in an arm's length transaction in the form of tangible personal property. Beginning July 1, 2002, for purposes of the imposition of the tax levied by any political subdivision of the state, the term "use" shall not include the purchase, the importation, the consumption, the distribution, or the storage of any tangible personal property which is to be leased or rented in an arm's length transaction in the form of tangible personal property.

(iv) The term "use", for purposes of sales and use taxes imposed by the state on the use for rental automobiles which take place prior to January 1, 1991, and by political subdivisions on such use prior to July 1, 1996, and imposed on the use for lease or rental of tangible personal property other than automobiles which take place prior to July 1, 1991, and for purposes of local sales and use taxes levied by political subdivisions, except for any use for rental automobiles on or after July 1, 1996, shall include the purchase, the importation, the consumption, the distribution, or the storage of tangible personal property to be leased or rented in an arm's length transaction as tangible personal property.

(b) Notwithstanding any other law to the contrary, for purposes of the imposition of the sales and use tax of any political subdivision, the use of a vehicle subject to the Vehicle Registration License Tax Law (R.S. 47:451 et seq.) shall be deemed to be a "use":

(i) In the political subdivision of the principal residence of the purchaser if the vehicle is purchased for private use, or

(ii) In the political subdivision of the principal location of the business if the vehicle is purchased for commercial use, unless the vehicle purchased for commercial use is assigned, garaged, and used outside of such political subdivision, in which case the use shall be deemed a use in the political subdivision where the vehicle is assigned, garaged, and used.

(c) For purposes of state and political subdivision sales and use tax, "use" shall not include the exercise of any right or power by a free hospital over items, including but not limited to supplies and equipment, which are reasonably necessary for the operation of the free hospital.

(d)(i) Notwithstanding any other provision of law to the contrary, and except as provided in Item (iii) of this Subparagraph, for purposes ~~of state and~~ sales and use taxes imposed by a political subdivision ~~sales and use tax~~, "use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it shall not include the further processing of tangible personal property into articles of tangible personal property for sale.

(ii) Except as provided in Item (iii) of this Subparagraph for refinery gas, for purposes of ~~state and~~ sales and use taxes imposed by a political subdivision ~~use tax~~, "use" shall not include the storage, consumption, or the exercise of any other right of ownership over tangible personal property which is created or derived as a residue or byproduct of such processing. Such residue or byproduct shall include but shall not be limited to catalyst cracker coke derived from crude oil, wood chips, bark, and liquor derived from the processing of sawlogs or pulpwood timber, or bagasse derived from sugarcane.

(iii) Notwithstanding any other provision of law to the contrary, and notwithstanding the provisions of this Subparagraph, "use" shall include the exercise of any right of ownership over the consumption, the distribution, and the storage for use or consumption in this state of refinery gas, except the sale to another person, whether at retail or wholesale, only if the refinery gas is ultimately consumed as an energy source by the person who owns the facility in which it is created and is not sold. Notwithstanding any other law to the contrary, the use of refinery gas shall be taxed at the cost price value provided in Subparagraph (3)(f) of this Section. If refinery gas, except for feedstock, is sold to another person, whether at retail, or wholesale, such sale shall be taxable and the sales price value shall be as provided for in Subparagraph (13)(d) of this Section. The provisions of this Item shall not apply to feedstocks.

(e) ~~For~~ Solely for purposes of ~~state and~~ sales and use taxes imposed by a political subdivision ~~sales and use tax~~, "use" shall not include the purchase of or the exercise of any right or power over:

(i) Tangible personal property sold by approved parochial and private elementary and secondary schools which comply with the court order from the Dodd Brumfield decision and Section 501(c)(3) of the Internal Revenue Code, or students, administrators, or teachers, or other employees of the school, 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.

(ii) Educational materials or equipment used for classroom instruction by approved parochial and private elementary and secondary schools which comply with the court order from the Dodd Brumfield decision and Section 501(c)(3) of the Internal Revenue Code, limited to books, workbooks, computers, computer software, films, videos, and audio tapes.

(f) ~~For~~ Solely for purposes of ~~state and~~ sales and use taxes imposed by a political subdivision ~~sales and use tax~~, "use" shall not include the purchase of or the exercise of any right or power over tangible personal property used by Boys State of Louisiana, Inc. and Girls State of Louisiana, Inc. for their educational and public service programs for youth.

(g) Notwithstanding any provision of law to the contrary, for purposes of sales or use taxation by the state or any local political subdivision, the term "use" shall not mean or include any funeral directing services as defined in Subparagraph (10)(s) of this Section.

(h) ~~For~~ Solely for purposes of sales and use taxes ~~levied by the state or any~~ imposed by a political subdivision ~~of the state~~, the term "use" shall not include the exercise of any right of ownership in or the distribution of telephone directories acquired by an advertising company that is not affiliated with a provider of telephone services if the telephone directories will be distributed free of charge to the recipients of the telephone directories.

(i) ~~For~~ Solely for purposes of ~~the imposition of~~ sales and use taxes imposed ~~or levied by all taxing authorities in the state~~ by a political subdivision, in the case of the sale or any other disposition by a dealer of any cellular, PCS, or wireless telephone, any electronic accessories that are physically connected with such telephones and personal communications devices used in connection with the sale or use of mobile telecommunications services, as defined in R.S. 47:301(10)(v), the term "use" shall not include the withdrawal, use, distribution, consumption, storage, donation, or any other disposition of any such cellular, PCS, or wireless telephone, any electronic accessories that are physically connected with such telephones and personal communications devices by the dealer.

(j) For purposes of the imposition of sales and use taxes imposed ~~or levied~~ by ~~any~~ a political subdivision ~~of the state~~, in the case of the sale or any other disposition by a dealer of any cellular telephone, PCS telephone, wireless telephone, or other wireless personal communication device that is used in connection with the sale or use of mobile telecommunications services, as defined in R.S. 47:301(10)(w), or any electronic accessory that is physically connected with any such telephone or personal communications device, the term "use" shall not include the withdrawal, use, distribution, consumption, storage, donation, or any other disposition of any such telephone or electronic accessory by the dealer.

(k) Solely for purposes of the sales and use tax ~~levied by the state or any~~ imposed by a political subdivision ~~whose boundaries are coterminous with those~~ of the state, the term "use" shall not include the purchase, the use, the consumption, the distribution, the storage for use or consumption, or the exercise of any right or power over manufacturing machinery and equipment used or consumed in this state to manufacture, produce or extract unblended biodiesel.

(l) Solely for the purposes of sales and use taxes ~~levied by the state or any~~ imposed by a political subdivision ~~whose boundaries are coterminous with those~~ of the state, the term "use" shall not include the use, the consumption, the distribution, the storage for use or consumption in this state, or the exercise of any right or power over an alternative substance as that term is defined in Subparagraph (10)(z) of this Section when such alternative substance is used as a fuel by a manufacturer. "Manufacturer" means a person whose principal activity is manufacturing and who is assigned by the Louisiana Workforce Commission a North American Industrial Classification System code with the agricultural, forestry, fishing, and hunting Sector 11 or the manufacturing Sectors 31-33 as they existed in 2002.

