

**FOURTH ANNUAL SALES AND USE TAX SEMINAR
QUESTION AND ANSWER SESSION**

EAST BATON ROUGE PARISH RESPONSE	STATE OF LOUISIANA RESPONSE
<p>1. Is any tax due for material or labor from the consumer for the installation of a patio cover or other equipment that will become a permanent part of the building?</p>	
<p>A company selling and installing patio covers is considered the consumer of the patio cover materials and other equipment that is permanently installed to the building. As the consumer, the patio company must pay sales or use tax on all materials and equipment permanently installed to the building. The patio company does not collect sales tax on the charges for materials and labor billed to the customer.</p>	<p>Contractors are treated as the final consumer of materials incorporated into an immovable and are taxed on the purchase of those materials.</p> <p>R.S. 47:301(10) of the sales tax law defines the term retail sale as a sale to a consumer or to any other person for any purpose other than for resale in the form of tangible personal property. By performing labor upon and passing title to an immovable rather than a movable property, contractors are deemed to be the final consumer of the materials. Contractors are responsible for the sales tax at the time they purchase the materials.</p> <p>Due to a court ruling (Department of Revenue v. Baton Rouge SMSA Limited Partnership d/b/a BellSouth Mobility, 19th JDC, Docket No. 423,577, Division D, June 18, 1998), separately stated installation charges associated with the retail sale of movable property are no longer subject to sales tax.</p>
<p>2. If you have a web site to solicit business, are you included in the nexus for Louisiana or other states?</p>	
<p>According to Rule 128 of the <i>East Baton Rouge Parish Sales and Use Tax Rules and Regulations</i>, a seller has sufficient nexus if the seller has a place of business, sales representatives, an office, or warehouse located in the jurisdiction or if the seller makes deliveries in his own vehicles in the Parish. Internet dealers selling tangible personal property at retail, have nexus only in the local jurisdiction and state where the dealer is physically located.</p>	<p>Internet sales are treated the same as catalog sales for sales tax purposes. If the business has a presence in Louisiana or delivers into Louisiana in its own trucks, it should register for and charge Louisiana sales tax on the sales it makes to Louisiana customers.</p>
<p>3. Will the tax form be available in an electronic format?</p>	
<p>The City-Parish Government is currently installing a digital imaging system to store and input tax returns. Once this system is operational, we will install a system that will allow electronic filing of tax returns and electronic fund transfers.</p>	<p>Taxpayers must use the pre-printed scannable forms issued by the Department for returns that are mailed to the Department. See Question No. 4 for information concerning electronic filing for sales taxes.</p>

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

4. Do you offer electronic filing of sales and use taxes? Can this be done?

Please refer to Question No. 3.

Yes, taxpayers may request filing by Electronic Data Interface, however they must also pay by Electronic Funds Transfer. The Department's web page (www.rev.state.la.us) has a list of vendors who supply the software for this. Information on filing procedures may be obtained from the Management Information Services Division (925-7640).

Effective January 1, 2001, taxpayers may submit state sales tax returns through the Internet as an alternative to preparing and filing traditional paper sales tax returns. This type of filing does not require payment by Electronic Funds Transfer. A payment coupon may be downloaded and mailed to the department along with the appropriate form of payment (check, money order, etc.). Participation is entirely voluntary, but any business that elects to use the Internet Filing Program must be registered for sales tax with the Department and have a current open account. Further information may be obtained from the Sales Tax Division at (225) 925-7356.

5. If I sell a product that is drop-shipped to a customer from a company in another state, do I collect sales tax? If the product is drop-shipped for a Baton Rouge, Louisiana, company, what then?

According to Rule 2 of the *East Baton Rouge Parish Sales and Use Tax Rules and Regulations*, all retail sales of tangible personal property within the parish are taxable and the retail dealer must collect sales tax. Retail sales of tangible personal property delivered out of the parish by the seller's vehicle are taxable in the parish where the buyer takes possession and the seller must collect sales tax. A retail dealer, who has not established nexus, selling and delivering by common carrier to a buyer in another parish does not collect any local sales tax.

There are two primary situations involved in third party drop shipments, both of which are discussed below.

- 1)
 - a. Should A collect the advance sales tax from B?
 - b. If A should not collect the advance tax from B, what documentation should B provide to A?
 - c. If A should collect the advance sales tax, how does B obtain a refund of the advance tax?

The sale of tangible personal property from a point in Louisiana to another point in Louisiana is subject to the Louisiana tax unless a statutory exemption applies. This is an intrastate sale subject to the laws of our state. Customer B is required to be registered as a dealer in this state, remit the advance sales tax to his supplier and collect the sales tax on his sales. Louisiana dealer A is obligated to collect the advance sales tax and report it on his return. Customer B is allowed to claim advance sales tax credit for state taxes paid to A against sales taxes due on the sale to B's customer.

2. This is the same situation except that Louisiana dealer A ships the merchandise from an out-of-state location to customer B's customer in Louisiana.

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

	<p>Answer:</p> <p>The fact that the sale is now in interstate commerce may cause the method of taxation to change, although the ultimate tax due remains the same. If customer B is not a Louisiana-registered dealer and is not required to be by virtue of the fact that B has no physical location here, no property for lease or rental here, no sales representatives (his own employees or independent representatives), and does not purchase property for sale and shipment from a Louisiana inventory to a Louisiana customer, we could not require B to either pay the advance sales tax to dealer A or to collect the tax from his Louisiana customer. In this instance, B must document in a letter to A that B does not meet the conditions outlined above and is therefore not subject to the payment or collection of the state sales tax. B's customer in Louisiana would bear the responsibility for the payment of any due taxes to this Department.</p>
<p>6. I own a drapery workroom. I charge and remit sales taxes on my fabrics and rods, but do I charge tax on installation when using a contract installer?</p>	
<p>Charges for the installation of tangible personal property, when separately stated on the invoice, are not subject to sales tax. This applies to installation charges of a contract installer. Failure to segregate these installation charges will subject the entire amount to the tax.</p>	<p>No. Separately stated installation charges are not taxable.</p>
<p>7. If a seller uses a common carrier to deliver goods outside of the parish, what parish tax does the seller charge?</p>	
<p>According to Rule 2 of the <i>East Baton Rouge Parish Sales and Use Tax Rules and Regulations</i>, a retail dealer, who has not established nexus, selling and delivering tangible personal property by common carrier to a buyer in another parish does not collect any local sales tax. The buyer must pay use tax to the parish where delivery occurs.</p>	<p>Not Answered</p>
<p>8. If a seller in East Baton Rouge Parish uses UPS to deliver to a buyer in Ascension Parish, what tax should the seller charge?</p>	
<p>An East Baton Rouge Parish seller, who does not establish nexus in Ascension Parish, does not collect tax on sales delivered by UPS to an Ascension Parish buyer. The buyer must pay use tax to Ascension Parish.</p>	<p>Not Answered</p>
<p>9. Is freight taxable inbound/outbound?</p>	
<p>Separately stated freight charges billed to a customer on sales invoices are not subject to tax. Freight charges for delivering a product from the manufacturer or wholesaler to a retail dealer are a part of the retail dealer's cost and are included in the sales price of the product sold.</p>	<p>Policy and Procedure Memorandum 70.14 addresses this issue. In summary, charges for the direct delivery of tangible personal property subsequent to the sale are not subject to the tax if separately stated from the sales price of the property. Delivery charges incurred by the vendor in acquiring the property to be sold are taxable when passed through to the customer upon the sale of the</p>

