

PUBLICATION

Navigating the Louisiana Legislature's New Sales and Use Tax Labyrinth

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Not even Daedalus could have constructed a labyrinth more complex than the new sales and use tax laws that the Louisiana Legislature adopted in the 2016 First Extraordinary Session that ended on March 9, 2016. Perhaps on a conceptual basis, they seem straightforward. However, the difficulty lies in parsing through the statutory language to determine how these new laws impact a particular transaction given all the cross references, divergent time periods and, in some cases, application by exclusion. This Alert is intended to provide businesses with a step-by-step methodology for finding their way through the new Louisiana sales and use tax maze found in Acts 25 and 26, both of which became effective April 1, 2016.

Source of the Complexity

For the limited period, April 1, 2016 through July 1, 2018, Act 25 (found in new Louisiana Revised Statutes 47:302.V.) specifies by an exclusive list the existing sales and use tax exemptions and exclusions that will apply to the state's two percent sales and use tax imposed under Louisiana Revised Statutes 47:302. Only by their absence from the list can one discern which of the existing exemptions and exclusions will *not* apply during this period to the state's two percent sales and use tax under Section 302. If there is an existing sales and use tax exemption or exclusion that does not appear in the list, then as of April 1, 2016, transactions formerly qualifying for the exemption or exclusion will be subject to the two percent state sales and use tax for this limited period.

Act 25 also specifies by two additional lists (found in new Louisiana Revised Statutes 47:321.L. and 47:321.S.) the exclusive exemptions and exclusions that will apply, respectively, to the state's one percent sales and use tax under Louisiana Revised Statutes 47:321 and to the State's .97 percent and .03 percent sales and use taxes under Louisiana Revised Statutes 47:331 and 51:1286.

What makes it difficult to determine by using these lists what sales and use tax exemptions and exclusions apply to a particular transaction is that the three lists differ from one another in three respects.

The first difference is that the two lists applicable to Louisiana Revised Statutes 47:321, 47:331 and 51:1286 each identify an additional exemption that will apply, the exemption for fuel that is subject to the road-use excise tax, as provided in Article 24 VII, Section 27 of the Constitution of Louisiana. The list applicable to the state's two percent sales and use tax under Louisiana Revised Statutes 47:302 does not include this particular exemption.

The second difference is that the limitation on applicable exemptions and exclusions imposed by the two lists applicable to Louisiana Revised Statutes 47:321, 47:331 and 51:1286 terminates on July 1, 2016, two years earlier than the list of exclusive exemptions and exclusions applicable to the state's two percent sales and use tax under Louisiana Revised Statutes 47:302. Therefore, as of July 1, 2016, some transactions will realize a reduction in the sales and use tax rate as the exemptions and exclusions applicable to half of the state's four percent sales and use tax come back online.

The third difference is that the list applicable to Louisiana Revised Statutes 47:321 differs from the lists applicable to Louisiana Revised Statutes 47:302, 47:331 and 51:1286 in that the list applicable to Louisiana

Revised Statutes 47:321 does not contain the exemption for the purchase, use and lease of manufacturing machinery and equipment as provided in Louisiana Revised Statutes 47:301(3)(i)(i), (13)(k) and (28)(a). Transactions involving the purchase, use and lease of such manufacturing machinery and equipment will be subject to the 1% state sales tax levied under Louisiana Revised Statutes 47:321 for the period April 1, 2016 through June 30 2018.

Adding to the complexity created by differences among the three lists of applicable exemptions and exclusions are the following additional exemption and exclusion provisions under Act 25:

- new Louisiana Revised Statutes 47:331.P. which provides that the exemptions for sales of steam, water, electric power, or energy, and natural gas will be inapplicable, inoperable and of no effect for the period beginning April 1, 2016 through March 31, 2019, as it applies to the taxes levied by Louisiana Revised Statutes 47:331 and 51:1286; and
- new Louisiana Revised Statute 47:331(Q) which provides that the exemption in Louisiana Revised Statutes 47:305.51 for utilities used by steelworks and blast furnaces will be applicable, operable and effective for all taxable periods beginning on or after July 1, 2007 through March 31, 2016 and for all taxable periods on or after April 1, 2019 and that these utilities will be subject to state sales and use tax levied in by Louisiana Revised Statutes. 47:331 for the period April 1, 2016 through March 31, 2019.