(m)(i) ~~For the~~ Solely for purposes of sales and use taxes imposed ~~or levied by the state or any~~ by a political subdivision ~~of the state~~, the term "use" shall not include the purchase of or the exercise of any right or power over toys by a ~~non-profit~~ nonprofit organization exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code if the sole purpose of the purchasing organization is to donate toys to minors and the toys are, in fact, donated.

(ii) The exclusion provided for in this Subparagraph shall be subject to the same conditions as are provided for in Items (10)(aa)(ii) and (iii) of this Section.

(n) ~~For~~ Solely for purposes of sales and use tax imposed by ~~the state or any~~ a political subdivision ~~of the state~~, the term "use" shall not mean or include the purchase, importation, storage, distribution, or exportation of, or exercise of any right or power over, textbooks and course-related software by a private postsecondary academic degree-granting institution, accredited by a national or regional commission that is recognized by the United States Department of Education and is licensed by the Board of Regents, which institution has its main location within this state and offers only online instruction, when all of the following apply:

(i) The textbooks and course-related software are physically outside of this state when purchased from a vendor outside of this state and then imported into this state.

(ii) The first student use of the textbooks and course-related software occurs outside of this state.

(iii) The textbooks and course-related software are provided to the student free of charge.

(o) Solely for purposes of the imposition of the state sales and use tax, the term "use" shall not include the purchase or use of any storm shutter device as defined and provided for in Subparagraph (10)(ee) of this Section.

(p) ~~For~~ Solely for purposes of sales and use tax imposed by ~~the state or any~~ a political subdivision ~~of the state~~, the term "use" shall not mean or include the purchase, importation, storage, distribution, or exercise of any right or power over anthropogenic carbon dioxide used in a qualified tertiary recovery project approved by the assistant secretary of the office of conservation of the Department of Natural Resources pursuant to R.S. 47:633.4.

(19) "Use tax" includes the use, the consumption, the distribution, and the storage as herein defined. No use tax shall be due to or collected by:

(a) The state on tangible personal property used, consumed, distributed, or stored for use or consumption in the state if the sale of such property would have been exempted or excluded from sales tax at the time such property became subject to the taxing jurisdiction of the state.

(b) Any political subdivision on tangible personal property used, consumed, distributed, or stored for use or consumption in such political subdivision if the sale of such property would have been exempted or excluded from sales tax at the time such property became subject to the taxing jurisdiction of the political subdivision.

(20) "Drugs" includes all pharmaceuticals and medical devices which are prescribed for use in the treatment of any medical disease.

(21) "Free hospital" means a hospital that does not charge any patients for health care provided by the hospital.

(22) The term "computer software" means a set of statements, data, or instructions to be used directly or indirectly in a computer in order to bring about a certain result in any form in which those statements, data, or instructions may be embodied, transmitted, or fixed, by any method now known or hereafter developed, regardless of whether the statements, data, or instructions are capable of being perceived by or communicated to humans. Computer software includes all types of software including operational, applicational, utilities, compilers, and all other forms.

(23)(a) The term "custom computer software" means computer software prepared, created, adapted, or modified to the special order of a particular purchaser, licensee, or user; or to meet the specific needs or requirements of a particular purchaser, licensee, or user, regardless of the means by or through which such computer software is furnished, delivered, or transmitted, and regardless of whether such software incorporates or consists of preexisting routines, utilities, or other computer software components.

(b) In order to be considered "custom computer software", the computer software must require preparation, creation, adaption, or modification by the vendor in order to be used in a specific work environment or to perform a specific function for the user.

(c) Updates, upgrades, and new versions of custom computer software shall be considered custom computer software, provided such upgrades, updates, and new versions meet the definition of custom computer software contained in this Chapter.

(24) The term "news publication" shall mean any printed periodical that:

(a) Appears at regular intervals.

(b) Contains reports of a varied character, such as political, social, cultural, sports, moral, religious, or other subjects of general public interest.

(c) Contains not more than seventy-five percent advertising.

(d) Is not owned or published as an auxiliary to another nonpublishing business, organization, or entity.

(25) "Taxing authority" shall mean and include both the state and a statewide political subdivision and any political subdivision ~~of the state~~ authorized under the Constitution or laws of the state of Louisiana to levy and collect a sales and use tax, unless the context indicates otherwise. For purposes of the Uniform Local Sales Tax Code provided for in Chapter 2D of this Subtitle, "taxing authority" shall mean any political subdivision ~~of the state~~ authorized under the Constitution or laws of the state of Louisiana to levy and collect a sales and use tax, except a statewide political subdivision.

(26) "Taxing jurisdiction" shall mean the area within the physical boundaries of the taxing authority.

(27) "Tax", "sales and use tax", and "sales tax" shall mean the sales and use tax imposed by the state pursuant to the provisions of this Chapter and Chapter 2-A and 2-B of this Subtitle and the tax imposed by political subdivisions under the constitution or laws of this state authorizing the imposition of a sales and use tax.

(28)(a) For purposes of the imposition of the lease or rental tax levied by the state and any political subdivision whose boundaries are coterminous with those of the state, the "gross proceeds", "monthly lease or rental price paid", and "monthly lease or rental price contracted or agreed to be paid" for machinery and equipment used by a manufacturer in a plant facility predominately and directly in the actual manufacturing for agricultural purposes or the actual manufacturing process of an item of tangible personal property, including but not limited to rubber tired farm tractors, cane harvesters, cane loaders, cotton pickers, combines, haybalers, attachments and sprayers, clippers, cultivators, discs, plows, and spreaders, which is for ultimate sale to another and not for internal use, at one or more fixed locations within Louisiana shall be reduced as follows:

~~(i) For the period ending on June 30, 2005, by five percent.~~

~~(ii) For the period beginning July 1, 2005, and ending on June 30, 2006, by nineteen percent.~~

~~(iii) For the period beginning July 1, 2006, and ending on June 30, 2007, by thirty-five percent.~~

~~(iv)~~ (i) For the period beginning July 1, 2007, and ending on June 30, 2008, by fifty-four percent.

~~(v)~~ (ii) For the period beginning July 1, 2008, and ending on June 30, 2009, by sixty-eight percent.

~~(vi)~~ (iii) For all periods beginning on or after July 1, 2009, the sales price shall be reduced by one hundred percent.

(b) For purposes of this Paragraph, "machinery and equipment", "manufacturer", "manufacturing", "manufacturing for agricultural purposes","plant facility", and "used directly" shall have the same meaning as defined in R.S. 47:301(3)(i)(ii).

(c) No person shall be entitled to purchase, use, lease, or rent machinery or equipment as defined herein without payment of the tax imposed by R.S. 47:302, 321, and 331 before receiving a certificate of exclusion from the secretary of the Department of Revenue certifying that he is a manufacturer as defined herein.