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

	<p>property. This is typically referred to as inbound freight or freight-in.</p>
<p>10. Is it necessary to separate City and Parish for East Baton Rouge Parish? If yes, can I obtain a listing of streets which designates the streets that belong in the Parish and the ones that belong in the City?</p>	
<p>It is important that you use the correct column on the tax report. The taxes are distributed to the local agencies based on the columns used. If you have a question regarding a customer's location, please call the Revenue Division for further assistance.</p>	<p>Not Answered</p>
<p>11. a. If an out-of-state plant sends a tank or boiler to be repaired in Ascension Parish, should both state and local taxes be charged? b. What if the tank or boiler is fabricated and not repaired?</p>	
<p>a. According to Rule 41 of the <i>East Baton Rouge Parish Sales and Use Tax Rules and Regulations</i>, repairs of tangible personal property performed in East Baton Rouge Parish for an out-of-state customer are subject to East Baton Rouge Parish tax on the total invoice amount.</p> <p>b. According to Rule 40 of the <i>East Baton Rouge Parish Sales and Use Tax Rules and Regulations</i>, fabrication of a new tank or boiler which is delivered to an out-of-state customer by common carrier or by the vendor, is not subject to East Baton Rouge Parish sales tax.</p>	<p>The Ascension Parish Tax Authority should be consulted concerning the imposition of any local taxes within that parish on these transactions.</p> <p>Repairs to tangible personal property are subject to the state sales tax if the customer takes delivery of the repaired item within this state. If the repaired item is delivered to the customer at an out-of-state location, the repair is not subject to the state sales tax.</p> <p>Fabrication of tangible personal property is subject to sales tax if the customer or his agent takes title or delivery of the item in Louisiana. If a common carrier or the vendor delivers the item to the customer outside of Louisiana, then it is not subject to Louisiana sales tax. However, it may be subject to the state and local tax at the place of delivery.</p>
<p>12. a. If an Ascension Parish business goes out-of-state to perform repair work, should both state and local taxes be charged? b. What if the work to be performed is fabricated?</p>	
<p>a. Repair services performed in another parish or in another state are not subject to East Baton Rouge Parish sales tax.</p> <p>b. Refer to Question No. 11 (b).</p>	<p>Repairs of tangible personal property performed in Louisiana are generally subject to state and local sales tax. Fabrication of tangible personal property in Louisiana in which possession passes to the customer (or his agent) in this state is subject to state and local taxes. Repairs performed out-of-state where the property does not come into Louisiana is not subject to the Louisiana state sales tax.</p>
<p>13. At what point does a contractor pay sales tax on lumber, tiles, and bricks installed for customers?</p>	
<p>A contractor is the consumer of the materials incorporated in to the immovable and he pays tax when the materials are purchased. The tax is due when the contractor takes possession of the materials, unless the temporary storage provision applies. If the temporary storage provision applies, then the property may be stored in this parish without being subject to our tax.</p>	<p>The contractor is generally considered to be the final consumer of purchases of tangible personal property when constructing real property for his customers. He is responsible for the sales tax at the point of purchase.</p>

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

<p>14. When does a customer pay sales tax for leasehold improvements (such as partitioning of a wall, shelves, cabinets) to his office?</p>	
<p>Same as State's response.</p>	<p>Leasehold improvements classified as real property would not be subject to sales tax by the lessee or lessor if a contractor performed the work. In other words, the contractor purchased the partitions, shelves or cabinets as tangible personal property and then converted it to real property. The contractor is considered the final consumer of purchases of tangible personal property when making leasehold improvements for his customers and is responsible for the sales tax on the cost of the goods at the point of purchase.</p> <p>If the lessee or lessor purchased the wall partitions, shelves or cabinets and made the improvements himself, then he would be considered the final consumer of purchases of tangible personal property and responsible for the sales tax at the point of purchase.</p>
<p>15. I'm a CPA in public practice. Can I have my clients' forms mailed directly to my office?</p>	
<p>Clients' sales tax forms can be mailed to their CPA's address. However, they must send a written request for their mailing address to be changed.</p>	<p>No. There are two main reasons. The first is that our systems are designed only to print the address of the taxpayer's social security number or his account number. The second reason is that the taxpayer is ultimately responsible for the filing of his tax returns. Should there be a change in the relationship between you and your client, it may adversely impact his ability to timely file returns.</p>
<p>16. Is an air conditioner compressor for a central unit taxable as tangible personal property or is it considered real property (specifically relating to repairs)?</p>	
<p>A central air conditioner unit is considered immovable property and if repaired on the owner's property, it is not a taxable repair of tangible personal property. The repairman must pay local tax when the compressor is purchased. If the compressor is removed from the owner's property and repaired at the repair dealer's shop, then it is taxable (parts and labor) as a repair of tangible personal property. Please refer to Rule 41 - Repairs to Tangible Personal Property.</p>	<p>It depends on whom the title of the compressor passes to at the time it is tangible personal property. Generally a contractor is called out to make a repair to a central air unit. In the course of his repair, he finds he needs to replace the compressor. When he purchases the compressor, he takes title to it and pays the sales tax on it. When he bills the customer for the repair, he generally bills for the parts and labor in a lump sum that covers any taxes paid on materials.</p> <p>However, if in the course of the repair, the customer supplies the compressor, then the customer would owe the sales tax on its purchase.</p>
<p>17. If you have a handrail fabricated and installed onto a catwalk attached to a building, what portion, if any, would be taxed if billed as a lump sum v. being billed in details?</p>	
<p>Fabrication of tangible personal property, which is permanently installed to immovable property by the fabricator, is considered a real property construction contract. Tax is due on the cost price of the materials used and</p>	<p>The manner of billing is irrelevant. Since the handrail is being fabricated <u>and</u> installed onto real property such that title passes after installation, the transaction is considered a real property transaction and thus, not subject to</p>

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

the labor is not taxed. The method of billing, lump sum or detail billing, is not important. If the fabricator and the installer are different, then the total charge for the fabricated item is taxable (materials and labor) and the separately stated installation charges are not taxable. Please refer to Rule 40.

sales tax. The contractor owes tax on his cost of the handrail and materials used in the installation. If the handrail were purchased separately by the consumer as tangible personal property, then the consumer would owe the sales tax.