For the limited period April 1, 2016 through June 30, 2018, Act 26 (found in new Louisiana Revised Statutes 47:321.1.A., B. and C.) adds a one percent state sales and use tax to the four percent state sales and use tax. And if you are thinking that the same exemptions and exclusions will apply to this one percent that apply under the new law to the remaining portions of the state sales and use tax, you are wrong.

Act 26 provides its own list of the exclusive exemptions and exclusions that will apply to this additional one percent state sales and use tax. The Act 26 list does incorporate in its entirety the list applicable to the two percent state sales and use tax under Louisiana Revised Statutes 47:302 but provides that the state sales and use tax exclusion for manufacturing machinery and equipment will not be in effect from April 1, 2016 through June 30, 2016 and adds another 25 exemptions and exclusions that will apply to the additional one percent state sales and use tax. Therefore, there will be transactions that prior to April 1, 2016 were exempt or excluded from all State sales and use taxes that as of April 1, 2016 will be subject to the pre-existing four percent state sales and use tax but not the one percent additional state sales and use tax.

Steps for Determining Louisiana State Sales and Use Taxes under Acts 25 and 26

Below are the suggested steps for analyzing, as of April 1, 2016, the extent to which a transaction is subject to Louisiana sales and use taxes.

Step 1

- Did your transaction give rise to a Louisiana sales or use tax liability prior to April 1, 2016?
 - If yes, then you will pay an additional one percent state sales and use tax from April 1, 2016 through June 30, 2018.
 - If not, why not?
 - Because your transaction was not subject to sales or use tax? For example, because your transaction involved a non-taxable service.
- If yes, your transaction will not incur any sales or use tax under the new law.

- Because an exemption or exclusion applied?
- If yes, then review the list of exemptions and exclusions found in new Louisiana Revised Statutes 47:302.V.

Step 2

- If your transaction qualified prior to April 1, 2016 for an exemption or exclusion, does your exemption or exclusion appear in the 302.V. List?
 - If yes, then your transaction will not incur any sales or use tax under the new law.
 - Except if your transaction involves the purchase, use and lease of manufacturing machinery and equipment as provided in Louisiana Revised Statutes 47:301(3)(i)(i), (13)(k) and (28)(a)
 - If not, does your transaction involve the acquisition of fuel that is subject to the road-use excise tax, as provided in Article VII, Section 27 of the Louisiana Constitution?
 - If yes, your transaction will be subject to the two percent state sales and use tax under Louisiana Revised Statutes 47:302 from April 1, 2016 through July 1, 2018.
 - If not, your transaction will be subject to the two percent state sales and use tax under Louisiana Revised Statutes 47:321, 47:331 and 51:1286 from April 1, 2016 through July 1, 2016 and will be subject to the two percent state sales and use tax under Louisiana Revised Statutes 47:302 from April 1, 2016 through July 1, 2018.

Step 3

- If your transaction qualified prior to April 1, 2016 for an exemption or exclusion which does not appear in the 302.V. List, is your exemption or exclusion one of the additional 25 exemptions and exclusions listed in new Louisiana Revised Statutes 47:321.1.F?
 - If yes, then your transaction will not be subject to the additional one percent state sales and use tax under new Louisiana Revised Statutes 47:321.1.A. B. and C.
 - Except if your transaction involves the purchase, use and lease of manufacturing machinery and equipment as provided in Louisiana Revised Statutes 47:301(3)(i)(i), (13)(k) and (28)(a)
 - If not, then from April 1, 2016 through June 30, 2018, your transaction will be subject to the additional one percent state sales and use tax under new Louisiana Revised Statutes 47:321.1.A., B. and C.

The Louisiana Department of Revenue has published a chart of state sales and use tax rates for previously exempt and excluded transactions broken down into the periods April 1, 2016 to June 30, 2016, July 1, 2016 to June 30, 2018 and July 1, 2018 through March 31, 2019. On its face, the chart is easy to use; however, to understand how the rates for the various periods were derived, you must perform an analysis similar to that described in the three steps outlined above. Understanding the rules behind the chart, rather than merely relying on the chart, may also help with sales and use tax planning to avoid additional taxes under the new law.

If you would like to discuss the new Louisiana sales and use tax laws and how they might affect your business, or if you have questions regarding any other Louisiana tax issues, please contact the author of this alert, Robert L. Wolfarth, or any of the attorneys in the Firm's Tax Group.