(d) The secretary of the Department of Revenue is hereby authorized to adopt rules and regulations in order to administer the exclusion provided for in this Subparagraph.

(e) The manufacturer's exemption certificate granted by the Department of Revenue shall serve as a substitute for the sales tax exemption for certain farm equipment.

(29) With respect to the furnishing of telecommunications and ancillary services, as used in this Chapter the following words, terms, and phrases have the meaning ascribed to them in this Paragraph, unless the context clearly indicates a different meaning:

(a) "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(b) "Ancillary service" means a service that is associated with or incidental to the provision of one or more telecommunications services, including but not limited to conference bridging services, detailed telecommunications billing services, directory assistance services, vertical services, and voice mail services.

(c) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(d) "Call center" means one or more locations that utilize telecommunications services in one or more of the following activities: customer services, soliciting sales, reactivating dormant accounts, conducting surveys or research, fundraising, collection of receivables, receiving reservations, receiving orders, or taking orders.

(e) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(f) "Conference bridging service" means a service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging service" does not include any telecommunications services used to reach the conference bridge.

(g) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of the telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but only for the purpose of sourcing sales of telecommunications services under R.S. 47:301.1(A). "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(h) "Customer channel termination point" means, in the context of a private communications service, the location where the customer either inputs or receives communications.

(i) "Detailed telecommunications billing service" means a service of separately stating information pertaining to individual calls on a customer's billing statement.

(j) "Directory assistance" means a service of providing telephone number or address information, or both.

(k) "End user" means the person who utilizes the telecommunications service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(l) "Home service provider" has the same meaning given to such term in Section 124(5) of the Mobile Telecommunications Sourcing Act, P.L. 106-252, 4 U.S.C. 124(5).

(m) "International telecommunications service" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. The United States includes each of the fifty United States, the District of Columbia, and each United States territory, or possession.

(n) "Interstate telecommunications service" means a telecommunications service that originates in one U.S. state, territory, or possession, and terminates in a different U.S. state, territory, or possession.

(o) "Intrastate telecommunications service" means a telecommunications service that originates in one U.S. state, territory or possession, and terminates in the same U.S. state, territory, or possession.

(p) "Mobile telecommunications service" has the same meaning given to such term in Section 124(7) of the Mobile Telecommunications Sourcing Act, P.L. 106-252, 4 U.S.C. 124(7).

(q) "Mobile wireless service" means a telecommunications service, regardless of the technology used, whereby the origination or termination points, or both, of the transmission, conveyance or routing are not fixed, including but not limited to telecommunications services that are provided by a commercial mobile radio service provider.

(r) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, the place of primary use must be within the licensed service area of the home service provider.

(s) "Postpaid calling service" means a telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service, except that the right provided is not exclusively to access telecommunications services.

(t) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(u) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as non-telecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance and which is sold in predetermined units or dollars of which the number declines with use in a known amount.

(v) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(w) "Service address" means:

(i) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(ii) If the location in Item (i) of this Subparagraph is not known, "service address" means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or, in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(iii) If the location in both Items (i) and (ii) of this Subparagraph are not known, "service address" means the location of the customer's place of primary use.

(x) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol service or is classified by the Federal Communications Commission as an enhanced or value-added service. "Telecommunications service" does not include any of the following:

(i) Data processing or information services which allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information.

(ii) Installation or maintenance of wiring or equipment on a customer's premises.

(iii) Tangible personal property.

(iv) Advertising, including but not limited to directory advertising.

(v) Billing and collection services provided to third parties.

(vi) Internet access service.

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3.

(viii) Ancillary services.

(ix) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

(x) Prepaid calling service and prepaid wireless calling service.

(y) "Vertical service" means a service that is offered in connection with one or more telecommunications services which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections.

(z) "Voice mail service" means a service that enables the customer to store, send, or receive recorded messages services. The term "voice mail service" does not include any telecommunications or vertical services that the customer may be required to have in order to utilize the voice mail service.

§301.1. Telecommunications and ancillary services

A. The sales and use tax levied by this Chapter shall apply to the sales price of telecommunications services in accordance with the following sourcing rules:

* * *

B.(1) The sales price of telecommunications services shall include, whether or not separately stated, charges for any of the following:

(a) The connection, movement, change, or termination of telecommunications services.

(b) Conference bridging services and vertical services if the customer's place of primary use is located in this state.

(2) The sales price of telecommunications services shall not include charges for any of the following:

(a) ~~The furnishing of any telecommunications service for resale, including access and other interconnection charges paid by providers of telecommunications services and charges for the use of intercompany facilities pursuant to shared network facility arrangements, provided that any dealer making a sale of telecommunications services for resale shall obtain a certificate from the purchaser of such services certifying that such services are purchased for the purpose of resale, the form of the~~

~~certification to be determined by rules and regulations to be promulgated by the secretary.~~

~~(b) Ancillary services, except those specified in Paragraph (1) of this Subsection, if the nontaxable ancillary service charges are stated separately from the charges for telecommunications services.~~

~~(c)~~ Any excise, franchise, or similar tax or like fee or assessment levied by the United States, by the state of Louisiana, or by any political subdivision as defined in Article VI, Section 44(2) of the Constitution of Louisiana, upon the purchase, sale, use, or consumption of any telecommunications service, which tax, fee, or assessment is collected by the seller from the purchaser.

~~(d) Telecommunications services paid for by inserting coins in coin-operated telephones available to the public.~~

~~(e)~~ <u>(b)</u> Telecommunications services or transactions defined in this Paragraph among entities classified as members of an affiliated group as provided by 26 U.S.C. 1504, provided, however, that these provisions shall not apply to any sale of tangible personal property.

~~(f)~~ <u>(c)</u> Any other property or services that are not telecommunications services if stated separately from the charges for telecommunications services.

* * *

~~D.(1) Notwithstanding any provision of law to the contrary, with respect to sales of interstate telecommunications services to any person for use in the operation of one or more call centers, the tax imposed by this Chapter shall not exceed twenty-five thousand dollars per calendar year.~~

~~(2) The limitation set forth in this Subsection shall apply only to holders of a direct payment number issued by the department pursuant to R.S. 47:303.1. In order to obtain such direct payment number, the applicant must establish that he satisfies the criteria set forth in this Subsection. The provisions of R.S. 47:303.1(B) shall not apply to any application for a direct payment number under this Subsection.~~

~~(3) The department shall not issue any refunds of taxes paid prior to receiving a direct payment number.~~

~~(4) All entities wholly owned by the same person or entity shall be considered a single person.~~

~~E.~~ D. To prevent actual multistate taxation of an interstate telecommunications service subject to the tax imposed by this Chapter, any taxpayer, upon proof that such taxpayer has paid a tax in another state on such service, shall be allowed a credit against the tax imposed by this Chapter to the extent of the amount of such tax paid in such other state.