18. Is the design of an Internet web site for a business or an individual taxable as a service?

Internet web site design is not subject to sales tax. However, if the web site design involves the sale of software, then the software is taxable.

Only those services that are specifically enumerated in the statutes under [R.S. 47:301(14)(a) through R.S. 47:301(14)(i)] are subject to tax. Designing a static web site that does not interface with other web sites is currently not a taxable service. However the design and development of web sites involving interfacing software is taxable as the sale of the software is considered a sale of tangible personal property.

19. Is the "hosting fee" charged to a client, to run his web site on an Internet servicing computer located in another state, taxable?

Hosting fees charged to run a client's web site are not subject to sales tax.

Hosting fees or other fees charged to a client to run the client's web site on an Internet servicing computer is not taxable as it is not listed as a service subject to tax in the statutes [R.S. 47:301(14)(a) through R.S. 47:301(14)(i)] unless those charges involve the sale of programming services or computer software within the State of Louisiana. Only those services listed are subject to sales tax.

20. Can I get a refund of sales taxes which were paid on repairs to immovable property from the Parish or the State?

Yes. You must request a refund in writing and also submit a sworn statement indicating the amount paid and the circumstances surrounding the overpayment.

The Department of Revenue will issue refunds or credits as allowed by law. However, in this specific situation, the vendor may have elected to treat the transaction as a sale of tangible personal property with an obligation to install. The Sales Tax Division will verify that a refundable overpayment has occurred before issuing payment. The taxpayer should contact the Department's Sales Tax Division at (225) 925-7356 for information on requesting the refund.

21. Are repairs to property that I am holding for resale subject to sales tax?

Repairs to tangible personal property for resale are exempt from local sales tax provided a resale exemption certificate is given to the repair dealer.

The repair of a resale item qualifies for the same treatment as the original purchase of the inventory. If the vendor is required to pay advance sales tax on the purchase of resale inventory, the repair of resale inventory is also subject to advance sales tax. However, the sales tax paid on the repair qualifies for advance tax credit and may be claimed on line 12 of the sales tax return.

22. Why are gloves in a medical facility taxed when used on a patient and then disposed of?

Medical devices used personally and exclusively by the patient are exempt from the Sewer Improvement tax, the Street Improvement tax, and the Educational Facilities Improvement District tax. Gloves are not used personally or exclusively by the patient and therefore, are subject to local sales tax.

The gloves are consumable items used by medical personnel in providing non-taxable services to patients. They are not being sold to the patient and do not qualify for exemption under the sales tax statutes. The fact that the gloves are disposed of after one use is immaterial.

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

23. Concerning computer services, how do you know what to pay taxes on? For example, if the vendor dials into the system to do a repair, is the service taxable? If the vendor goes on site and repairs without any new software, how is that taxable?

If the software “source code,” the actual program, is rewritten or modified to correct the problem, then the charge for this work is subject to sales tax. If the software “source code” is designed to allow for changes in tables, variable or lists (example, changes FICA rates on payroll) then the charge for this service is not subject to sales tax.

Computer software is tangible personal property [see *South Central Bell Telephone Co. v. Sidney J. Barthelemy, et al*, 643 So. 2d, 1240 LA 1994] and treated the same as any other such property. The repair of tangible personal property is taxable under R.S. 47:301(14)(g). The repair is subject to Louisiana State Sales Tax if the property is located in Louisiana during the repair and not delivered out-of-state after the repair. The customer must accrue and pay the tax on line 2 of their State Sales Tax Return if the vendor is not registered to collect Louisiana State Sales Tax.

See Volume 18 No. 2 April 1998 edition of *The Louisiana Tax Topics* at our web site (www.rev.state.la.us) for further information in this area.

24. If a plant in Ascension Parish is on the Direct Pay program and the plant buys materials from a vendor in Gonzales, does the vendor collect any tax?

A Direct Pay number issued by a local taxing jurisdiction is only valid for purchases and repairs that occur in that jurisdiction. Direct Pay Permits are not valid for purchases and repairs that occur outside the jurisdiction that issued the Direct Pay Permit.

Not Answered

25. What is the current ruling on rental cars as it relates to warranty repairs and customer-pay repairs (City-Parish and State)?

R.S. 47:301 (7) (h) excludes from state and local sales and use tax leases and rentals of motor vehicles by licensed motor vehicle dealers or manufacturers when the vehicles are furnished to customers to fulfill their obligations under warranty agreements. It also provides an exclusion when the applicable warranty has lapsed and the leased or rented motor vehicle is provided to the customer at no charge.

The lease or rental of motor vehicles by licensed motor vehicle dealers [see R.S. 32:1252(14)] and vehicle manufacturers [see R.S. 32:1252(11)] for their customers, while the customer’s own vehicle is being repaired under warranty or when the warranty has lapsed, is excluded from sales tax. The dealer must provide the rented vehicle to the customer free of charge [see R.S. 47:301(7)(h)]. If the customer leases or rents the vehicle directly from the motor vehicle leasing dealer, the charge paid by the customer to the leasing dealer is taxable.

In addition to the General Sales Tax, Louisiana imposes an Automobile Rental Tax [see R.S. 47:551] on the rental of automobiles for a period of 29 days or less. However, this tax does not apply to insurance companies that rent vehicles for their policyholders while the insured’s vehicle is being repaired, automobile dealers that rent vehicles for their repair customers, and individuals or businesses who rent vehicles while their own vehicle is being repaired.

