

RULE

**Department of Revenue and Taxation
Sales Tax Division**

Rental Exemption Definitions (LAC 61:I.4301)

Under the authority of R.S. 47:301(7) and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Sales Tax Division, has amended LAC 61:I.4301 pertaining to the definition of lease or rental.

The Department of Revenue and Taxation has determined along with exhibitors (motion picture theater owners) and motion picture distributors that certain contracts entered into by the parties do not fall under the definition of a lease or rental. These contracts have evolved over the years from agreements that simply charge an amount per day or showing for the use of the film, to contracts that specify many different conditions, such as, the number of times the film is shown, the amount charged to the patrons, and the type of facilities in which the film is to be shown. The amendment is not specific to agreements between theater owners and distributors but addresses any contract of this nature. A reference is made in LAC 61:I.4409, which is the rule dealing with the exemption for motion picture film rental.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue and Taxation**

Chapter 43. Sales and Use Tax

§4301. Definitions

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1. - 6. ...

7. *Lease or Rental*

a. General. The terms *lease or rental* as used in this Chapter have the commonly accepted meaning, that is, the granting of possession or use of tangible personal property by the owner thereof to another person for a consideration without the transfer of title to the property. Re-leases or sub-leases and re-rentals or sub-rentals are also considered as leases or rentals.

b. Exceptions. Some arrangements or agreements for the use of tangible personal property, whether specifically mentioned in the statute or implied by the nature of the agreement or arrangement, are not considered leases or rentals. The types arrangements or agreements that are not defined as leases or rentals are:

(i). the lease or rental for re-lease or re-rental of property to be used in connection with the operating, drilling, completion, or reworking of oil, gas, sulphur, or other mineral wells. The lease or rental for re-lease or re-rental of casing tools, pipe, drill pipe, tubing, compressors, tanks, pumps, power units, and other drilling or related equipment qualifies for exclusion if the property is to be used for one of the specified purposes. The re-lease or re-rental to the ultimate user is not exempt.

(ii). the lease or rental of property with an operator. When the owner of the property exerts control over the property by the furnishing of an operator, he is in fact performing a service and not leasing or renting. As an example, the owners of various types of equipment such as boats, draglines, trucks, tractors, or automobiles may furnish the equipment to the user complete with an operator. In this situation, the owner of the equipment is performing a service, even though the person paying the fee directs the specific use of the equipment. The owner, through furnishing the operator, has retained sufficient control over the property to remove it from the rented or leased category. The fact that a separate charge is made for the salary of the operator is immaterial. This is not to say that when the owner of the property furnishes advisory or engineering personnel, with or without charge, to the lessee that the agreement would not qualify as a lease or rental. For instance, the fact that a computer manufacturer furnished a full-time engineer, a full-time programmer, and a full-time computer operator to an installation having its own programmers and operators would not change the nature of the lease covering the equipment. Similarly, an engineer or superintendent furnished with the equipment does not alter the rental charges for use of the equipment, if the owner would be unable to operate the equipment without personnel furnished by the lessee.

(iii). agreements, joint ventures, arrangements, or partnerships between exhibitors (movie theater operators) and film distributors that place significant restrictions on the use of the movies and on the proceeds

from the use of the movies. For example, an agreement between an exhibitor and a film distributor that stipulates that the proceeds from the showing of the film are to be shared, but also specifies the amount to be charged to the movie patron, the number of and/or the time of showings, or the types or sizes of the facilities where the film is shown would not qualify as a lease or rental because of the restrictions placed on the parties.

8. - 21. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:301.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 13:107 (February 1987), amended LR 21:957 (September 1995), LR 22:855 (September 1996).

John Neely Kennedy
Secretary

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