§302. Imposition of tax

* * *

D. Notwithstanding any other provision of law to the contrary, no sales or use tax of any taxing authority shall be levied on any advertising service rendered by an advertising business, including but not limited to advertising agencies, design firms, and print and broadcast media, or any member, agent, or employee thereof, to any client whether or not such service also involves a transfer to the client of tangible personal property. However, a transfer of mass-produced advertising items by an advertising business which manufactures the items itself to a client for the client's use, which transfer involves the furnishing of minimal services other than manufacturing services by the advertising business shall be a taxable sale or use of tangible personal property; provided that in no event shall tax be levied on charges for creative services which are separately invoiced. <u>The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.</u>

* * *

§303. Collection

* * *

E. Collection of tax on off-road vehicles. (1) The vehicle commissioner shall not issue a title or a certificate of registration on any off-road vehicle purchased in this state or brought into this state from another state until satisfactory proof has been presented to him that all sales taxes required by law have been paid. ~~However, as provided for in R.S. 47:305.56, an out-of-state purchaser of an off-road vehicle shall be exempt from the payment of state sales and use taxes.~~ The purchaser of an off-road vehicle from a seller who is not registered with the Department of Public Safety and Corrections shall pay the sales tax at the time the vehicle is titled the same as is required for the registration and licensing of other vehicles under the provisions of Subsection B of this Section.

* * *

F. Collection of tax on membership in health and physical fitness clubs. The sales tax due under the provisions of this Chapter on contracts for membership in a health and physical fitness club shall be assessed and shall be due and payable on a monthly basis computed on the amount paid each month less any actual or imputed interest or collection fees or unpaid reserve amounts not received by the health and fitness club, provided that no sales or use tax of the state or any of its political subdivisions not collected by such clubs shall be due or payable on amounts collected on such contracts prior to the effective date of the Act originally enacting this Subsection. <u>Solely for state sales and use tax purposes, there shall be no deduction for any actual or imputed interest, collection fees, or unpaid reserve amounts not received by the health and fitness club.</u>

* * *

§304. Treatment of tax by dealer

A. The tax levied in this Chapter shall be collected by the dealer from the purchaser or consumer, except as provided for the collection of tax on motor vehicles in R.S. 47:303 and the collection of tax on property leased or rented for use offshore in R.S. 47:301(4)(d)(ii). The dealer shall collect the sales tax on off-road vehicles and remit them directly to the Department of Public Safety and Corrections upon application for certificate of title and registration as required for the registration and licensing of other vehicles under the provisions of Subsection B of this Section. The dealer shall collect the sales taxes on off-road vehicles from out-of-state residents who purchase off-road vehicles in this state and remit the sales taxes due directly to the Department of Revenue. ~~, unless the requirements of the sales and use tax exemption provided for in R.S. 47:305.56 are met.~~

* * *

§305. Exclusions and exemptions from the tax

A.(1) The gross proceeds derived from the sale in this state of livestock, poultry, and other farm products direct from the farm are exempted from the tax levied by taxing authorities, provided that such sales are made directly by the producers. When sales of livestock, poultry, and other farm products are made to consumers by any person other than the producer, they are not exempted from the tax imposed by taxing authorities.

(2) The gross proceeds derived from the sale in this state of livestock at public sales sponsored by breeders' or registry associations or livestock auction markets are exempted from the sales and use tax levied by the state only. When public sales of livestock are made to consumers by any person other than through a public sale sponsored by a breeders' or registry association or a livestock auction market, they are not exempted from the sales and use tax imposed by the state. ~~This Section shall be construed as exempting race horses entered in races and claimed at any racing meet held in Louisiana, whether the horse claimed was owned by the original breeder or not.~~

(3) Every agricultural commodity sold by any person, other than a producer, to any other person who purchases not for direct consumption but for the purpose of acquiring raw product for use or for sale in the process of preparing, finishing, or manufacturing such agricultural commodity for the ultimate retail consumer trade, shall be exempted from any and all provisions of the sales and use tax imposed by a taxing authority, including payment of the tax applicable to the sale, storage, use, transfer, or any other utilization of or handling thereof, except when such agricultural commodity is actually sold as a marketable or finished product to the ultimate consumer, and in no case shall more than one tax be exacted. For the purposes of this

Section, "agricultural commodity" means horticultural, viticultural, poultry, farm and range products, and livestock and livestock products.

(4)~~(a) The purchase of feed and feed additives for the purpose of sustaining animals which are held primarily for commercial, business, or agricultural use shall be exempted from the taxes levied by taxing authorities.~~

~~(b) For purposes of this Subsection:~~

~~(i) "Commercial use" means the purchasing, producing, or maintaining of animals, including breeding stock, for resale;~~

~~(ii) "Business use" means the keeping and maintaining of animals which are used in performing services in conjunction with a business enterprise, such as sentry dogs and rental horses;~~

~~(iii) "Agricultural use" means the maintaining of work animals and beasts of burden which are utilized in the activity of producing crops or animals for market, in the production of food for human consumption, in the production of animal hides or other animal products for market, or in the maintaining of breeding stock for the propagation of such agricultural use animals.~~

~~(c) This exemption shall not apply to the purchase of feed or feed additives for animals kept primarily for personal, sporting, or other purposes, including but not limited to purchases for pets of any kind or hunting dogs.~~

~~(5)~~(a) Solely for purposes of the sales and use tax levied by the state, such tax shall not apply to the sale or use of materials, supplies, equipment, fuel, and related items other than vessels used in the production or harvesting of crawfish. The person who purchases the exempt items shall claim the exemption by executing a certificate at the time of purchase. The Department of Revenue shall provide the certificates to retail merchants. Any merchant who in good faith, and after examination of the applicability of the certificate to that purchase with due care, neglects or fails to collect the tax herein provided, due to the presentation by the purchaser of a tax exemption certificate issued by the Department of Revenue, including those issued pursuant to R.S. 47:305.10, shall not be liable for the payment of the tax.

(b) Solely for purposes of the sales and use tax levied by the state, such tax shall not apply to the sale or use of bait and feed used in the production or harvesting of crawfish. The person who purchases the exempt items shall claim the exemption by executing a certificate at the time of purchase. The Department of Revenue shall provide the certificates to retail merchants. Any merchant who in good faith, and after examination of the applicability of the certificate to that purchase with due care, neglects or fails to collect the tax herein provided, due to the presentation by the purchaser of a tax exemption certificate issued by the Department of Revenue, including those issued pursuant to R.S. 47:305.10, shall not be liable for the payment of the tax.

~~(6)~~(5) Solely for purposes of the sales and use tax levied by the state, such tax shall not apply to the sale or use of materials, supplies, equipment, fuel, bait, and related items other than vessels used in the production or harvesting of catfish. The person who purchases the exempt items shall claim the exemption by executing a certificate at the time of purchase. The Department of Revenue shall provide the certificates to retail merchants. Any merchant who in good faith, and after examination of the applicability of the certificate to that purchase with due care, neglects or fails to collect the tax herein provided, due to the presentation by the purchaser of a tax exemption certificate issued by the Department of Revenue, shall not be liable for the payment of the tax.