26. Could you please explain the wrecker service tax for the following:

- a. Dealer-owned wrecker
- b. Outsourced to other wrecker services

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

<p>Wrecker services are not subject to sales tax.</p>	<p>Wrecker services are not taxable under Louisiana’s sales tax laws. Also, wrecker services are not taxable when charged by an auto repair facility if separately stated from the repair charges [see <i>McNamara v. Patterson Services, Inc.</i>, 382 So. 2d. 971]. The wrecker services are equivalent to shipping. This rule applies regardless of whether the wrecker service is provided by the repair facility or a separate company.</p>
<p>27. On Line 12 of the Louisiana Department of Revenue sales and use tax form, do you back out the tax before you take a credit?</p>	
<p>Not Answered.</p>	<p>Line 12 of the State Sales Tax return shows two columns and two rows for advance tax purchases. The top row is for purchases taxed at four percent and the bottom row is for purchases taxed at three percent. In the left column include the total amount of the advance purchases not including taxes paid. In the right column include the actual State Sales Tax paid on these purchases at each rate.</p>
<p>28. Does East Baton Rouge Parish consider shipping taxable?</p>	
<p>Refer to Question No. 9.</p>	<p>Not Answered</p>
<p>29. What is the classification and taxability of the following: a. Software (e.g., Excel, Word, etc.) b. The right to use third party products/systems that are not on-site (e.g. bill paying system that is serviced off-site).</p>	
<p>a. According to Rule 56 of the <i>East Baton Rouge Sales and Use Tax Rules and Regulations</i>, canned and customized software is subject to sales tax. b. License fees paid for the use of computer software are subject to sales tax.</p>	<p>As defined by a Louisiana Supreme Court case, software is tangible personal property and is subject to sales tax [see <i>South Central Bell Telephone Co. v. Sidney J. Barthelemy, et al.</i>, 643 So. 2d, 1240 LA 1994]. This includes the sale, lease and repair of custom and prepackaged software as well as programming services. The use of a computerized bill paying system that is maintained and operated by a vendor at the vendor’s location is a nontaxable service.</p>
<p>30. What states provide reciprocity to Louisiana?</p>	
<p>Same as State’s response.</p>	<p>All of the 45 states that impose sales taxes provide some form of reciprocity. Louisiana will reciprocate to the extent the other states provide reciprocity.</p>
<p>31. Do all parishes provide reciprocity to all other parishes? If not, where would this information be available to preparers?</p>	
<p>All parishes provide reciprocity.</p>	<p>Not Answered</p>

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

32. Does a reseller certificate exist for both the Parish of East Baton Rouge and the State of Louisiana?	
East Baton Rouge Parish does issue a resale exemption certificate for purchases of tangible personal property for resale.	The State of Louisiana provides for the payment of advance sales tax by retailers making purchases for resale.
33. Are mileage charges taxable when going to a site to perform repair services?	
All charges for repairs of tangible personal property, including parts, labor, and mileage, are subject to sales tax.	Yes. Any charge required to bring a repairperson to the damaged property is included in the taxable price of the repair. Separately stated charges to bring the damaged property to a repair facility are not included in the taxable price.
34. Who decides if the property is movable v. immovable (customer or service company)?	
The nature of the property determines if it is movable or immovable. Movable property includes tangible personal property which has been declared immovable under Article 467 of the Louisiana Civil Code and property defined in Article 466, which has been removed from the immovable and repaired at the repair dealer's shop.	Louisiana statutes determine if property is movable or immovable. The vendor must ascertain whether property meets the criteria set out by the laws based on information provided by the customer. In some cases however, the customer and vendor may agree to treat a transaction as a sale of tangible personal property with an obligation to install instead of a real property contract.
35. In East Baton Rouge Parish, how do you get credit for sales taxes paid on purchases for resale?	
The ordinances exempt purchases for resale when a properly executed resale exemption certificate is provided to the supplier. Sales taxes paid on purchases for resale <u>cannot</u> be deducted on the sales tax return. The dealer must request a refund in writing and also submit a sworn statement indicating the amount paid and the circumstances surrounding the overpayment.	Not Applicable.
36. Does the State of Louisiana and East Baton Rouge Parish consider the installation of draperies and carpet taxable?	
Please refer to Question No. 6.	<p>Draperies are considered to be tangible personal property and would be subject to tax. This is because they are easily removed from a building without causing significant damage to itself or the building. However, the separately stated installation charges are not taxable.</p> <p>Wall to wall carpet is considered to be part of the building after it has been installed. A carpet retailer may treat the transaction as a sale with an obligation to install. The retailer would charge sales tax on the cost of the carpet only [not the installation charges]. The carpet vendor may also treat the transaction as a real property contract and pay use tax on the cost of his materials. In this case, the retailer would not charge sales tax to the customer for any part of the transaction.</p>

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

37. Are consultation fees for interior decorators taxable?	
Consultation fees included in the selling price of tangible personal property are subject to sales tax even if separately stated on the invoice. However, consultation services that are not a part of the sale of tangible personal property are not subject to sales tax.	No. Consultation fees that are not an integral part of the sale of tangible personal property are not subject to sales tax.
38. What do you do when the company issues a Direct Pay Certificate in another parish?	
A Direct Pay Permit only applies to taxable transactions occurring in the parish that issued the Direct Pay Permit. It does not apply to taxable transactions occurring in another parish.	Not Answered
39. If a phonebook ad is provided by a publisher without charge for one year, is tax due on the ad at market value even though no charge was made?	
Phonebook advertising is not subject to sales tax.	No. Louisiana State Sales Tax is imposed on the sale or rental of tangible personal property and certain specifically enumerated services. Advertising is not included as a taxable service for sales tax. The law governing market value versus cost price primarily concerns the use tax on property imported into Louisiana [See R.S. 47:301(3)(a) and LAC 61:I.4301(C)]. In this case, the tax is based on the actual cost price or the reasonable market value of the tangible personal property at the time it becomes susceptible to the use tax, whichever is less [Emphasis added].
40. Are restaurants purchasing supplies, including disposable cups, plates, forks, and straws, allowed to take advanced tax credit on the Louisiana Department of Revenue Sales and Use Tax return?	
According to Rule 64 of the <i>East Baton Rouge Sales and Use Tax Rules and Regulations</i> , disposable cups, plates, forks, and straws may be purchased under a resale exemption certificate.	Yes. The sale of materials for further processing into articles of tangible personal property for subsequent sale at retail does not constitute a retail sale to the purchaser [See R.S. 47:301(10)(c)(i) and LAC 61:I.4301(C)]. Although non-wholesale purchasers of these items must pay an advanced sales tax [see R.S. 47:306(B)], this tax is allowed as a credit on the purchaser's state sales tax return. To qualify as a material for further processing, the item must become a recognizable and identifiable component of and add benefit to the end product delivered to the customer. Disposable cups, plates, forks, and straws are component parts that add a benefit to the meal by protecting and storing the food. The final customer retains these disposable items with the retail purchase. Non-disposable plates and utensils retained by the restaurant for continuous use are subject to the sales and use tax and do not qualify for the advance tax credit.

