

### **Are Parts Used to Repair Rental Property Taxable?**



The Louisiana Department of Revenue and Taxation has recently issued a revenue ruling, Revenue Ruling No. 13-003, that addresses the purchase of lease equipment as well as the repair of lease equipment. Items of tangible personal property purchased for lease or rental reap the benefit of an exclusion from sales tax as provided by La. R. S. 47:301(10)(a) (iii). However, that same statute does not exclude from taxation the acquisition of parts or material obtained for the purpose of repairing/servicing lease or rental equipment that is owned by the lease or rental dealer.

Prior to the International Paper Co. v. East Feliciana School Board court case, 2002-0648, it was a local practice to observe parts and materials purchased for use and consumption by lease/rental dealers who routinely serviced, repaired or maintained tangible personal property held out for lease or rental they owned as not taxable. There was never a question of whether labor and parts/material added during a third party repair were taxable. Effective March 1, 2013, the department will begin holding dealers liable for repair parts and materials added to equipment regardless of whether the tangible personal property is purchased and installed by a third party or by the owner of the lease or rental property. In conclusion, repair parts or materials acquired for the service or routine maintenance of lease or rental equipment

owned by the dealer shall not qualify for the exclusion from sales tax as provided in La. R. S. 47:301(10)(a)(iii).

Dealers who have questions in reference to our new office policy regarding repairs to property owned by the lease or rental dealer are encouraged to consult with an auditor or the administration of our office for confirmation of this new policy.

### **Keeping Adequate Records is MANDATORY**

For a number of reasons, our Sales/Use Tax Ordinance stipulates the requirement of every dealer to keep records. In support of returns filed, proper records must be maintained.

Prior to the adoption of the Uniform Tax Code regulations, commonly known as UTC, the local ordinance is quite factual about preserving adequate records. It states with emphasis that every dealer is required to keep and maintain suitable records of sales, purchases or the purchase or sale of services, as the case may dictate. Further, 47:309 of the UTC communicates the system of records should be suitable enough to support the accuracy of every return filed with the department. Included among the records necessary, but not limited to, are sales invoices, purchase orders, merchandise records, inventory records, bills of lading, shipping records, and all other pertinent records to sales, purchases, or use of tangible personal property, whether or not the dealer thinks they are subject to sales or use tax. Encompassed in this scope of records to keep are the details of property leased or rented in

the instance of both rentals from and to others. It should be noted that bank deposits alone are not suitable records without the backup from other documents including cash register tapes and sales invoices.

The consequences of not making records available for inspection by the Collector or for not preserving adequate records enough to confirm the correct tax liability could subject the violator to a fine up to \$500 for each reporting period or imprisonment for up to sixty (60) days or both as per the provisions of R.S. 47:309 of the UTC.

### **Propane is Not a Motor Fuel**



Lately, several calls to the office have been about propane and its taxable status. Although propane has the quality of producing certain characteristics when used as a source of fuel, for local tax purposes it is not classified as a motor fuel. According to our local ordinance, exemptions do cover sales of Gasoline, Gasohol and Diesel while the sale of propane remains a target for sales tax.

In R.S. 47:305.37 of the State Rules and Regulations, included among the exclusions and exemptions are diesel fuel, butane, propane, or other liquefied petroleum gases used for farm purposes. Likewise, in R.S. 47:305.39, propane is again listed with butane and liquefied petroleum gases as exempt products from state tax when purchased by consumers for private residential heating and cooking. It should be noted that any applicable exemption projected in the state statutes are required by Act 205 (1978)

to include language that clearly states the exemption is applicable to local tax authorities as well. Otherwise, the state exemption is only for state sales and use tax only. While we acknowledge there may be an opening for argument, it is the position of our department that propane is not by definition a motor fuel, and we look at the sale of propane in the same fashion as any other sale of tangible personal property. One argument in connection to uses of propane is its use as a source of fuel to power equipment and especially forklifts. Again, there are no local provisions for any such exemption based on propane use. Therefore it shall be our policy to observe all uses of propane, farm, residential, forklifts and lawn equipment etc. as taxable applications.



### Internet Credit Card

#### Purchases and Nexus

Many businesses are making more and more purchases of consumables on the internet by the use of credit cards. Some larger businesses refer to these company credit cards as "procurement cards" or "P-cards". Smaller companies or businesses prefer using their personal credit cards to make business purchases of consumables. Auditors have found audits that many companies overlook this area of tax liability. One may ask, "are the internet vendors required to charge the local jurisdiction's sales tax?"

Answering that question will require an explanation of the

word "NEXUS." Nexus is a seller having a minimum connection with the local taxing jurisdiction before that local taxing jurisdiction may impose collection duties of the local taxing jurisdiction's sales and use taxes on the seller. Local taxing jurisdictions have found nexus to exist where the seller conducted the following activities:

1. A place of business within the parish;
2. Have sales representatives within the parish making sales visits;
3. An office or warehouse located within the parish;
4. Regularly make deliveries in the seller's own vehicles in the local taxing jurisdiction;
5. Make installation and repairs of goods in a local taxing jurisdiction;
6. Utilized the local taxing jurisdiction's court to repossess goods; or
7. Enjoy the benefits of a local taxing jurisdiction's services such as police protection and use of highways, when performing services in a local jurisdiction for the benefit of customers.

Courts have ruled that nexus can be established by using third party vendors to make repairs on materials located in a taxing jurisdiction.

Some vendors like the large chain stores have places of business in our parish and are obligated to charge the local sales tax on their internet sales to credit card customers. If a business does not have nexus with our parish, then the taxing jurisdiction cannot force them to register and collect local sales tax. Therefore, when you are not charged the correct local tax rate on your credit card internet

purchase, it becomes your responsibility to accrue and remit the local taxes on the local sales and use tax return. Those purchases subject to tax are normally reported on line 14 of the return.



### How to Contact Us

Our main number is **(337) 217-4280** and fax number is **(337) 217-4281**. Extension for general customer assistance is 3413; for administration dial extension 3423; for delinquent returns dial 3406; and for audit information dial 3404.

### Local Office Holidays

Our offices will be closed on the following dates for the holidays mentioned:

Independence Day...July 4, 2013  
 Labor Day.....Sept. 2, 2013  
 Veterans Day.....Nov. 11, 2013  
 Thanksgiving....Nov. 25-29, 2013  
 Christmas/New Year's.....

Dec. 23, 2013 – Jan. 3, 2014

In addition, our regular office hours through May are 8:00 am to 4:30 pm. Summer hours in June and July will be 8:00 am to 4:00 pm. Our office is open during the lunch hour throughout the year.



### Reminder

When our office is closed on weekends or holidays, dealers may use the green drop box located under the breezeway to drop off returns. The box is strategically located for taxpayer convenience, so take full advantage of its availability.