B. For purposes of the sales and use tax of all taxing authorities, the "use tax," as defined herein, shall not apply to livestock and livestock products, to poultry and poultry products, to farm, range and agricultural products when produced by the farmer and used by him and members of his family.

C. ~~For purposes of the sales and use tax of all taxing authorities, where a part of the cost price of a motor vehicle is represented by a motor vehicle returned to the dealer's inventory, the use tax is payable on the total cost price less the wholesale value of the article returned.~~

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

(a) Gasoline.

(b) Steam.

(c) Water (not including mineral water or carbonated water or any water put in bottles, jugs, or containers, all of which are not exempted).

(d) 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.

~~(e) Repealed by Acts 2007, No. 480, §2.~~

~~(f)~~<u>(e)</u> Fertilizer and containers used for farm products when sold directly to the farmer.

~~(g)~~<u>(f)</u> Natural gas.

~~(h)~~<u>(g)</u> All energy sources when used for boiler fuel except refinery gas.

~~(i)~~ <u>(h) Solely for purposes of sales and use tax imposed by a political subdivision.</u> New trucks, new automobiles, new aircraft, and new boats, vessels, or other water craft withdrawn from stock by factory authorized new truck, new automobile, new aircraft dealers, and factory-authorized dealers of new boats, vessels, or other water craft, and used trucks and used automobiles withdrawn from stock by new or used motor vehicle dealers, which are withdrawn for use as demonstrators.

~~(j)~~<u>(i)</u> Solely for purposes of the state sales and use tax, drugs prescribed by a physician or dentist.

~~(k)~~ <u>(j)</u> Solely for purposes of the state sales and use tax, orthotic, including prescription eyeglasses and contact lenses, and prosthetic devices and wheelchairs and wheelchair lifts prescribed by physicians, optometrists, or licensed chiropractors for personal consumption or use.

~~(l)~~ (k) Solely for purposes of the state sales and use tax, the sale or purchase of any ostomy, ileostomy or colostomy device or any other appliance including catheters or any related item which is required as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste.

~~(m)~~(l) Solely for purposes of the state sales and use tax, patient aids prescribed by a physician or a licensed chiropractor for home use.

~~(n)~~(m) Solely for purposes of the state sales and use tax, food sold for preparation and consumption in the home including by way of extension and not of limitation bakery products.

~~(o)~~(n) Solely for purposes of the state sales and use tax, dairy products.

~~(p)~~(o) Solely for purposes of the state sales and use tax, soft drinks.

~~(q)~~(p) Solely for purposes of the state sales and use tax, fresh fruits and vegetables.

~~(r)~~(q) Solely for purposes of the state sales and use tax, package foods requiring further preparation by the purchaser.

~~(s)~~(r) Solely for purposes of the state sales and use tax, any and all medical devices used exclusively by the patient in the medical treatment of various diseases or administered exclusively to the patient by a physician, nurse, or other health care professional or health care facility in the medical treatment of various diseases under the supervision of and prescribed by a licensed physician.

~~(t)~~(s) Orthotic devices, prosthetic devices, prostheses and restorative materials utilized by or prescribed by dentists in connection with health care treatment or for personal consumption or use and any and all dental devices used exclusively by the patient or administered exclusively to the patient by a dentist or dental hygienist in connection with dental or health care treatment. Notwithstanding any other provision of law to the contrary, the exemptions from the state sales and use tax provided in this Subparagraph shall be applicable to any sales and use tax levied by any local governmental subdivision or school board.

~~(u) Solely for purposes of the state sales and use tax, adaptive driving equipment and motor vehicle modifications prescribed for personal use by a physician, a licensed chiropractor, or a driver rehabilitation specialist licensed by the state.~~

(2)(a) Sales of meals furnished as follows:

(i) To the staff and students of educational institutions, including but not limited to kindergartens, if the meals are consumed on the premises where purchased, or if they are purchased in advance by students, faculty, or staff pursuant to a meal plan sponsored by the institution or organization or purchased in advance pursuant to any other payment arrangement sanctioned by the institution or organization and generally available to students, faculty, and staff of the institution or organization, regardless of where such meals are consumed.

(ii) To the staff and patients of hospitals.

(iii) To the staff, inmates, and patients of mental institutions.

(iv) To the boarders of rooming houses.

(v) Occasional meals furnished to the public in educational, religious, or medical organization facilities.

(b) Except as provided for in Item (a)(i) of this Paragraph, the furnishing of such meals shall be exempt from the taxes imposed by this Chapter if the meals are consumed on the premises where purchased.

(3) Food sales by restaurants, drive-ins, snack bars, candy and nut counters, private clubs, and sales made by an establishment not specifically exempted elsewhere who furnish facilities for the consumption of the food on the premises are not exempt from the taxes imposed by taxing authorities.

(4)(a) The exemption for food, drugs, orthotic and prosthetic devices, and wheelchairs and wheelchair lifts prescribed by physicians or licensed chiropractors for personal consumption or use; for patient aids prescribed by a physician or licensed chiropractor for home use; and ostomy, ileostomy, or colostomy devices, or other appliances including catheters or related items required as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste applies only to sales taxes imposed by the state of Louisiana and does not apply to such taxes authorized and imposed by any school board, municipality, or other local taxing authority notwithstanding any other provisions of law to the contrary, and specifically, but not exclusively, R.S. 47:337.8.

(b) However, sales taxes authorized and imposed by any taxing authority shall not apply to the procurement and administration of cancer and related chemotherapy prescription drugs used exclusively by the patient in his medical treatment when administered exclusively to the patient by a physician, nurse, or other health care professional in a physician's office where patients are not regularly kept as bed patients for twenty-four hours or more.

(5)(a) However, sales taxes authorized and imposed by any school board, municipality, or other local taxing authority shall not apply to the sale of prescription drugs under the pharmaceutical vendor program for Title XIX of the Social Security Act as administered by the Department of Health and Hospitals of the state of Louisiana. Beginning January 1, 1999, such taxes shall not apply to the sale of such drugs under Title XXI of the Social Security Act as administered by such department.

(b) The administration of prescription drugs used exclusively by the patient in the medical treatment of various diseases or injuries when administered exclusively to the patient by a physician, nurse, or other health care professional in a physician's office where patients are not regularly kept as bed patients for twenty-four hours or more shall be a professional service.

(c) For the time after July 1, 1999, school boards, municipalities, and other local taxing authorities may by ordinance or resolution provide for the following:

(i) An exemption for the sale of prescription drugs administered as provided for in Subparagraph (b) of this Paragraph, or an exemption for the procurement and administration of chemotherapy drugs used exclusively by the patient in his medical treatment if administered exclusively to the patient by a physician, nurse, or other health care professional in a physician's office where patients are not regularly kept as bed patients for twenty-four hours or more.