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

41. If Company A subcontracts to Company B and Company B ships to owner, are sales taxes due on all levels? How many levels? Company A does not touch the raw materials. Company B modifies the raw materials and ships to owner. Company A bills owner. Company B bills Company A for modification of raw materials. Company B paid sales tax on raw materials, modified materials, and shipped to owners. Company A mainly contractor.

Company A must collect sales tax from the customer on sales of tangible personal property. Company B should have purchased raw materials under a resale exemption certificate.

From the question we must assume that this transaction involves the sale of tangible personal property subject to Louisiana State Sales Tax and that Company A and Company B are Louisiana companies. Unless Company A is a wholesaler, Company B would charge an advance sales tax to Company A on the first transaction [see R.S. 47:306(B) and LAC 61:I.4351(C)]. Company A would then claim this amount as a credit against the sale to the final customer on their sales tax return. The lack of physical contact with the product by Company A does not alter the nature of the transaction. Note that Company B would also be entitled to claim the advance tax credit for state sales tax paid on the purchase of raw materials in the contract.

42. How do I qualify as a tax-exempt manufacturer?

A manufacturer purchasing raw materials for further processing must provide a resale exemption certificate to the raw material supplier, otherwise the manufacturer must pay sales and use tax on the purchase of tangible personal property.

We assume the question asks how a manufacturer would qualify as a wholesaler for state sales tax purposes. A wholesale dealer is a company where 50 percent or more of its sales are not retail sales [see R.S. 47:306(B)(10)(b) and LAC 61:I.4351(C)(1)]. Wholesalers do not pay the advance tax on items purchased for further processing into articles of tangible personal property that will be resold. However, a wholesaler [or manufacturer] must still pay sales or use tax on items acquired for the personal use of the company.

To qualify for a wholesaler or W number, a taxpayer must have three months of sales tax filings verifying that at least 50 percent of their sales are not retail sales. The taxpayer can then file an Application for Advance Sales Tax Exemption W Number [form R-1318] with the Sales Tax Division of the Department of Revenue. The Sales Tax Division will process the return and notify the taxpayer if they qualify for the exemption.

When the taxpayer is notified that they qualify for a W number, they must supply their vendors with an LGST-9 exemption certificate as evidence of the exemption. The exemption certificate must only be used on purchases for resale. Misusing the certificate will subject the W number holder to revocation of their exempt status.

43. When items are purchased for lease, and sales or use tax is paid at that time and then the item is sold with taxes collected, is credit allowed for taxes paid on the purchase?

If the item is never rented/leased, then the taxpayer can request a refund of the sales taxes paid.

Currently, Louisiana does not impose a state sales tax on items purchased for subsequent lease or rental [see R.S. 47:301(10)(a)(iii) and R.S. 47:301(18)(a)(iii)]. Therefore, no state sales or use tax would have been paid on the original

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

	<p>purchase of the item. If local sales or use tax is paid on an item purchased for lease or rental, these taxes cannot be claimed as a credit against the state sales taxes collected in a subsequent taxable [i.e., not occasional] sale of that item. Also, sales tax collected on the lease or rental payments are not allowed as a credit against the tax collected on the sale.</p>
<p>44. A commercial swing set is located in Livingston Parish (property and swing owned by customer) and the swing frame is concreted in the ground. The company that contracted to refurbish the swing set is located in East Baton Rouge Parish. The swing hangers, chains, and swing seats are replaced. Is this considered a repair vs. fabrication? Is this tangible or real property? Is it taxable in East Baton Rouge or Livingston Parish?</p>	
<p>This is a repair of tangible personal property and it is taxable in Livingston Parish.</p>	<p>Not Answered</p>
<p>45. Customers come to my facility to compete in a “virtual computer scenario” that I create. They pay on a per hour basis to compete in computer-generated worlds while using my computer systems. While the simulation is happening, the Game Master (employee) has frequent contact with the customer and equipment. The employee tabulates scores, monitors the system, announces rules, awards prizes, etc. throughout the simulation. Is this a non-taxable service or a rental?</p>	
<p>The hourly charge is taxable as an admission to places of amusement.</p>	<p>As defined by R.S. 47:301(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. An exception to this is the lease or rental of property with an operator [see LAC 61:I.430 1(C) Lease or Rental]. In this situation the owner, or his employee, is actually operating the equipment and thus providing a nontaxable service instead of a lease or rental. However, the mere presence of the owner’s employee does not automatically classify the transaction as nontaxable. The employee must maintain sufficient control over the property to remove the transaction from the description of a bare rental. Some examples are provided in the regulation for guidance.</p> <p>Although each transaction must be judged individually, if the customer can operate the equipment without direct control by the owner’s employees it is usually a taxable rental. From the information given in the question, it appears that the customers may not have sufficient control to classify this as a taxable rental. However, some additional information should be obtained before a final answer is confirmed. For example, can customers access the “virtual computer scenario” only through the “Game Master?” Can the owner’s employee stop the program at any time? Does the customer have the right to alter the program to suit their needs?</p> <p>If a taxpayer wants a personal ruling dealing with their specific situation, they should send a letter to the Director of the Sales Tax Division, Louisiana Department of Revenue, P. O. Box 201, Baton Rouge, LA 70821.</p>

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

46. In Rule 35H, is the rental property taxable or non-taxable? There is not a clear answer in the regulations. Also, what is the State's and other local authorities' opinion on this matter?

If the equipment is furnished with an operator, then the transaction is a non-taxable service.

R.S. 47:301(10)(a)(iii) excludes property purchased for subsequent lease or rental from state sales and use tax. This exclusion only applies to "bare" lease or rental property. Equipment purchased to provide a non-leasing service is subject to state sales and use tax.

R.S. 47:302(B), 321(B), and 331(B) levy a tax on the lease or rental of tangible personal property. R.S. 47:301(7)(a) defines lease or rental as the leasing or renting of tangible personal property and the possession or use thereof by a lessee or renter, for a consideration, without transfer of the title of such property. However, when the owner of the property exerts control over the property by furnishing an operator, he is in fact performing a service and not leasing or renting [see LAC 61:I.4301(C)]. Examples of this are transactions where the owner provides a driver of a truck or crane operator with the crane. The transaction is still classified as a lease or rental if the owner only provides technical assistance, such as an engineer or computer programmer and is unable to operate the equipment without personnel furnished by the lessee.

47. An item is purchased by a vendor for resale and the vendor is not a wholesaler. Does the advanced tax credit apply? If so, what is the purpose of the advanced tax credit?

Not Answered.

Yes. Louisiana vendors that do not have a wholesale or W number account must pay advanced sales tax on merchandise purchased for resale [see R.S. 47:306(B) and LAC 61:I.4351(C)]. The vendors claim credit for the state sales tax paid on these purchases against the sales tax collected from their customers. The difference is remitted to the Department of Revenue on the state sales tax return. This method ensures that the correct amount of tax is remitted to the State.

The advanced sales tax only applies to sales between Louisiana registered dealers. A vendor should not accrue use tax on resale merchandise purchased from a company that is not registered to collect Louisiana sales tax.

48. Is computer technical support (telephone support in particular) taxable at the state and local levels?

Telephone support is not taxable if it is separately stated on the invoice.

From the question, we assume that the technical support does not involve any maintenance or repair services. If the technical support only entails the providing of information to computer users, it is not subject to state sales tax.

49. Is the sale and/or rental of medical equipment to a person in the home supported with a certificate of medical necessity (prescription) taxable at the state and local levels?

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

<p>The sale of medical devices is only subject to 3% East Baton Rouge Parish tax. These devices are exempt from the 1/2% Sewer Improvement tax, the 1/2% Street Improvement tax, and the 1% Educational Facilities Improvement District tax.</p> <p>The rental of medical devices is subject to 5% East Baton Rouge Parish tax. The rental of medical devices is not exempt from the sewer, street, and school district tax.</p>	<p>Louisiana provides two exemptions relating to the lease or rental of medical equipment. The sales, use, and lease taxes imposed by the State does not apply to the purchase or rental of machines, parts, materials, and supplies prescribed by a physician for home renal dialysis [see R.S. 47:305(G)]. Also, state sales tax paid on the sale, lease, or rental of corporeal movable property paid under the provisions of Medicare is refundable [see R.S. 47:315.3]. These are the only exemptions relating to the rental of medical devices in the home.</p>
<p>50. If an item is paid for by Medicare or Medicaid, is it taxable or non-taxable at the state and local levels?</p>	
<p>Sales of medical devices and equipment paid by Medicare are subject to 3% East Baton Rouge Parish sales tax. These items are exempt from the sewer, street, and school district tax. Effective July 1, 2000, persons paying sales tax on the purchase or rental of medical equipment may apply for a refund of the local sales tax paid on the amount paid by Medicare.</p> <p>Medical devices and equipment paid by Medicaid are exempt from the 5% East Baton Rouge Parish sales tax.</p>	<p>Medicare is a federally supported insurance program. R.S. 47:315.3 provides for the refund of state sales and use tax upon the sale, lease, or rental of tangible personal property paid for under the provisions of Medicare. Medicaid is a state run program that provides medical assistance for Louisiana citizens. Because Medicaid is funded by the State, it is not subject to state and local taxes.</p>
<p>51. Can you please discuss House Bill No. 27, which was passed on July 5, 2000?</p>	
<p>Act 22 (HB 27) Second Extraordinary Session, 2000 - Amends R.S. 47:315.3(A), which provides for refunds of local sales and use taxes paid on the sale or rental of certain tangible personal property covered by Medicare.</p>	<p>House Bill 27 (Act 22 of the 2000 2nd Extraordinary Session) extends the provisions of R.S. 47:315.3 to local sales and use taxes. This law provides for the refund of sales taxes paid on the sale, lease, or rental of tangible personal property that is paid by or under the provisions of Medicare.</p>
<p>52. Who is responsible for the sales tax in the following cases:</p> <p>a. A customer hires a contractor to do improvements to his office. Will the contractor's labor be considered as installation? In this case, is installation the same as repairs since the contractor may tear down the old stuff and install new items. We will call it leasehold improvements and not repairs, because we add a lot of new items. As a contractor, what is his sales tax liability? As a customer, what is his sales tax liability? If the contractor did not collect all the necessary sales tax from the customer, is the customer liable for the sales tax?</p> <p>b. A customer hires a computer specialist to install software on his computer. From time to time, the customer also requests assistance from the computer specialist to solve his computer problems. The invoice consists of labor charged by hours spent on the job, software, parts, freight, and travel. As a computer specialist, what is his sales tax liability? As a customer, what is his sales tax liability? If the computer specialist did not collect all the required sales tax from the customer, will the customer be responsible to remit the sales tax?</p>	
<p>a. Contractors provide labor and materials to improve real property and are not liable for the collection of sales taxes on their contracting revenues. Contractors are considered the ultimate consumer of the materials which become affixed to real property. The contractor's labor is not considered an installation of movable property. The customer is</p>	<p>From the information given in part (a), it appears that the contractor is performing work on real [or immovable] property. Repairs or improvements to real property are not subject to sales tax. The contractor is the final consumer of the tangible personal property incorporated into the real property contract. The contractor pays the sales tax on these materials to his vendor or accrues</p>

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

not liable for any sales tax.

b. The computer specialist must collect and remit sales tax on sales of computer software and repairs of hardware. Separately stated installation charges associated with tangible personal property are not taxable. All charges for the repair of hardware, including parts, labor, travel, etc., are subject to sales tax. If the computer specialist fails to collect sales tax, then the customer must pay tax on the cost price of the software and repairs.

and remits the tax directly to the Department of Revenue. The taxes will become part of the contractor's costs.

If the contractor removes real property from the premises and performs a repair on that property while it is in a movable state, the service is a repair of tangible personal property and subject to sales tax [see R.S. 47:301(14)(g)(ii)]. The tax is the responsibility of the contractor to collect and the customer to pay. Either party could be held liable for failure to pay the tax.