(ii) An amnesty for any person who may have been responsible to impose, collect, and/or remit the tax previously imposed on the transactions provided for in Subparagraph (b) and (c) of this Paragraph prior to the time such exemption and/or amnesty is granted according to such reasonable terms and conditions as the respective school boards, municipalities, and other local taxing authorities may adopt.

(6) The exemptions from the state sales and use tax provided in this Subsection in existence as of the effective date of Act 205 of 1978* shall be applicable to any sales and use tax levied by any local governmental subdivision or school board except as otherwise specifically provided in this Subsection. Without determining the validity of any exemptions placed in this Subsection subsequent to the effective date of Act 205 of 1978, all Acts after the 1991 Regular Session placing an exemption in this Subsection which is applicable to a political subdivision must, to be effective, specifically provide in the title and body of the bill that it is applicable to a political subdivision. The exemptions provided in R.S. 47:305(D)(1)(t) are hereby deemed to specifically comply with Act 205 of 1978.

~~E~~ <u>D</u>. It is not the intention of any taxing authority to levy a tax upon articles of tangible personal property imported into this state, or produced or manufactured in this state, for export; nor is it the intention of any taxing authority to levy a tax on bona fide interstate commerce; however, nothing herein shall prevent the collection of the taxes due on sales of tangible personal property into this state which are promoted through the use of catalogs and other means of sales promotion and for which federal legislation or federal jurisprudence enables the enforcement of the sales tax of a taxing authority upon the conduct of such business. It is, however, the intention of the taxing authorities to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state <u>except for tangible personal property kept in inventory clearly marked for use outside of Louisiana</u>, of tangible personal property after it has come to rest in this state and has become a part of the mass of property in this state. At such time as federal legislation or federal jurisprudence as to sales in interstate commerce promoted through the use of catalogs and other means of sales promotions enables the enforcement of this Chapter or any other law or local ordinance imposing a sales tax against vendors that have no other nexus with the taxing jurisdiction, the following provisions shall apply to such sales on which sales and use tax would not otherwise be collected.

~~F~~ E. The sales, use and lease taxes imposed by taxing authorities shall not apply to the amounts paid by radio and television broadcasters for the right to exhibit or broadcast copyrighted material and the use of film, video or audio tapes, records, or any other means supplied by licensors thereof in connection with such exhibition or broadcast and the sales and use tax shall not apply to licensors or distributors thereof.

~~G~~ F. The sales, use, and lease taxes imposed by taxing authorities shall not apply to the purchase or rental by private individuals of machines, parts therefor, and materials and supplies which a physician has prescribed for home renal dialysis.

~~H.~~ G. "Demonstrators" as used in Subsection ~~D~~C of this Section for purposes of the sales and use tax levied by all taxing authorities shall mean all of the following:

(1) New and used trucks and automobiles for which dealer inventory plates may be obtained pursuant to R.S. 47:473, and new aircraft titled in the dealer's name for use as demonstrators which are kept primarily on the dealer's premises during normal business hours and which are available for demonstration purposes. However, the occasional use of a demonstrator by authorized personnel of the dealer shall not disqualify such demonstrator from the exemption herein designated.

(2) New boats, vessels, or other water craft, hereafter, "boats", which comply with all the following:

(a) They are registered in a boat, vessel, or water craft dealer's name with the appropriate agency.

(b) They are reported by the dealer to the department as demonstrators and are clearly identified as demonstrators in the manner required by the department.

(c) They are used by those designated by such dealer for any activity which results in the advertisement, promotion of sales, or demonstration of the qualities of the boat for the purpose of increasing sales of such boats; provided that such use does not occur on more than six consecutive days and does not occur on more than twelve days in any calendar month. The dealer shall keep such logs or other records of such use as shall be required by the department.

(d) They are ultimately sold at retail.

~~I.~~ H. The sales and use taxes imposed by the state of Louisiana or any of its political subdivisions shall not apply to the labor, or sale of materials, services, and supplies, used for repairing, renovating or converting of any drilling rig, or machinery and equipment which are component parts thereof, which is used exclusively for the exploration or development of minerals outside the territorial limits of the state in Outer Continental Shelf waters. For the purposes of this Subsection, "drilling rig" means any unit or structure, along with its component parts, which is used primarily for drilling, workover, intervention, or remediation of wells used for exploration or development of minerals. For purposes of this Subsection, "component parts" means any machinery or equipment necessary for a drilling rig to perform its exclusive function of exploration or development of minerals.

* * *

§305.6. Exclusions and exemptions; Little Theater tickets

The sales tax imposed by <u>local</u> taxing authorities shall not apply to the sale of admission tickets by Little Theater organizations. <u>The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.</u>

§305.7. Exclusions and exemptions; tickets to musical performances of nonprofit musical organizations

The sales tax imposed by <u>local</u> taxing authorities shall not apply to the sale of admission tickets by domestic nonprofit corporations or by any other domestic nonprofit organization known as a symphony organization or as a society or organization engaged in the presentation of musical performances. ~~; provided that this Section~~ This exemption shall not apply to performances given by out-of-state or nonresident symphony companies~~, nor shall this Section apply~~ or to any performance intended to yield a profit to the promoters thereof. The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.

* * *

§305.9. Exclusions and exemptions; motion picture film rental

The sales and use taxes imposed by ~~the State of Louisiana or any such taxes imposed by~~ any parish or municipality within the state shall not apply to the amount paid by the operator of a motion picture theater to a distributing agency for use of films of photoplay. The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.

* * *

§305.11. Exclusions and exemptions; contracts prior to and within ninety days of tax levy

A. No new or additional sales or use tax shall be applicable to sales of materials or services involved in lump sum or unit price construction contracts entered into and reduced to writing prior to the effective date of the statute or ordinance levying same or to sales or services involved in such contracts entered into and reduced to writing within ninety days thereafter, if such contracts involve contractual obligations undertaken prior to such effective date and were computed and bid on the basis of sales taxes at the rates effective and existing prior to such effective date.

B. This ~~section~~ Section shall apply to sales and use taxes now or hereafter levied by ~~the State of Louisiana or by~~ any parish, municipality, or other political subdivision thereof, whether such levy is under authority of general or special laws of the state or under powers granted in local charters or under any other authority or grant of the power to levy and collect sales or use taxes.

C. The provisions of this Section shall not apply to sales now or hereafter levied by the state of Louisiana.

* * *

§305.16. Exclusions and exemptions; cable television installation and repair

The sales and use taxes imposed by ~~the state or by~~ any political subdivision ~~thereof~~ shall not apply to necessary fees incurred in connection with the installation and service of cable television. Such exemption shall not apply to purchases made by any cable television system but shall only apply to funds collected from the subscriber for regular service, installation, and repairs. The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.

§305.17. Exclusions and exemptions; income from coin-operated washing and drying machines in a commercial laundromat

~~State sales~~ Sales taxes imposed by ~~R.S. 47:302 and R.S. 47:321, as well as any sales taxes imposed by~~ any parish, municipality, school board, or other political subdivision, within the state, shall not apply to or be imposed upon the income on receipts from any coin-operated washing or drying machine in a commercial laundromat. A commercial laundromat, for purposes of this Section, is defined to be any establishment engaged solely in the business of furnishing washing or drying laundry services by means of coin-operated machines. The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.