In part (b), the vendor performs several duties. The installation described in the first sentence implies that the software belongs to the customer and the vendor merely installs it. This installation is not subject to sales tax. Also, if the computer specialist sells the software to the customer and separately charges for installing the software, the installation charges are not subject to sales tax [see R.S. 47:301(13) and Department of Revenue v. SMSA Limited Partnership d/b/a/ BellSouth Mobility, 19th JDC, Docket No. 423,577, Division DJ].

In the second sentence the customer requests that the computer specialist solve his computer problems. If this entails a repair of the software or hardware, then the transaction is a taxable repair under R.S. 47:301(14)(g)(i). The labor charges, the new software, the parts, and the travel expenses are all included in the cost of the repair and are subject to sales tax. If the freight charge is for shipping to the computer specialist, those charges are included in the cost of the repair also. However, if the freight is a separately stated charge for shipping to the customer, then the charge is not subject to sales tax. As above, the computer specialist is responsible for collecting the tax and the customer is responsible for paying the tax. Either party could be held liable for failure to pay the tax.

The tax is the responsibility of the computer specialist to collect and the customer to pay. If the computer specialist [vendor] does not properly collect the tax, he is personally liable for paying the tax. If the vendor does not collect the tax, the customer is liable for paying the tax and should report the tax due on this item on their sales tax return.

53. We would appreciate a discussion on what is taxable in reference to construction. On purchases that are installed, what is taxed to the owner?

Please refer to Questions 1, 13, and 52(a).

The construction of real or immovable property is not subject to sales or use tax. The contractor pays tax on the tangible personal property that he installs to the real property. The tax is a cost the contractor must consider when billing his customer. However, contractors that fabricate, install, or repair tangible personal property have several possible tax treatments to consider.

Fabrication, installation, and repair charges are separate and distinct in the sales

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

	<p>tax law, although they are often the same activity. A labor charge for adding an item to tangible personal property prior to a sale is included in the taxable sales price. An example is where a customer wants a luggage rack added to a vehicle before signing a purchase agreement. A labor charge for installing the rack is taxable even if it is separately stated. Fabrication includes a situation where the customer supplies the raw materials used to create the final product. R.S. 47:301(12) defines a sale to include the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work. An example is where a vendor builds a luggage rack from materials supplied by the customer. The labor charges for building the rack are taxable.</p> <p>Labor charges for adding articles to tangible personal property after the sale are installations and not taxable when separately stated [see R.S. 47:301(13)]. If the customer purchases a vehicle and later returns to acquire a luggage rack, the separately stated charge for installing the luggage rack is not taxable although the sale of the rack will be. Also, if the customer purchases a vehicle with a luggage rack and returns to the dealer to replace it with a better or different style of rack, the labor charges for replacing the rack are not subject to sales tax. This matter was recently litigated in court [see <u>Department of Revenue v. Baton Rouge SM SA Limited Partnership d/b/a BellSouth Mobility</u>, 19th JDC, Docket No. 423,577, Division D].</p> <p>Labor charges for the repair or replacement of a defective item is considered a repair. If the customer purchases a vehicle with a luggage rack that is later damaged, the charge for replacing the rack is considered a repair and subject to sales tax [see R.S. 47:301(14)(g)(i)]. Separately stating the labor charge is immaterial.</p>
--	---

54. Barbara Roe stated that it was valid to itemize repairs to a central air conditioning unit (i.e. parts, labor, etc.) and still be non-taxable. Is this method acceptable for East Baton Rouge Parish also?

<p>Yes. According to Rule 43 of the <i>East Baton Rouge Sales and Use Tax Rules and Regulations</i>, the repair of im movable property is not a taxable service. This service is not taxable whether billed in a lump sum or itemized separately. The repair dealer is the consumer of the parts and materials used and must pay sales or use tax at the time of purchase.</p>	<p>Not Answered</p>
--	---------------------

55. Is there an easy way to determine the jurisdiction of tax? (i.e. Column A, B, C, D on parish tax). The bookkeeper normally has no knowledge of location. Is there a map available? When doing a return on another parish, this gets confusing.

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

<p>Please refer to Question No. 10. You should contact the other parishes to request a map or street listing. You should also discuss the proper taxing jurisdiction with your customer.</p>	<p>Not Answered</p>
<p>56. When listing exemptions for direct pay, do you need to list the name of the company or just put "direct pay"?</p>	
<p>You must identify the company name on the tax return. For example, "Direct Pay - ABC Company."</p>	<p>We are unclear about the context of this question. Anytime a company claims to be exempt from tax on purchases because they possess a direct pay number, they should provide an exemption certificate to their vendors. Vendors are required to maintain copies of the exemption certificate as evidence that the customer is exempt.</p> <p>When reporting the exemption on your sales tax return, the vendor is obligated to maintain their records in a manner that can be readily verified. You do not have to list each exempt customer on the sales tax return, but your records should be kept so that an auditor can track the sales reported on the return to the specific invoices to which they relate.</p>
<p>57. Is a Direct Pay number valid on lump sum contracts involving real property? One of my customers insists on using their DP number and asking that we itemize labor and materials on real property contracts. I normally ignore their instructions and remit state and local use tax on the material portion of the job.</p>	
<p>No. A Direct Pay Permit only applies to the sale/rental of tangible personal property and sales of services. It does not apply to a real property contractor who is working for a company that has a Direct Pay Permit.</p>	<p>A customer that holds a Direct Pay number cannot legally compel a real property contractor to charge sales tax for materials even if the labor and materials are separately stated on the invoice. Normally the contractor pays sales or use tax on his cost of the tangible personal property used on the job. A June 26, 1996, Louisiana 2nd Circuit Court of Appeals decision clarified the contractor's responsibility in this matter [see <u>Clyde Juneau Company, Inc. v. Caddo-Shreveport Sales and Use Tax Commission</u>, 677 So. 2d 610, La. App. 2d Cir., 1996.] The case was discussed in the Louisiana Tax Topics [Volume 17, No. 1 published January 1997].</p> <p>A contractor and a customer may agree to treat the transaction as a retail sale of tangible personal property with an obligation to install. Here the customer takes title to and the risk of loss for the tangible personal property before it is installed in the real property contract. The contractor would charge sales tax on the materials' portion of the contract only. The labor charges [installation] are not subject to sales tax. However, this alternative may change the local occupational license classification from contractor to retailer for those jobs.</p>

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

58. Some customers with “W” numbers insist on trying to use their “W” number for purchases on which they are the final consumer. It is difficult to keep them from backing taxes out on our invoices.

A “W” number must be used only on purchases for resale. You must collect sales tax on purchases for use or consumption.