* * *

§305.19. Exclusions and exemptions; leased vessels used in the production of minerals

The taxes imposed by local taxing authorities shall not apply to those vessels which are leased for use offshore beyond the territorial limits of this state for the production of oil, gas, sulphur, and other minerals or for the providing of services to those engaged in such production. The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.

§305.20. Exclusions and exemptions; Louisiana commercial fishermen

A. A Louisiana resident, domiciled in Louisiana, who possesses such valid Louisiana commercial fishing license(s) as may be necessary for commercial fishing ventures, including but not limited to a vessel license issued pursuant to R.S. 56:304, and who is an owner of a vessel operated primarily for the conduct of commercial fishing as a trade or business and which the Louisiana Department of Wildlife and Fisheries determines will be predominantly and principally used for commercial fishing ventures and whose catch is for human consumption shall <u>not</u> be exempt from state sales, use, lease, and services taxes ~~as set forth in Subsection C of this Section~~. Possession of a commercial fishing license issued by the Department of Wildlife and Fisheries shall not be used as the sole determination that a vessel will be used predominantly and principally for commercial fishing ventures. This exemption <u>from state sale, use, lease, and services taxes</u> shall ~~also~~ apply to facilities which process the catch from owners of commercial fishing vessels for which this exemption is granted when such vessels are owned by, or leased or contracted exclusively to, the seafood processing facility.

* * *

~~C. An owner who has obtained a certificate of exemption shall, with respect to the vessel identified in the certificate for the harvesting or production of fish and other aquatic life, including shrimp, oysters, and clams, and certain seafood processing facilities described in Subsection A, be exempt from the taxes described in Subsection A, as follows:~~

~~(1) Taxes applied to the materials and supplies necessary for repairs to the vessel or facility if they are purchased by the owner and later become a component part of the vessel or facility.~~

~~(2) Taxes applied to materials and supplies purchased by the owner of the vessel or facility where such materials and supplies are loaded upon the vessel or delivered to the facility for use or consumption in the maintenance and operation thereof for commercial fishing and processing ventures. For purposes of this~~

~~Paragraph, it shall make no difference whether the vessel is engaged in interstate, foreign, or intrastate commerce.~~

~~(3) Taxes applied to repair services performed upon the vessel or facility. For the purposes of this Paragraph, it shall make no difference whether the vessel is engaged in intrastate, interstate, or foreign commerce.~~

~~(4) Taxes applied to the purchase of gasoline, diesel fuel, and lubricants for the vessel and to sources of energy and fuels for the facility.~~

* * *

§305.28. Exclusions and exemptions; gasohol

A. The sales or use taxes imposed by ~~the state of Louisiana or any such taxes imposed by~~ any parish or municipality or other local entity within the state shall not apply to the sale at retail, the use, the consumption, the distribution, and the storage, to be used or consumed in this state, of any motor fuel known as gasohol, containing a blend of at least ten percent alcohol, if the alcohol therein has been produced, fermented, and distilled in Louisiana from agricultural commodities. Alcohol to be used in gasohol must have been rendered unsuitable for human consumption at the time of its manufacture or immediately thereafter.

B. Gasohol, in order to qualify for this exemption must have been dyed a color which shall be different and distinct from other gasolines. The secretary of the Department of Revenue shall designate the color used and supplied by the dealer in the manufacture of gasohol.

<u>C. The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.</u>

* * *

§305.41. Exclusions and exemptions; Ducks Unlimited; Bass Life

The sales and use tax imposed by ~~the state of Louisiana or any of its~~ <u>any</u> local governmental subdivisions or school boards shall not apply to either the sales of Ducks Unlimited or Bass Life or any of their chapters or any rental or purchase of property or services by Ducks Unlimited or Bass Life or any of their chapters. <u>The</u>

provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.

* * *

§305.43. Exclusions and exemptions; nonprofit organizations dedicated to the conservation of fish or migratory waterfowl; nature of exemption; limitations; qualifications

A. The sales and use taxes imposed by ~~R.S. 47:302, R.S. 47:321, and R.S. 47:331~~ a political subdivision shall not apply to any sales made by a nonprofit organization dedicated exclusively to the conservation of fish or the migratory waterfowl of the North American Continent and to the preservation and conservation of wetland habitat of such waterfowl, when the entire proceeds, except for the necessary expenses connected therewith, are used in furtherance of the organization's exempt purpose. The exemption provided herein 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.

B. Purchases by any organization qualifying hereunder shall be exempt from the payment of any sales or use taxes imposed by ~~the state and its~~ political subdivisions. The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.

* * *

E. An exemption certificate must be obtained from the ~~secretary of the Department of Revenue~~ political subdivision, under such regulations as he shall prescribe, in order for a nonprofit organization to qualify for the exemption provided in this Section.

§305.44. Exclusions and exemptions; raw materials used in printing process

A. The sales and use taxes imposed by ~~the state under R.S. 47:302, R.S. 47:321, and R.S. 47:331 and by~~ any political subdivision shall not apply to purchases



CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

and sales of the following, including all chemical supplies necessary to produce such items whether manufactured by a printer or purchased from a subcontractor:

* * *

§305.49. Catalog distribution; exemption

Notwithstanding any provision of law to the contrary, no sales or use tax shall be imposed by ~~the state or~~ any political subdivision on the value of catalogs distributed, or intended for distribution in the state, without charge to the recipient.

§305.50. Exemption; vehicles used in interstate commerce; rail rolling stock; railroad ties

* * *

F. The sales and use tax imposed by ~~the state, its statewide taxing authorities, or any of its political subdivisions~~ <u>any political subdivision</u> shall not apply to the "sales price" or "cost price" of railroad ties that a railroad purchases prior to long-term preservative treatment and installs into the railroad's track system outside the taxing jurisdiction of the respective taxing authority, whether it be the state, a statewide taxing authority, or a political subdivision.

* * *

§305.57. Exemptions; sale of art work

A. The sales and use taxes imposed by ~~the state of Louisiana or any of its political subdivisions~~ <u>any political subdivision</u> shall not apply to the sale of original, one-of-a-kind works of art from an established location within the boundaries of a cultural product district. <u>The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.</u>

* * *

§305.59. Exemption; charitable residential construction

The sales and use tax imposed by the ~~state of Louisiana and all of its tax~~ <u>local taxing</u> authorities shall not apply to the sale of construction materials to Habitat for Humanity affiliates, Fuller Center for Housing covenant partners located in this state, or the Make it Right Foundation when such materials are intended for use in constructing new residential dwellings in this state. The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.

* * *

§305.61. Exemption; certain water conservation equipment; Sparta Groundwater Conservation District

A. The sales and use tax imposed by all ~~tax~~ local taxing authorities in the state shall not apply to sales of water conservation equipment for use within the Sparta Groundwater Conservation District. Only persons defined as "users" under R.S. 38:3087.133(7) shall be eligible for this exemption.

B. Any person seeking to qualify for this exemption must apply for an exemption certificate with the ~~secretary of the Department of Revenue~~ local taxing authority. Prior to application for an exemption certificate, the applicant must receive certification from the commissioner of conservation that the equipment qualifies as water conservation equipment. The certification by the commissioner of conservation shall be attached by the board to the application for the exemption certificate. In accordance with the powers defined in R.S. 38:3087.136, the board shall determine the types of equipment which qualify as water conservation equipment, provided that such equipment must reduce water consumption by at least twenty-five percent.

§305.62. Exemption; Annual Louisiana Second Amendment Weekend Holiday

* * *

B.(1) Notwithstanding any other provisions of law to the contrary, the sales and use tax levied by ~~the state of Louisiana and its~~ political subdivisions shall not apply to the sales price or cost price of any consumer purchases of firearms, ammunition, and hunting supplies that occur each calendar year on the first consecutive Friday through Sunday of September. The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.

* * *



CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

§305.64. Exemption; qualifying radiation therapy treatment centers

A.(1) ~~The sales and use tax imposed by the state of Louisiana shall not apply to the amount paid by qualifying radiation therapy treatment centers for the purchase, lease, or repair of capital equipment and the purchase, lease, or repair of software used to operate capital equipment.~~ Any political subdivision of this state, including parishes and municipalities, may elect to grant a sales and use tax exemption for the amount paid by qualifying radiation therapy treatment centers for the purchase, lease, or repair of capital equipment and the purchase, lease, or repair of software used to operate capital equipment. The provisions of this Section shall not apply to sales and use taxes imposed by the state of Louisiana.

* * *

B. An exemption certificate shall be obtained from the ~~secretary of the Department of Revenue~~ political subdivision in order for a radiation therapy center to qualify for the exemption provided for in this Section.

~~C. The Department of Revenue shall promulgate rules and regulations in accordance with the Administrative Procedure Act as are necessary to implement the provisions of this Section.~~

§305.65. Exemption; charitable residential construction, rehabilitation, and renovation; limitation

A. The sales and use tax imposed by ~~the state of Louisiana and all of its tax~~ local taxing authorities shall not apply to the sale of construction materials to Hands on New Orleans and Rebuilding Together New Orleans covenant partners located in this state when such materials are intended for use in either constructing, rehabilitating, or renovating residential dwellings in this state which were destroyed or damaged by Hurricane Katrina or Hurricane Rita.

B. No more than five hundred thousand dollars of ~~state and~~ local exemptions authorized pursuant to this Section shall be granted in any calendar year.

~~C. The secretary of the Department of Revenue shall promulgate rules and regulations necessary to implement the provisions of this Section.~~

* * *

§305.68. Exemption; Fore!Kids Foundation

The sales and use tax imposed by ~~the state of Louisiana or~~ any political subdivisions shall not apply to the purchase, use, or rental of materials, services, property, and supplies, by the Fore!Kids Foundation, whose primary purpose is to fund children's service organizations from monies raised from golfing events.

* * *

§305.70. Exemption; "Make It Right Foundation"

The sales and use tax imposed by ~~the state of Louisiana or~~ any political subdivision shall not apply to the sale of construction materials to the "Make It Right Foundation" when such materials are intended for use in constructing new residential dwellings in this state.

* * *

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

A.

* * *

(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 <u>and the return is timely filed.</u>

<u>(b) The compensation permitted a dealer under the provisions of this Paragraph shall not exceed fifty dollars per calendar month. The aggregate state compensation available to a dealer who operates more than one business location</u>



CODING: Words in ~~struck through~~ type are deletions from existing law; words <u>underscored</u> are additions.

within this state and who does not file a consolidated monthly tax report for all locations shall not exceed fifty dollars per month.

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

* * *

§6001. Antique airplanes and certain other aircraft

A. No tax imposed by ~~the state or by~~ any parish, municipality, school board, or any political subdivision of the state shall be imposed on antique airplanes which are maintained by private collectors and not used for commercial purposes, and no personal property tax shall be imposed on any aircraft weighing less than six thousand pounds which is owned by a private individual and not used for commercial or profit making purposes. The exemption from local taxes contained in this Section is granted notwithstanding the provisions of R.S. 47:302, and such exemption shall apply to any sales and use tax levied by any local governmental subdivision or school board.

* * *

Section 4. R.S. 47:305.18, 305.20(C), 305.26, 305.33, 305.40, 305.42, 305.54, 305.56, 305.58, 305.60, 305.64(C), 305.66, 315.2, 315.3, 315.5, 306.1, and Section 4 of Act No. 386 of the 1990 Regular Session of the Legislature are hereby repealed in their entirety.

Section 5. This Act shall take effect and become operative on January 1, 2014, if and when the Acts which originated as House Bill Nos. ____ of this 2013 Regular Session of the Legislature are enacted and become effective. This Act shall become effective on January 1, 2014.

---

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)]

---

Stokes HB No. 714

**Abstract:** Provides for taxability of the sale, use, consumption, rental, distribution, and storage of tangible personal property and the sale of services.

Present law imposes a 4% state tax upon the sale, use, consumption, rental, distribution, and storage of certain tangible personal property and services.

Present law provides with respect to the tangible personal property and services subject to the tax, including numerous exclusions and exemptions of certain property and services from taxation.

Proposed law repeals certain exclusions and exemptions.

Proposed law provides for the taxability of digital goods and services.

Present law authorizes the retention of 1.1% of taxes collected by a dealer to be retained by the dealer as compensation for collection and remittance of the tax to the state. This is commonly referred to as vendors' compensation.

Proposed law changes present law by changing the rate of compensation from 1.1% to 1%, and by limiting the amount of vendors' compensation permitted for each dealer to $50 per month.

Effective Jan. 1, 2014, if and when House Bill Nos. ___ of this 2013 R.S. are enacted and become effective.

(Amends R.S. 4:168 and 227, R.S. 32:707(A), R.S. 47:301, 301.1(B)(2), (D), and (E), 302(D), 303(E)(1) and (F), 304(A), 305, 305.6, 305.7, 305.9, 305.11, 305.16, 305.17, 305.19, 305.20(A), 305.28, 305.41, 305.43(A), (B), and (E), 305.44(A)(intro. para.), 305.49, 305.50(F), 305.57(A), 305.59, 305.61, 305.62(B)(1), 305.64(A)(1) and (B), 305.65, 305.68, 305.70, 306(A)(3), and 6001(A); Repeals R.S. 47:305.18, 305.20(C), 305.26, 305.33, 305.40, 305.42, 305.54, 305.56, 305.58, 305.60, 305.64(C), 305.66, 315.2, 315.3, 315.5, 306.1, and §4 of Act No. 386 of the 1990 R.S.)