Taxpayers that have wholesale or “W” numbers are required to pay sales tax on purchases for their personal use. If you suspect that a company is misusing their “W” number certificate you should report this to the Sales Tax Division of the Louisiana Department of Revenue. Sales Tax Officials may handle the matter or refer it to the Department’s Field Services Division. Penalties for misuse of an exemption certificate include revocation of the taxpayer’s exempt status.

59. Under Article 466 of the Louisiana Tax Code, your newsletter states that the dealer must pay sales or use tax on materials or parts purchased. I regularly get charged tax on central air conditioner repairs that I view as “Real Property” repairs. It is difficult for a small dealer to include sales or use tax in a “lump sum” price of a part used in real property repair. Many times a technician may not know which parts will be required, and it is difficult for a dealer to “pre-price” a part with tax included in the sales price, due to multiple taxing entities. What difference does it make as to whether the tax is included, or is added separately to the sales price of the part, as long as taxes on the sale are remitted? The State/Parish comes out ahead if taxes are charged on the sale in lieu of the dealer including “Use Tax” based on the cost of the part.

The ordinance only taxes repairs of tangible personal property and not repairs of immovable property. Also a recent court case, Clyde Juneau Company, Inc. v. Caddo-Shreveport Sales and Use Tax Commission, held that parts used by the contractor in the repair of an immovable were not a sale of tangible personal property.

This matter was addressed in a case where judgement was rendered on June 26, 1996, by the Louisiana 2nd Circuit Court of Appeals [see Clyde Juneau Company, Inc. v. Caddo-Shreveport Sales and Use Tax Commission, 677 So. 2d 610, La. App. 2d Cir., 1996]. In that decision, the contractor was held liable for sales or use tax on the cost of the materials used to repair immovable heating and air-conditioning systems even though the separately stated charge for materials on the repair dealer’s invoice was higher than his cost. The contractor could not be forced to collect sales tax on these materials from his customer.

As a matter of practice, the Department does allow real property contractors to treat their contracts as retail sales of materials with an obligation to install them. Under this scenario, the sale of the materials would be subject to sales tax but the installation would not. However, most contractors find the former method preferable since the total cost to the customer is less.

60. Can I get more information concerning the State and Ascension Parish’s sales and use tax code requirements regarding the purchases of video movies that are used entirely for rental?

Act 1266 of 1999 provides an exclusion from local sales and use tax for all tangible personal property purchased for lease or rental. The legislation provides for the following phase-in of the exclusion:

- Beginning July 1, 1999, and ending June 30, 2000, one-fourth (1/4) of the sales or cost price is excluded.
- Beginning July 1, 2000, and ending June 30, 2001, one-half (1/2) of the sales or cost price is excluded.

Under R.S. 47:301(10)(a)(iii), the purchase of tangible personal property for lease or rental is not subject to Louisiana State Sales Tax. This includes movie videos purchased for rent. Note that if the video rental dealer regularly sells used videos to the public, these sales are taxable and a credit is not allowed on the original purchase of the videocassette.

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

- Beginning July 1, 2001, and ending June 30, 2002, three-fourths (3/4) of the sales or cost price is excluded.
- Beginning July 1, 2002, one hundred (100%) percent of the sales or cost price is excluded.

61. Does the Louisiana Department of Revenue require that shipping/handling and freight be taxed?

Same as State's response.

Charges for shipping from the vendor or his supplier directly to the customer are not subject to sales tax [see R.S. 47:301(3)(a) and Pensacola Construction Co. v. McNamara, 558 So.2d 231, Sup. Ct., 1990]. However, charges for shipping from the supplier to the vendor are considered part of the vendor's cost of merchandise and are taxable even if separately stated on the invoice. Handling charges are also considered to be part of the selling price. If shipping and handling charges are combined on the invoice, the entire amount is considered to be taxable.

Often, a vendor describes the cost of shipping a product to his customer as shipping and handling. The description requires the Department to assume the item to be taxable, unless the taxpayer can prove that it only includes charges for shipping.

62. If we buy tubes to be used to repair or fabricate at a plant site that will become part of the permanent structure of the unit and we are not charged sales tax on the sale of the tubes, do we need to pay use tax to the parish and state where the tubes were delivered?

If this is a repair to immovable property or a real property contract, then sales or use tax is due when the tubes are purchased.

From this question, we assume that your company installs the tubes in a manufacturing or chemical plant that is immovable property. If this assumption is correct, your company is the final consumer of the tubes as tangible personal property. When you install the tubes in the plant, they have been rendered immovable. Your company should pay the state sales tax or use tax on the cost of the tubes [less credit for tax paid to another state if you took delivery of the tubes outside of Louisiana].

63. If we are billed for services which state labor and materials, but which are not broken out, do we need to pay use tax on this? (This would be in instances where we got another company to weld a specific tube).

Please refer to Question No. 62. The other welding company referenced in your question must pay sales and use tax when the tubes are purchased.

The note persuades us to believe that the welding is some type of repair. The taxability of this repair depends on the status of the tube when the welding was performed. If the tube is part of the plant [i.e., immovable property], then the service is not taxable and the repair contractor owes sales or use tax on the cost of his materials. If the tube is removed from the premises and repaired at the contractor's shop, this is a taxable repair of tangible personal property [see R.S. 47:301(14)(g)(ii)]. Both the labor and material charges are taxable. Also, if the repair is performed before the tube is installed in the plant, the repair is taxable. If the transaction involves an installation of an item to the tube, the

EAST BATON ROUGE PARISH RESPONSE

STATE OF LOUISIANA RESPONSE

	<p>installation charge is not taxable. For more detail on installation versus repair charges, refer to Question No. 53.</p>
<p>64. When a company goes out to a site and takes x-ray pictures of welds, are they required to pay use tax on the x-rays?</p>	
<p>Same as State's response.</p>	<p>A company is providing a professional service if it uses x-rays to determine the quality of a welding job and then relates those findings to a customer. Including the developed x-rays with the report is immaterial. The value of this transaction is in the information provided by the report and not the x-ray [see R.S. 47:301(16)(e)]. The x-ray film is a consumable to the vendor who must pay sales tax [or accrue use tax] on the purchase of this item.</p> <p>A company is making a taxable sale if it takes x-rays of welds and delivers the developed pictures to a specialist who will interpret them. In this case the vendor would charge tax on the sale of the x-ray pictures and claim advance tax credit on their purchases of the film.</p>